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**RESORT PARK ASSOCIATION, INC.**

**AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR VILLA MONTEREY UNITS IV, IV B AMENDED AND IV D**

THIS AMENDMENT AND RESTATEMENT TO the Declaration of Covenants, Conditions and Restrictions for Resort Park Association ("Amendment") is made this 21<sup>st</sup> day of APRIL, 2022, by Resort Park Association, Inc. ("Association").

**RECITALS**

A. The Resort Park Association, Inc., is an Arizona non-profit corporation which represents the owners of certain property in Maricopa County, Arizona, which is more particularly described as:

“Tract C” and all of the lots in Villa Monterey Unit Four, as shown on the plat of record in the office of the Recorder of Maricopa County, Arizona, in Book 103 of Maps, page 5 thereof, Villa Monterey Unit Four B Amended according to the plat of record in the office of the Recorder of Maricopa County, Arizona, in Book 174 of Maps, page 3 thereof; and Unit Four D according to the plat of record in the office of the Recorder of Maricopa County, Arizona, in Book 186 of Maps, page 14 thereof.

B. The Declaration of Restrictions for Villa Monterey Units IV, IV B Amended and IV D was recorded at Recording No. 1989-015726, records of Maricopa County, Arizona (“Declaration”), and revoked all previous covenants, restrictions, conditions, and equitable servitudes on the real property, and subjected the real property described in the Declaration (and any Supplemental Declaration) to the Declaration and required that the property be held, sold, used, and conveyed subject to the easements, restrictions, covenants and conditions, which run with the title to the real property subject to this Declaration. The Declaration was amended in Recording Nos. 1992-0086851, 1992-0147632, 1994-0021448, and 2020-0289727, all official records of Maricopa County, Arizona.

C. The Declaration is binding on all parties having any right, title or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each Owner of any portion of the properties.

D. The Members of the Association wish to amend the Declaration.

E. Pursuant to Section 25 of the Association’s Declaration, an amendment to the Declaration must be approved by an instrument in writing executed and acknowledged by the Owners of not less than two-thirds (2/3) of the Lots.

NOW, THEREFORE, the Declaration is hereby amended as follows:

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## ARTICLE I - Definitions

As used herein, the following terms have the following meanings:

- A. "Association" means Resort Park Association, Inc., an Arizona nonprofit corporation.
- B. "Board" means the Board of Directors of the Association as from time to time constituted.
- C. "Common Area" means Tract C, of Villa Monterey Unit Four.
- D. "Governing Documents" means this Amended and Restated Declaration and any other documents, such as Bylaws, Articles of Incorporation, Rules and Regulations, and Architectural Guidelines which govern the operation of the Association.
- E. "Lot" or "Lots" means the lots in the Subdivision, individually or collectively, as the case may be and does not include any Lot or Lots in the other Villa Monterey units.
- F. "Member" means the Owner of record of any Lot in the Subdivision.
- G. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of equitable title in fee simple of any Lot.
- H. "Property" means the real property described above, or any part thereof.
- I. "Resident" means the person occupying premises for an extended period of time.
- J. "Subdivision" means Villa Monterey Unit Four, according to the plat of record in the office of the Recorder of Maricopa County, Arizona, in Book 103 of Maps page 5 thereof, Villa Monterey Unit Four B Amended, according to the plat of record in the office of the Recorder of Maricopa County, Arizona in Book 174 of Maps, page 3 thereof and Unit Four D, according to the plat of record in the office of the Recorder of Maricopa County, Arizona in Book 186 of Maps, page 14 thereof.

## ARTICLE II – Property Rights

A. **Owner's Easement of Enjoyment**. Every Owner, Lessee or Resident and individuals residing with such Owner, Lessee or Resident, shall have a right and easement of enjoyment in and to the Common Area, which right shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association to regulate the use of the Common Area through the Association Rules and Regulations to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners, Lessees or Residents.

