

PKORLEANS0001ARCCR-26-1-1--
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When Recorded Return To:

Carpenter, Hazlewood, Delgado & Wood, PLC
1400 East Southern Avenue, Suite 400
Tempe, Arizona 85282

**AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION is made on the date hereinafter set forth by the Park Orleans Townhouses Corp. ("Association");

WITNESSETH

WHEREAS, the following property, which is more particularly described as:

Lots One (1) through Seventy-six (76), inclusive, and including Tract "I", Park Orleans Townhouses, and excluding Tract "A", according to the plat thereof of record in the office of the County Recorder of Maricopa County, Arizona, in Book 118 of Maps, page 27 thereof is subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Association hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property described herein and the owners thereof, their heirs, successors, grantees and assigns. These easements, covenants, restrictions and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described properties or any part thereof, and shall inure to the benefit of each owner thereof. This Declaration hereby establishes a plan for the individual ownership of real property estates, consisting of a lot and the improvements contained thereon, and the ownership by a non-profit association comprised of all owners of townhouses, of all of the remaining property, both real and personal, which is hereinafter defined and referred to as the "common elements". Said restrictions establish and impose a general plan for the improvement and development of said property described herein and the adoption and establishment of

covenants, conditions and restrictions upon said land and upon any and all townhouse units constructed thereon, and upon the use, occupancy and enjoyment thereof. Every conveyance of any of said townhouses, or property or portion thereof shall be and is subject to these easements, covenants, conditions and restrictions as follows:

ARTICLE I

DEFINITIONS

Section 1. “Association” shall mean and refer to Park Orleans Townhouses Corp. its successors and assigns.

Section 2. “Board” shall mean the Board of Directors of the Park Orleans Townhouses Corp.

Section 3. “Common area” and “common elements” shall be synonymous and shall mean all property owned by the Association for the common use and enjoyment of the members of the Association, including, but not limited to, all of the above referred to premises except the land specifically designated as a “lot” or “unit” on the above referred to plat of record and all recorded amendments thereto, except streets dedicated to the public and accepted by a governmental agency. The common elements shall also include all recreational facilities, community facilities, if any, swimming pools, pumps, trees, pavements, streets, pipes, wires, conduits and other public utility lines.

Section 4. “Declaration” means this Amended and Restated Declaration of Covenants, Conditions and Restrictions, as they may be amended from time to time.

Section 5. “Lot”, “unit” and “townhouse” shall be synonymous and shall mean and refer to a separately designated and legally described freehold estate consisting of any plot of land and the improvements thereon shown upon any recorded subdivision map of the properties with the exception of the common area.

Section 6. “Member” shall mean and refer to every person or entity who holds membership in the Association.

Section 7. “Owner” shall mean and refer to the record owner, whether one or more persons or entities, of equitable title (or legal title if equitable title has merged) of any lot which is part of the properties.

Section 8. “Project Documents” means this Declaration of Amended CC&Rs, the Articles of Incorporation, the Bylaws and the Association Rules and Regulations.

Section 9. “Properties” or “premises” shall mean and refer to that certain real property hereinbefore described, and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 10. “Visible from Neighboring Property” means, with respect to any given object, that the object is or would be visible to a person six feet tall, standing at ground level on any part of the neighboring property.

ARTICLE II

THE ASSOCIATION AND MEMBERSHIP

Section 1. Membership in the Association shall be limited to record owners of equitable title (or legal title if equitable title has merged) of townhouses constructed on the property described above or on any duly annexed property. An owner of a townhouse shall automatically, upon becoming the owner of a townhouse, be a member of the Association, and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease. Ownership of a lot shall be the sole qualification and criteria for membership. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation.

A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of such townhouse and then only to such purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer is void and will not be reflected upon the books and records of the Association. In the event the owner of any townhouse should fail or refuse to transfer the membership registered in his name to the purchaser of such townhouse, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership to the purchaser and thereupon the old membership outstanding in the name of the seller shall be null and void as though the same had been surrendered.

The record owner of equitable title (or legal title if equitable title has merged) of each townhouse shall be entitled to one membership in the Association, for himself and his family residing in the townhouse, which membership shall be subject to all of the provisions of the Association’s Articles of Incorporation, By-Laws, and these Restrictions, as now in effect or duly adopted and amended.