B. **Waiver of Use.** No Owner may exempt himself/herself from personal liability for assessments duly levied by the Association, nor release the improved Lot owned by him/her from the liens and charges hereof by abandonment of his improved Lot.

C. **Membership and Voting Rights.** Each Lot Owner within the Association shall automatically be a Member of the Association and shall be entitled to one (1) vote for each Lot owned. In the event that a Lot is owned of record by more than one person, the vote attributed to that Lot shall be cast as a single vote as the Owners of that Lot shall among themselves determine, and said vote shall not be apportioned.

### **ARTICLE III – Permitted Uses and Restrictions**

A. **Residential Use.** The property is hereby restricted to single family dwellings for residential use (except for the Common Area which shall be used for recreational purposes only). All buildings or structures erected on the Property shall be of new construction and no buildings or structures shall be moved from other locations on to the Property.

B. **Age Restrictions.**

1. At least one occupant of each Lot must be 55 years of age or older; provided, however, that (i) this Subparagraph shall not apply to Lots occupied by persons who first occupied the Lot prior to September 13, 1988, or (ii) if an occupant who is 55 years of age or older dies, the remaining occupants of the Lot may continue to occupy the Lot even though none of such persons is 55 years of age or older.

2. No person under 18 years of age may occupy a Lot for more than thirty (30) days in any twelve month period. For purposes of this Subparagraph (2), a person shall be deemed to occupy a Lot for any day during which he or she stays overnight on the Lot or is present on the Lot for more than twelve (12) hours.

3. The provisions of this paragraph 2 are for the purpose of establishing the policies and procedures necessary for the property to qualify as housing intended and operated for occupancy by at least one person 55 years of age or older per unit under the Fair Housing Amendments Act of 1988, and the regulations promulgated thereunder. The Board of Directors is authorized to adopt such other policies and procedures which may be necessary from time to time in order for the property to meet all of the requirements for such exemption.

4. In the event of any change in the number or identity of persons occupying a Lot as a result of transfer, sale, gift, lease, assignment, death, birth, marriage, separation, divorce, or otherwise, the Owner of the Lot shall immediately notify the Board of Directors in writing and provide the Board of Directors with the names and ages of all occupants of the Lot and such other information as the Board of Directors may reasonably request.

5. An Owner may request in writing that the Board of Directors make an exception to the requirements of Subparagraphs (1) or (2) of this Paragraph with respect to such Owner's Lot and, provided that the granting of such an exception would not jeopardize compliance of the property with the requirements for housing intended and operated for occupancy by at least one person 55 years of age or older per unit under the Fair Housing Amendments Act of 1988, and the regulations promulgated thereunder, the Board of Directors may grant such an exception. The Board of Directors, however, shall be under no obligation to make any exception under any circumstances, and the granting of any requested exception shall be in the sole discretion of the Board of Directors. Any request for an exception shall set forth the names and ages of all proposed occupants of the Lot, the reason the exception is being requested, and the length of time for which the exception is requested. Any Owner making such a request shall also provide the Board of Directors with such other information as the Board of Directors may request.

6. In order for the Association to qualify as housing for older persons under the Fair Housing Amendments Act of 1988, at least eighty percent (80%) of the Lots must be occupied at all times by one person 55 years of age or older. In order for the Association to determine whether that requirement is being met at all times, each Owner shall, within ten (10) days after being requested to so do by the Board of Directors, furnish to the Association a statement signed by the Owner certifying that at least one occupant of the Owner's Lot is 55 years of age or older. In addition, if requested to do so by the Board of Directors, an Owner shall promptly furnish to the Association such documentary evidence as may be requested by the Association to verify the accuracy of the statements set forth in any certification submitted to the Association by the Owner.

C. **Business Use Prohibited.** No trade or business may be conducted on any Lot or in or from any Lot, except that an Owner or other Resident of a Lot may conduct a business activity within the Lot so long as (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot, (ii) the business activity conforms to all applicable zoning ordinances of the City of Scottsdale, (iii) the business activity does not involve the door-to-door solicitation of residents and does not involve persons coming to the Lot to purchase/obtain goods or services, except on an infrequent basis as determined by the Board in its sole discretion, and (iv) the business activity is consistent with the residential character of the community and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Association, as may be determined from time to time in the sole discretion of the Board. The terms "business" and "trade" as used in this Section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (a) such activity is engaged in full or part time, (b) such activity is intended or does generate a profit, or (c) a license is required for such activity. The leasing of a Lot by the Owner in accordance with the provisions of this Declaration and the Governing Documents shall not be considered a trade or business within the meaning of this Section.

D. **Animals/Permitted Pets.** "Permitted Pets" shall mean dogs, cats, fish or small birds or reptiles of a variety commonly kept as a household pet. Permitted Pets may be kept in a Lot if they are kept, bred or raised solely as domestic pets and not for commercial purposes. The Board of Directors shall have the absolute authority to determine what constitutes Permitted Pets. Permitted Pets shall not be allowed to make an unreasonable amount of noise, cause an odor which is detectable outside the Lot, or be an annoyance to a person of ordinary sensibilities. No Permitted Pet shall be allowed to run loose on any part of the Common Area unless authorized by the Board. All dogs shall be kept on a leash when outside a Lot and all Permitted Pets shall be directly under the control of the Owner, Lessee or occupant at all times. No structure for the care, housing, confinement, or training of any Permitted Pet shall be maintained on any portion of the Common Area or in any Lot so as to be visible from the street, Common Area, or any other Lot. The Board of Directors shall have the authority to adopt Rules and Regulations concerning the conduct of Permitted Pets.

E. **Leasing.**

1. Buyers who purchase a Lot after April 3, 2020, must wait 18 (eighteen) consecutive months after the close of escrow to lease or rent the Lot. This restriction will not apply when a Lot is transferred to a family member [spouse/child(ren)/grandchild(ren)/siblings) or parent(s)] of the former Owner. Anyone who was a homeowner prior to April 3, 2020, is not subject to this provision, until their Lot is sold.

2. Any homeowner, upon the sale or conveyance of their Lot, must notify any potential buyer or person taking title that the new Owner must own said Lot for a minimum of 18 (eighteen) consecutive months before they may lease or rent the Lot. This will not apply when a Lot is transferred to a family member [spouse/child(ren)/grandchild(ren)/siblings) or parent(s)] of the former Owner.

3. Only one lease is allowed in a twelve- (12) month period. Subleasing, defined as the re-renting of a property by an existing tenant to a new third party, is not permitted.

4. Any homeowner who rents or leases their Lot shall provide the Association with the name and contact information for any adults occupying the property, the time period of the lease, including the beginning and ending dates of the tenancy, a description and the license plate numbers of the tenants' vehicles, and proof of age of the occupants of the property.

5. Any future homeowner may apply for a hearing before the VMIV Board of Directors for temporary or special variances in case of hardship. Permission to lease will be granted at the discretion of the Board of Directors.

F. **Signs.** No signs other than the following shall be allowed within the Association without the written permission from the Board of Directors:

1. One professionally manufactured or produced 'for sale' sign which may be no larger than an industry standard for sale sign (not to exceed 18 x 24 inches) and a sign rider (not to exceed 6 x 24 inches) located on an Owner's Lot;

2. One professionally manufactured or produced 'for rent' sign which may be no larger than an industry standard for sale sign (not to exceed 18 x 24 inches) and a sign rider (not to exceed 6 x 24 inches) located on an Owner's Lot;

3. One 'open house' sign which may be no larger than an industry standard for sale sign (not to exceed 18 x 24 inches) located on an Owner's Lot;

4. Owners may display political signs, on their Lot, so long as the signs are not displayed any earlier than seventy one (71) days before the day of an election and must be removed no later than fifteen (15) days after a general election. If an Owner displays a sign for a candidate who did not advance in a primary election, then the sign must be removed no later than fifteen (15) days after the primary election.