Section 2. The Association may, from time to time, and subject to the provisions of this Declaration adopt, amend and repeal rules and regulations governing all aspects of the Association's rights, activities and duties, the use and/or occupancy of the Common Areas and any other part(s) of the Properties, or any other subject within the jurisdiction of the Association. The Association Rules may include the establishment of a system of fines and penalties for violations of the Project Documents. Except as limited herein, the Association Rules may be adopted, amended and repealed by a majority of the Members of the Board. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

ARTICLE III

VOTING RIGHTS

Section 1. The Association shall have one class of voting membership.

Class A. Class A members shall be all those Owners as defined in Article II. A Class A member shall be entitled to one vote for each lot owned by said member, as provided above.

Section 2. In the event any townhouse unit owner shall be in arrears in the payment of any amounts due under any of the provisions of this Declaration for a period of fifteen (15) days, or shall be in default in the performance of any of the terms of this Declaration for a period of fifteen (15) days, said unit owner's right to vote as a member of the Park Orleans Townhouses Corp. shall be suspended and shall remain suspended until all payments are brought current and all defaults remedied.

ARTICLE IV

PROPERTY RIGHTS

Section 1. **Members' Easements of Enjoyment.** Every member shall have a right and easement of enjoyment in and to the common elements, and such easement shall be appurtenant to and shall pass with the title to each and every townhouse. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all owners of townhouses of Park Orleans and is necessary for the protection of said owners. Such right and easement of enjoyment shall be subject to reasonable rules and regulations as from time to time are promulgated by

the Board of Directors, and which may include, but shall not be limited to:

- (a) The right of the Association to limit the number of guests of members;
- (b) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common areas;
- (c) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the common areas and facilities and in aid thereof; to mortgage said property. The right of such mortgagee in said properties shall be subordinate to the rights of the homeowners hereunder; and
- (d) The right of the Association to dedicate or transfer all or any part of the common areas 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 entitled to cast two-thirds (2/3) of the votes of the Class A membership has been recorded, agreeing to such dedication or transfer, and unless written notice of the proposed action is sent to every member not less than thirty (30) days nor more than sixty (60) days in advance.
- (e) The right of the Association to suspend the right of an Owner or lessee and such Owner's or lessee's family, tenants and guests to use the Common Area if the Owner or lessee has violated any provision of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

Section 2. **Delegation of Use.** Any member may delegate, in accordance with the By-Laws, his right of enjoyment to the common areas and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

Section 3. **Title to the Common Areas.** The Association owns a fee simple title to the common elements. Said common elements shall be free and clear of all liens and encumbrances except normal easements and these covenants, conditions and restrictions.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessment. Each owner of any lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and agree to pay to the Association annual assessments, special assessments, fees, charges, and fines and penalties.

The annual and special assessments, together with such interest thereon, fees, charges, fines and penalties, and costs of collection thereof, as hereinafter provided, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, fees, charges, fines and penalties, together with such interest, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the owner of such property at the time when the assessment fell due. The personal obligation shall not pass to his successor in title unless it is expressly assumed by them or unless prior to such transfer of title, as evidenced by the records of the County Recorder or other appropriate governmental agency, a lien for such assessments shall have been filed in writing with the County Recorder or other appropriate governmental agency.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively for the purpose of promoting the recreation, health, and safety and welfare of the residents in the properties and in particular for the improvement and maintenance of the properties, services and facilities devoted to this purpose and related to the use and enjoyment of the common area, and of the townhouses situated upon the properties.

Section 3. Establishment, Basis and Maximum of Assessments. The owner of each such townhouse, for themselves, their heirs, successors, and assigns, further covenant that each such townhouse shall be subject to an assessment in an amount to be determined by the Association. The amount to be prorated among the members of the Association shall be established annually by the Board of Directors. Said amount shall be established after the Board of Directors has met with the management corporation, as hereinafter provided, and has examined the annual report to be prepared by said management corporation, and the annual audit, review or compilation.