G. **Antennas, Satellite Dishes and Other Signal Reception Equipment.** No antenna or other device for the transmission or reception of television or radio signals including but not limited to television antenna, satellite or microwave dishes, in excess of one (1) meter (39.37 inches) in diameter shall be erected, used or maintained upon any Lot without the prior written approval of the Board of Directors, which will grant approval for such devices consistent with the Federal Communication Commission's rule(s) regarding Over-the-Air Reception Devices ("OTARD").

H. **Clotheslines and Equipment.** No clotheslines, equipment, garbage containers, incinerators, service yards, wood piles and storage piles may be kept on a Lot if they are visible from the street, the Common Area, or a neighboring Lot.

I. **Nuisances.** No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon such 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 the foregoing provisions, no exterior loud speakers, horns, whistles, bells or other loud sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Lot. The Board of Directors, in its sole discretion, shall have the authority to determine whether a nuisance exists and such determination shall be final and binding upon all parties involved.

J. **Fencing/Walls.** No fences, hedges, or walls shall be erected or maintained upon the Property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Board pursuant to Article IX herein.

K. **Change of Use.** Upon (i) adoption of a resolution by the Board of Directors stating that in the Board's opinion the then-present use of a designated part of the Common Area is no



longer in the best interests of the Owners, and (ii) the approval of such resolution by two thirds (2/3) of eligible Owners (one vote per Lot) who are voting in person or by absentee ballot at a meeting duly called for such purpose, the Board of Directors shall have the power and the right to change the buildings, structures, and improvements thereon in any manner deemed necessary by the Board to accommodate the new use, provided such new use shall be for the benefit of the Owners.

#### **ARTICLE IV – Utility Easements**

There is hereby created a blanket easement upon, across, over and under the Lots and Common Area within this subdivision for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephone, electricity, television or communication lines and systems, etc. 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 said Property. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electric lines, water lines, or other utilities or service lines may be installed or relocated on said premises except as initially programmed and approved by the Association. This easement shall in no way affect any other recorded easements on said premises. This easement shall be limited to improvements as originally constructed.

#### **ARTICLE V – Association, Board of Directors**

A. **Formation of Association.** The Association shall be organized as a nonprofit Arizona corporation. The Association shall be the entity through which the Lot Owners shall act. The Association shall have such rights, powers and duties as are prescribed by law and as are set forth in the Governing Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration.

B. **Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles of Incorporation and the Bylaws. Unless the Governing Documents specifically require the vote or written consent of the Owners, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

C. **Rules.** The Association may, from time to time, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to (i) all aspects of the Association's rights, activities and duties, (ii) the management, operation and use of the Common Area, or (iii) the conduct of its Owners, tenants or guests. Except as limited herein, the Association Rules may be adopted, amended and repealed by a majority of the members of the Board.

D. **Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Owner, or to any other person or entity, 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, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in the Section shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

E. **Powers and Duties.** The Association shall have the following powers and duties:

1. Subject to the restrictions and limitations contained in this Declaration, the Association may enter into contracts and transactions with others.

2. The Association shall manage and maintain the Common Area at a reasonably high standard of care.

3. The Board may employ a professional property manager, management company or managing agent on a salaried or fee basis with such experience and qualifications and on such terms and conditions as may be acceptable to the Board. Any such agreement must be terminable upon thirty (30) days' notice and the term thereof may not exceed three (3) years unless negotiated for renewal.

4. The Association, including the Board or any committee of the Board, shall have the right to do such things as are expressly authorized in this Declaration, as well as such things as are reasonably necessary or proper for, or incidental to, the exercise of such express powers and duties.

5. The Association shall perform the functions and discharge the obligations delegated to or imposed upon the Association, the Board, or any committee of either.

6. The Association may exercise any right or privilege given to the Association expressly by the Governing Documents and every other right or privilege reasonably implied from the existence or any right or privilege given to the Association by the Governing Documents or reasonably necessary to effectuate any such right or privilege.

F. **Fines.** In accordance with any procedure which may be set forth in the Bylaws, under Arizona law or adopted by the Board, the Association shall have the power to levy reasonable fines against any Owner who violates any provision of the Governing Documents, after providing the Owner notice and opportunity to be heard.

G. **Suspension of Right to Vote and to Use Recreational Facilities for Default of Payment.** During any period in which an Owner shall be in default in the payment of any annual or special assessment(s) levied by the Association, the voting rights and right to use the recreational facilities of such Owner may be suspended at the discretion of the Board of Directors, after notice and an opportunity to be heard, until such assessment has been paid.

H. **Suspension of Right to Use Recreational Facilities for Violation of Governing Documents.** During any period in which an Owner shall be in violation of any provision of the Governing Documents, the right to use the recreational facilities of such Owner may be suspended at the discretion of the Board of Directors, after notice and an opportunity to be heard, until such violations have been cured.

#### **ARTICLE VI - Maintenance**

A. **Duties of the Association.** The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Common Area, and all Improvements located thereon, except for any part of the Common Area which any governmental entity is maintaining or is obligated to maintain. The Board shall be the sole judge as to the appropriate maintenance, repair and replacement of the Common Area, and the Improvements located thereon shall be maintained in good condition and repair at all times. No Owner, Resident or other Person shall construct or install any Improvements on the Common Area or alter, modify or remove any Improvements situated on the Common Area without the approval of the Board. No Owner, Resident or other Person shall obstruct or interfere with the Association in the performance of the Association's maintenance, repair and replacement of the Common Area, and the Improvements located thereon.

B. **Duties of the Lot Owner.** Each Owner shall maintain, repair, replace and restore, at his/her own expense, all portions of his/her Lot, subject to the Governing Documents.

C. **Right of Entry.** If the Owner fails to perform the necessary acts to comply with Governing Documents, the Association shall have the right to enter upon the Lot and perform maintenance as required by the Board of Directors. The cost of performance by the Association shall be an additional assessment and lien upon the Lot. Such assessment shall be paid upon notice from the Association.

#### **ARTICLE VII – Covenant for Assessments and Creation of Lien**

A. **Creation of Lien and Personal Obligation of Assessments.** Each Owner by becoming the Owner of a Lot, is deemed to covenant and agree to pay Assessments to the Association in accordance with and subject to the limitations of this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs including, but not limited to, reasonable attorneys' fees incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs including, but not limited to, reasonable attorneys' fees incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due. Any person or entity that takes ownership of a Lot through any type of transfer, including but not limited to inheritance, intestate succession, quitclaim deed, or gift, shall be responsible for all delinquent assessments and attorney's fees due at the time of transfer.

B. **Budget.** The Board of Directors shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board of Directors believes will be required during the ensuing fiscal year to pay all common expenses including, but not limited, to: (a) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Area; (b) the actual or estimated amounts of contributions to be made by the Association to the maintenance of and payment of taxes upon Tracts B, C, D, E, and F of Villa Monterey Unit Two, a Subdivision of Maricopa County, Arizona, and for maintaining in like condition the landscaped island on Coolidge Street at the Miller Road entrance. The Association is to be responsible for a part of said costs as determined by the Board in its negotiations with the other Units that share said costs on said property; and (c) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacements. The Board of Directors is expressly authorized to adopt and amend budgets for the Association.

C. **Annual Assessments.** For each fiscal year, the total amount of the estimated common expenses set forth in the budget adopted by the Board of Directors shall be assessed against each Lot. The Board is authorized to increase the Annual Assessment by a maximum of ten percent (10%) over the previous year. Approval by two thirds (2/3rds) of eligible Owners (one vote per Lot) voting in person or by absentee ballot at a meeting duly called for such purpose is required to increase the Annual Assessment in excess of ten percent (10%).

D. **Special Assessments.** The Association, through the Board of Directors, may levy against each Lot, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, replacement or improvement upon the Common Area, including fixtures and property related thereto, or for any other purpose as determined by the Board of Directors, provided, however, that any Special Assessment shall first be approved by two thirds (2/3rds) of eligible Owners (one vote per Lot) who are voting in person or by absentee ballot at a meeting duly called for such purpose.