An annual report shall be prepared by the management corporation or by such other party as the Board of Directors shall order. The exact date for the annual report shall be determined by the Board of Directors. The Board of Directors shall meet with the management corporation or other party preparing said report within forty (40) days following the preparation of same to discuss and set the rate for the current year.

The Board of Directors or the designated representative shall notify the owner or owners of each townhouse unit as to the amount of the annual assessment and shall each month collect for each townhouse unit one twelfth (1/12) of said townhouse unit's proportional share of said annual assessment. The assessments on a unit will commence at the time of the first conveyance or first occupancy of said unit.

The annual assessment may not exceed a certain amount, hereinafter referred to as the maximum annual assessment cap. The maximum annual assessment cap shall automatically increase each fiscal year in an amount not to exceed 20% of the prior years' annual assessment.

The maximum annual assessment may, at any time after the end of said first fiscal year, be increased above 20% of the prior years' annual assessment by a vote of the members, provided that any such increase shall have the assent of two-thirds (2/3) of the members at a meeting duly called for this purpose, at which a quorum is present. A quorum shall be determined in accordance with the provisions of Section 4 below.

Section 4. Special Assessments. In addition to any other assessments authorized by this Declaration, the Association's Board of Directors shall have the right and power to levy in any assessment year, a special assessment for the purpose of providing for the construction of additional recreational and other common facilities, unexpected repairs or the alteration, replacement, demolition or removal of existing recreational and other common facilities, from time to time, as in their discretion appears to be in the best interests of the Association and the townhouse project. Any such alteration, demolition, removal, construction, improvements or additions, increasing the owners' annual assessment over the then maximum limitation, shall be authorized by an affirmative vote of three-fourths (3/4) of the Board of Directors at a duly called meeting at which a quorum is present, and ratified and approved by the affirmative vote of sixty-six percent (66%) of the Council of Co-Owners present at a duly called meeting at which a quorum is present.

For the purposes of Sections 3 and 4, of the Article V, the presence at a duly called meeting of members or of proxies entitled to cast thirty percent (30%) of all the votes of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called by sending written notice to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting, setting forth the purpose of the meeting, and the required quorum at any such 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 5. 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 basis. Each townhouse unit's pro rata share of any assessments shall be 1/76 of the total amount of said assessment.

Section 6. Effect of Nonpayment of Assessments and Remedies of the Association. Each townhouse owner, for himself, his heirs, successors, grantees and assigns, covenants that with respect to charges so determined during the period that he is an owner, he will remit these charges directly to the management corporation, or to such other party or parties as directed by the Association's Board of Directors.

Any assessments which are not paid when due shall be delinquent. Each townhouse owner further agrees that these charges, if not paid within fifteen (15) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of seven percent (7%) per annum and shall become a lien upon said owner's lot and townhouse and shall continue to be such lien until fully paid. In addition, the Board of Directors may establish a late fee to be charged to any Owner who has not paid any assessment, fee, charge, fine or penalty, or any installment thereof, within fifteen (15) days after such payment was due. The lien of all annual and special assessments shall be subordinate to the lien of any first mortgage.

Each owner expressly vests in the Park Orleans Townhouses Corp., or its agents, the right and power to bring all action against such owner personally for the collection of such charges as a debt and to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage of real property, power of sale in connection with said lien. The lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other townhouse owners. The Association, acting on behalf of the unit owners, shall have the power to

bid in an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. In the event the Association employs an attorney or attorneys to enforce said lien or the collection of any amounts due pursuant to this Declaration, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the owner, owners and parties against whom the action is brought shall pay all attorneys' fees and costs thereby incurred by the Association in the event the Association prevails in any such action.

No owner of a townhouse may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common elements or by the abandonment of his townhouse.

Section 7. Rules Regarding Billing and Collection Procedures. Annual assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making assessments and for the billing and collection of the assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to an Owner will not relieve any Owner of his or her liability for any assessment or charge under this Declaration. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an assessment period; successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

Section 8. No Offsets. All assessments shall be payable in the amount specified by the assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Common Area or that the Association is not enforcing the Project Documents.