E. **Remedies for Non-Payment of Assessments.** All Assessments, attorney fees for enforcing any provision of the Governing Documents (whether or not a lawsuit is filed), monetary penalties and other fees and charges levied against a Lot shall be the personal obligation of the Owner of the Lot at the time the Assessments, monetary penalties or other fees and charges became due.

1. All assessments and related charges not received on or before the due date as set by the Board of Directors shall be delinquent, and the Owner of the Lot against which such assessment is made shall be in default.

2. If any installment of the annual or special assessment or any part thereof is not received by the fifteenth (15th) day after it is due, a late charge, in an amount determined by the Board, shall be immediately imposed without further notice or warning to the delinquent Owner and interest at a rate determined by the Board shall accrue from

the due date until paid, except if the assessment is paid within thirty (30) days of the due date, no such interest charges shall be imposed.

3. If assessments and other charges or any part thereof remain outstanding more than sixty (60) days after the assessment payments first became delinquent, or if any Owner remains in violation of any provision of this Declaration, the Association, acting through the Board of Directors, may institute collection procedures and any and all legal action permitted in law or equity, including placing a lien on the property or instituting a lawsuit, to collect all amounts due pursuant to the provisions of the Declaration. Any expenses or costs of collection, including attorneys' fees charged to the Association, shall be added to the assessments due and owing from the Owner, who is responsible for the payment thereof in addition to the delinquent assessment, late penalties and accruing interest.

F. **Disclosure Fee.** The Association is permitted to charge a disclosure fee to compensate the Association for the costs incurred in the preparation of a disclosure statement furnished by the Association pursuant to A.R.S. Section 33-1806.

G. **Capital Contribution Fee.** To ensure that the Association will have adequate funds to establish operating, maintenance, and capital improvement reserves or to meet its expenses or to purchase necessary equipment or services, as of the date of the recording of this Declaration, when a Lot transfers ownership by voluntary sale or transfer (including, but not limited to, buyers under agreements for sale), the purchaser or seller shall immediately pay to the Association, a Capital Contribution Fee in an amount equal to two (2) times the Association Annual Assessment. The amount of the Capital Contribution Fee may be increased by the Board from time to time, provided any such increase is approved by two thirds (2/3rds) of eligible Owners (one vote per Lot) voting in person or by absentee ballot at a meeting duly called for such purpose. Notwithstanding the foregoing, the following purchasers or transferees shall be exempt from payment of the Capital Contribution Fee: (i) the transfer or conveyance of a Lot by devise or intestate succession, or by gift without the payment of any consideration by the transferee; (ii) a transfer or conveyance of a Lot for estate planning purposes; (iii) a transfer or conveyance to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transferor conveyance was to avoid payment for the Capital Contribution Fee in which event a Capital Contribution Fee shall be payable with respect to such transfer or conveyance; or (iv) any transfer or conveyance which does not fall under the exemptions set forth in subsections (i) – (iii) above, but which the Board determines, in its sole discretion, would be unfair or unjust to collect and/or falls outside of the scope and intent of this provision.

1. All Capital Contribution Fees will be deposited in the Association's reserve account and will be deemed to be a contribution to the capital of the Association. Capital Contribution Fees are non-refundable and will not be considered as an advance payment of assessments.

2. Capital Contribution Fees will exclusively be used by the Association as required under A.R.S. §33-442 for the construction or installation of buildings in the Common Area or for additions, repairs, maintenance or other improvements to existing buildings, roads, or other improvements in the Common Area. The collection and expenditure of the Capital Contribution Fees touch and concern the Property and are appurtenant to the title of each and every Lot.

3. Capital Contribution Fees will only be collected on the sales of Lots that are sold/listed for sale after the date this Declaration is recorded. Any Lot that is currently listed for sale as of the date this Declaration is recorded is exempt from the payment of the Capital Contribution Fee.