Section 9. Exempt Property. The following property, subject to this Declaration, shall be exempt from the assessments created herein: (a) all properties dedicated to and accepted by a local public authority; and (b) the common areas; however, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 10. Transfer, Refinance and Disclosure Fees. Each purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board. Any Owner of a Lot who sells or refinances his or her Lot and requires a status or disclosure statement from the Association in connection therewith shall pay to the Association a refinance or disclosure fee in such amount as is established from time to time by the Board. Fees charged pursuant hereto shall be secured by the Association Lien established pursuant to Article V, Section 1.

Section 11. Fines and Penalties. In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Project Documents, the Association shall have the right, subject to applicable law, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Project Documents by the Owner, any other residents of the Owner's Lot or any of the Owner's family, tenants, guests, contractors or agents. The amount of the fine or penalty for each violation shall be established by the Board.

Section 12. Notice of Violation, Appeal and Payment of Fines and Penalties. The Board, or any person designated by the Board, may serve a "Notice of Violation" against an Owner or lessee for a violation of any provision of the Project Documents by the Owner, his family or guests. A Notice of Violation shall contain (i) a description of the violation, (ii) the appropriate time and place at which the violation was observed, (iii) the amount of the fine to be paid by the Owner or lessee for such violation, (iv) the name of the person issuing the Notice of Violation, and (v) a statement advising the Owner or lessee of the Owner's or lessee's right to appear before the Board on the date, time and place specified for a hearing at which the Owner or lessee can offer any defenses or mitigating circumstances.

A Notice of Violation shall be deemed to have been served if delivered personally to the Owner or lessee named in the Notice of Violation or sent to the Owner or lessee by registered or certified United States mail, return receipt requested, postage prepaid. A Notice of Violation served by mail shall be deemed to have been received by the Owner or lessee to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is deposited in the United States mail. A Notice of Violation given to the Owner by mail shall be addressed to the Owner at the address of the Owner as shown on the records of the Association. A Notice of Violation given to the lessee by mail shall be addressed to the Lot occupied by the lessee. If a Lot is owned by more than

one person or entity, a Notice of Violation to one of the joint Owners shall constitute notice to all of the joint Owners.

The Owner or lessee shall pay the fine set forth in the Notice of Violation to the Association within ten (10) days after the Notice of Violation is served on the Owner or lessee or, if the Owner or Lessee appears at the hearing specified in the Notice of Violation, within ten (10) days after a hearing before the Board in which the Board upholds the fine.

Any fines or penalty levied pursuant hereto shall be secured by the Association lien established pursuant to Article V, Section 1.

Section 13. **Surplus Funds.** The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

ARTICLE VI

PARTY WALLS

The rights and duties of the owners of townhouses within this townhouse project with respect to party walls shall be governed by the following:

- (a) Each wall, including patio walls, which are constructed as part of the original construction of the townhouse multi-family structure, any part of which is placed on the dividing line between separate townhouse units, 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.
- (b) In the event any such party wall is damaged or destroyed through the act of one adjoining owner, or any of his guests, tenants, licensees, agents or members of his 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 and repair the same to as good condition as formerly

without cost to the adjoining owner.

- (c) In the event any such party wall is damaged or destroyed by some cause other than the act of one of the adjoining owners, his agents, tenants, licensees, guests or family (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.
- (d) Notwithstanding any other provision of this article, an owner who by his negligent or willful act causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- (e) The right of any owner to contribution from any other owner under this article shall be appurtenant to the land and shall pass to such owner's successors in title.
- (f) 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 his townhouse in any manner which requires the extension or other alteration of any party wall shall first obtain the written consent of the adjoining owner.
- (g) In the event of a dispute between owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such owners addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by each of the owners and the third by the two so chosen, or if the two arbitrators cannot agree as to the selection of the third arbitrator within five days, then by any Judge of the Superior Court of Maricopa County, Arizona. A determination of the matter signed by any two of the three arbitrators shall be binding upon the owners, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.
- (h) These covenants shall be binding upon the heirs and assigns of any owners, but no person shall be liable for any act or omission respecting any party wall except such as took place while an owner.

ARTICLE VII**ARCHITECTURAL CONTROL**

No exterior additions, or alteration to any building nor changes in fences, hedges, walls and other structures shall be commenced, erected or maintained until the plans and specifications showing the nature, kind, shape, height, materials, location and approximate cost of same shall have been submitted to and approved in writing as to conformity and harmony of external design and location with existing structures in the property by an architecture committee composed of the Board of Directors of the Association, or by a representative designated by the Board of Directors. The members of such committee shall not be entitled to compensation for services performed pursuant to this paragraph. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within forty (40) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VIII**EXTERIOR MAINTENANCE**

The Association, or its duly delegated representative, shall maintain and otherwise manage all property up to the exterior building lines and patio enclosures, including, but not limited to, the landscaping, parking areas, streets and recreational facilities, roofs, common elements and exteriors of the building located upon the above described properties (except windows of townhouse units, exterior doors including the door and window hardware and fixtures), and such additional maintenance of the buildings as the Board of Directors shall from time to time determine to be in the best interest of the Association and the co-owners and shall maintain and otherwise manage and be responsible for the rubbish removal of all areas within the above described property. The Board of Directors shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property, so that said townhouse project will reflect a high pride of ownership. All maintenance and repair of the individual townhouse units shall be the sole obligation and expense of the individual unit owners, except to the extent the exterior maintenance and repair is provided by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the common elements and all exteriors and roofs of the townhouse units, including, but not limited to, recreation and parking areas and walks, shall be taken by the Board of Directors or by its duly delegated representative. The powers, rights and duties of the Association and Board of Directors shall be as contained in this Declaration, and as may be adopted in its Articles of Incorporation and By-laws not inconsistent herewith.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the owner, his family, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

ARTICLE IX

INTERIOR AND OTHER MAINTENANCE

Each owner shall be responsible for the upkeep and maintenance of the interior of his townhouse and for the upkeep and maintenance of individual patios, all other areas, features or parts of his townhouse and property not otherwise maintained by the Association. All fixtures and equipment installed within a townhouse unit, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a townhouse unit, shall be maintained and kept in repair by the owner thereof. Termite control for all buildings and grounds encompassed within the Association shall be the responsibility of the Association. An owner shall do no act or any work that will impair the structural soundness or integrity of the multi-family building or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other townhouse units or their owners.

ARTICLE X

DAMAGE OR DESTRUCTION OF PROPERTY

In the event any common element, townhouse, carport or storage facility is damaged or destroyed by an owner or any of his guests, tenants, licensees, agents or members of his family, such owner does hereby irrevocably authorize the Association to repair said damaged element, townhouse, carport or storage facility, and the Association shall so repair said damaged element, townhouse, carport or storage facility in a good workmanlike manner in conformance with the original plans and specifications of the townhouses. The owner shall then repay the Association in the amount actually expended for such repairs.

In the event any townhouse is damaged or destroyed by an owner or any of his guests, tenants, licensees, agents or members of his family, such owner shall, within thirty (30) days from the date of the occurrence of the damage or destruction, repair and rebuild the exterior of said townhouse and any damage to adjacent townhouses or property in a good workmanlike manner in conformance with the original plans and specifications used in the construction of said townhouses. In the event such owner refuses or fails to so repair and rebuild any and all such damage to the exterior of the townhouse and adjacent property within said thirty-day period, the Association, by and through its Board of Directors, is hereby irrevocably authorized by such owner to repair and rebuild any such townhouse and/or adjacent property in a good workmanlike manner

in conformance with the original plans and specifications of the townhouses. The owner shall then repay the Association in the amount actually expended for such repairs.

Each townhouse owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work shall be delinquent and shall become a lien upon said owner's lot and townhouse and shall continue to be such lien until fully paid. Said charges shall bear interest from the date of delinquency at the rate of five percent (5%) per annum. The amount of principal and interest owed by said owner to the Association shall be a debt, and shall be collectible by any lawful procedure allowed by the laws of the State of Arizona.

Each such owner, by his acceptance of a deed to a lot and townhouse, hereby expressly vests in the Association or its agents the right and power to bring all actions against such owner for the collection of such charges and to enforce the aforesaid lien by all methods available for the enforcement of such liens and such owner hereby expressly grants to the Association a power of sale in connection with said lien.