### **ARTICLE VIII – Insurance**

A. **Scope of Coverage.** The Association shall maintain, to the extent reasonably available, the following insurance coverage:

1. Comprehensive general liability insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all claims for bodily injury and property damage arising out of the use, ownership or maintenance of the Common Area or other properties the Association maintains. Deductible amounts, if applicable, shall be determined in the sole discretion of the Board;

2. Property insurance on facilities and physical assets of the Association insuring against all risk of direct physical loss in an amount equal to the insurable replacement value of the facility or asset as determined by the Board. Deductible amounts shall be determined in the sole discretion of the Board;

3. Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

4. Directors and Officers liability insurance in an amount to be determined by the Board; and

5. Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

B. **Association Responsibility for Insurance Claims.** The Association is authorized to adjust all claims arising under insurance policies purchased by the Association, to execute releases upon the payment of claims, and to perform all other acts reasonably necessary

to accomplish these responsibilities. The Board in its discretion may appoint an authorized representative or committee to negotiate losses under any policy purchased by the Association. All proceeds from insurance acquired by the Association shall be payable to the Association. Any proceeds resulting from damage to the Common Area shall be used to repair or replace the damaged property unless the Board adopts a resolution not to repair or replace the damaged property. Any excess proceeds shall be retained by the Association to accomplish the purposes of the Association.

C. **Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to Article IX, Section 1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

D. **No Association Liability.** The Association and the Board members shall not be liable to any person or entity if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of the insurance is not adequate.

E. **Individual Responsibility.** It shall be the responsibility of each Owner, Resident and Tenant to secure his or her own personal insurance on his individual property interests within the Association including, but not limited to, the dwelling unit, furnishings, personal property and personal liability, including liability for the operation of automobiles. The Association and Board members shall not be liable to any person or entity if any risks or hazards are not covered by the personal insurance obtained by an Owner on his or her individual property interests within the Association or if the amount of his or her insurance is not adequate.

### **ARTICLE IX – Architectural Control**

A. **Alterations and Improvements.** No building, fence, wall, or other structure or exterior improvement visible from the street shall be commenced to be constructed or erected on any Lot until the plans and specifications, showing the nature, kind, shape, height, materials and location, have been submitted to and approved by the Board. The Board shall have the right to refuse to approve any such plans or specifications which are not suitable or desirable in accordance with the community's historical character and/or consistent with the Association Architectural Guidelines. The Board shall have the right to take into consideration the suitability of the proposed building, structure or improvement and the materials with which it is to be built, to the site; the harmony with the surroundings; and the effect of the building or other structure as planned on the outlook from the adjacent, neighboring property or viewed from the street. All subsequent additions to or changes, modifications, alterations or improvements in any building, fence, wall or other structure shall be subject to the prior approval of the Board.

The Board of Directors shall have thirty (30) days after the proper plans and specifications have been received by it, to review the same, and must approve or deny the same in said thirty (30) day period. An application is not considered complete until all required information has been provided by the Owner. In the event the Board of Directors has not given its written approval or disapproval as specified herein, such approval will not be required, and this paragraph will be deemed to have been fully complied with.

B. **Architectural Review Committee.** The Architectural Review Committee shall consist of two or more members. The chair of the Architectural Committee must be a member of the Board. None of the members is required to be an architect or to meet any other particular qualifications for membership. Aside from the chair, the members of the Architectural Review Committee need not be, but may be, a member(s) of the Board. The Board may act as the Architectural Review Committee if a majority of the Board concludes it necessary, and elects to do so.

C. **Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in this Article, if the Board determines in its discretion that: (a) a restriction would create an unreasonable hardship or burden on an Owner or Occupant or a change of circumstances since the recording of this Declaration had rendered such restriction obsolete; (b) the activity permitted under the variance will not have any substantial adverse effect on Owners and Occupants and is consistent with the high quality of life intended for residents of the community; and (c) the activity permitted under the variance is consistent with City of Scottsdale requirements.