Nothing contained in this Article X shall be construed in any way so as to relieve any insurance company from the payment of any and all amounts which would be payable under any policy or policies had not this article been inserted.

In the event of a dispute between an owner and the Board of Directors with respect to the cause of damage or the extent of repairs necessitated or with respect to the cost thereof, then upon written request of the owner addressed to the Association, the matter shall be submitted to arbitration under such rules as may from time to time be adopted by the Association of its Board of Directors. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chosen by the Board of Directors, one chosen by the owner, and these two arbitrators shall then choose a third arbitrator. If the two arbitrators cannot agree as to the selection of the third arbitrator, then by any Judge of the Superior Court of Maricopa County, Arizona. A determination by any two of the three arbitrators shall be binding upon the owner and the Association, who shall share the cost of arbitration equally. In the event one party fails to choose an arbitrator within ten (10) days after receipt of a request in writing for arbitration from the other party, then said other party shall have the right and power to choose both arbitrators.

ARTICLE XI

INSURANCE

The Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain insurance for all the buildings, including all townhouses, and shall also obtain a broad form public liability policy covering all common elements, and all damage

or injury caused by the negligence of the Association or any of its agents. Said insurance may include coverage against vandalism. Premiums for all such insurance shall be common expenses (insurance and premiums for interior fixtures and personal property for individual townhouses shall be paid for individually by the owners). All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association for each of the townhouse owners. Insurance on individual townhouses (for interior fixtures and personal property) obtained by such townhouse owners may be written in the name of the individual owners. Premiums for insurance obtained by the Board of Directors shall be a part of the common expense and will be paid with the money received by the Association from the annual assessment. The Board may increase the assessment rate without the approval of the membership to pay insurance premiums and the assessment rate may be adjusted annually to meet the estimated premium costs for the coming year and added to the amount of the annual assessment. In addition to the aforesaid insurance required to be carried by the owners and/or the Association, any owner may, if he wishes, at his own expense, insure his own townhouse unit for his own benefit and carry any and all other insurance he deems advisable. It shall be the individual responsibility of each owner at his own expense to provide, as he sees fit, homeowners' liability insurance, theft and other insurance covering personal property damage and loss. In the event of damage or destruction by fire or other casualty to any property covered by insurance written in the name of the Board of Directors, the Board of Directors, shall upon receipt of the insurance proceeds, contract to rebuild or repair such damaged or destroyed portions of the property to as good condition as formerly. All such insurance proceeds shall be deposited in a bank or other financial institution, the accounts of which bank or institution are insured by a federal governmental agency, with the proviso agreed to by said bank or institution that such funds may be withdrawn only by signature of at least one-third (1/3) of the members of the Board of Directors, or by an agent duly authorized by the Board of Directors. The Board of Directors shall contract with any licensed contractor, who shall be required to provide a full performance and payment bond for the repair, reconstruction or rebuilding of such destroyed building or buildings. In the event the insurance proceeds are insufficient to pay all the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all townhouse owners of the damaged building to make up any deficiency, except that the special assessment shall be levied against all townhouse owners, as established above, to make up any deficiency for repair or rebuilding of the common elements not a physical part of a townhouse unit. In the event such insurance proceeds exceed the cost of repair and reconstruction, such excess shall be paid over to the respective mortgagees and owners as their interests may then appear. Such payments shall be made to all such owners and their mortgagees in proportion to their percentage interests.

In the event of damage or destruction by fire or other casualty to any townhouse, carport, storage area or other property covered by insurance written in the name of an individual buyer, said buyer shall, upon receipt of the insurance proceeds, contract to

repair or rebuild such damaged or destroyed portions of the carport and storage area and the exterior of the townhouse in a good workmanlike manner in conformance with the original plans and specifications of said townhouse. In the event such owner refuses or fails to so repair and rebuild any and all such damage to the exterior of the townhouse and carport and storage area within thirty (30) days, the Association, by and through its Board of Directors, is hereby irrevocably authorized by such owner to repair and rebuild any such townhouse and/or carport and/or storage area in a good workmanlike manner in conformance with the original plans and specifications of the townhouses. The owner shall then repay the Association in the amount actually expended for such repairs.