#### **ARTICLE X – Party Walls**

The rights and duties of the owners of Lots within the Subdivision with respect to party walls shall be governed by the following:

1. Each wall which is constructed as part of the original construction upon the Property and any part of which is placed on the dividing line between Lots shall constitute and be a party wall and with respect to each such wall, 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 party wall is damaged or destroyed through the act of an adjoining owner or any of his agents, guests, or members of his family, or any lessee (whether or not such act is negligent or otherwise culpable) so as to deprive the adjoining owner of the full use and enjoyment of such wall, then the first mentioned of such owners shall forthwith proceed to rebuild or repair the same to as good condition as formerly and in compliance with all applicable building codes, without cost to the adjoining owner.

3. In the event any party wall is damaged or destroyed by some cause other than the act or neglect of an adjoining owner, his agents, guests, or members of his family or any lessee or any agent, guest, or member of the family of such lessee (including ordinary wear and tear and deterioration as the result of the lapse of time), then, in such event, both of such adjoining owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly, and in compliance with all applicable building codes, at their joint and equal expense.



4. In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any owner proposing to modify, make additions to, or rebuild the improvements on his Lot in any manner which requires the extension or alteration of any party wall shall first obtain the written consent of each adjoining Lot owner, the Architectural Review Committee, and the Board of Directors.

5. In the event of a dispute, claim, or controversy between owners with respect to the repair or rebuilding of a party wall or with respect to the responsibility for the cost thereof, then upon written request of either of such owners addressed to the Board, the matter shall be settled using the mediation service offered by the City of Scottsdale.

6. The covenants set forth in this Article shall be binding upon the heirs, successors in interest and assigns of the owners of Lots but no person shall be liable for any act or omission respecting any party wall except as such took place while he was owner of the Lot upon which a portion of the party wall is situated.

#### **ARTICLE XI – General Provisions**

A. **Enforcement.** The Association or any Owner shall have the right to enforce the Governing Documents and/or any and all covenants, restrictions, charges, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which shall have been executed pursuant to, or subject to, the provisions of this Declaration. The Association is entitled to collect any attorneys' fees or costs incurred in the enforcement of any provision of the Governing Documents, whether or not a lawsuit is filed.

B. **Amendment.** These covenants, restrictions, and conditions may be revoked or amended by an instrument in writing executed by a two thirds (2/3rds) of Owners (one vote per Lot) voting in person or by absentee ballot at a meeting duly called for such purpose.

C. **Severability.** The invalidity of any one of the agreements, covenants, restrictions, or conditions herein contained by judgment, decree or court order, shall in no way affect the validity of the remaining provisions of this instrument and the same shall remain in full force and effect.

D. **Interpretation.** Except for judicial construction, the Association shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefitted or bound by this Declaration. In the event of any conflict between this Declaration and the Articles of Incorporation, Bylaws, Association Rules and Regulations or Architectural Guidelines, this Declaration shall control. In the event of any conflict between the Articles of Incorporation and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules and Regulations or the Architectural Guidelines, the Bylaws shall control.

**CERTIFICATION**

**RESORT PARK ASSOCIATION, INC.**

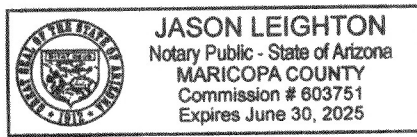
BY: Susan M Thomas (Signature)

SUSAN M THOMAS (Print Name)  
ITS: President

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of April, 2022, by SUSAN M. THOMAS, the President of Resort Park Association, Inc., an Arizona non-profit corporation, on behalf of the non-profit corporation.

Notary Public: [Signature]  
My commission Expires: 6/30/2025



**RESORT PARK ASSOCIATION, INC.**

BY: Julie Karcis (Signature)

Julie Karcis (Print Name)  
ITS: Secretary

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of April, 2022, by JULIE KARCIS, the Secretary of Resort Park Association, Inc., an Arizona non-profit corporation, on behalf of the non-profit corporation.

Notary Public: [Signature]  
My commission Expires: 6/30/2025