ARTICLE XII

USE RESTRICTIONS

- Section 1. Said premises are hereby restricted to residential dwellings for residential use. All buildings or structures erected upon said premises shall be of new construction and no buildings or structures shall be moved from other locations onto said premises, and no subsequent buildings or structures other than townhouses, being residence units joined together by party walls, shall be built on any parcel where the builder theretofore programmed and constructed a townhouse. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other out building shall be used on any portion of the premises at any time as a residence either temporarily or permanently.
- Section 2. All tenants shall be subject to the terms and conditions of the Project Documents. Each Owner shall cause his, her or its tenants or other occupants to comply with the Project Documents and, to the extent permitted by applicable law, shall be responsible and liable for all violations and losses caused by such tenants or occupants. Any lease or rental agreement must be in writing and must provide that the terms of the lease are subject in all respect to the provisions of the Project Documents and that any violation of the Project Documents by the lessee or the other occupants shall be a default under the lease. No Owner may lease less than his, her or its entire Lot. No Lot may be leased for a period of less than thirty (30) days.
- Section 3. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except that generally recognized and commonly accepted household pets may be kept within or upon the Lot, provided that they are not kept, bred or maintained for any commercial purposes. Household pets, dogs and cats are limited to a combination of no more than three pets per

lot. Dogs are limited to three dogs under 15 pounds or two dogs if over 15 pounds. The owner of each pet is responsible for cleaning up any waste, dirt, and soilage and repairing any damage caused by the pet. No household pets may be kept on a Lot which result in annoyance to or which are obnoxious to other owners or residents, such as barking dogs. All household pets must be kept indoors or within fenced yards or patios unless leashed, and may not be permitted to run loose. The Scottsdale leash law applies to the Association. No household pets, dogs or cats shall be free to roam the common areas. They must be on a leash at all times.

Section 4. No advertising signs (except for industry standard sized “for sale,” “for lease,” or “open house” signs as permitted by the Arizona planned community act or any other successor statutes), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on the premises, nor shall the premises be used in any way or for any purpose which may endanger the health or unreasonably disturb the owner of any townhouse or any resident thereof. Provided, further, however, the foregoing covenants shall not apply to the signs and billboards, or the construction and maintenance of buildings, if any, of Park Orleans Townhouses Corp., a nonprofit corporation incorporated under the laws of the State of Arizona, its successors, and assigns, in furtherance of its powers and purposes as herein set forth.

Section 5. All clotheslines, equipment, garbage cans, service yards, woodpiles, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring townhouses and streets. All rubbish, trash or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. All clotheslines shall be confined to patio areas.

Section 6. Except in the individual patio areas, no planting or gardening shall be done, and no fences, hedges or walls shall be erected or maintained upon said premises except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Association’s Board of Directors or their designated representative.

Section 7. The common elements shall remain undivided, and shall at all times be owned by the Association or its successors, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the common elements.

Section 8. No antenna, satellite receiving station 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 area in the Properties (whether attached to a building or structure or otherwise) so as to be Visible from Neighboring Property, unless approved by the Board; provided, however, with respect to antennas and other devices for the reception of video programming signals greater than one (1) meter in diameter ("Permitted Antenna") an Owner may install a Permitted Antenna on the Owner's Lot if written notice identifying the type of Permitted Antenna is given the Association, and, to the extent the following can be done without precluding the reception of an acceptable quality signal, the Permitted Antenna is installed so as to be inconspicuous from adjacent Lots and Common Area in a manner that is architecturally compatible with the overall theme of the Properties. This provision shall be interpreted in a manner to be consistent with the Telecommunications Act of 1996, as amended from time to time, and the regulations promulgated thereunder. The Board may permit one or more aerial satellite dishes or satellite communication systems, and/or other apparatus and equipment for an antenna or cable system for the benefit of all or portions of the Properties.

Section 9. Windows shall have drapes, shutters or blinds. All aluminum foil, sheets, blankets, paper or other window covering is forbidden.

Section 10. No noxious or offensive activity shall be carried on upon any Lot or any part of the Properties, nor shall anything be done thereupon which may be, or may become, an annoyance or nuisance to the neighborhood, or which shall in any way interfere with the quiet enjoyment of each of the Owners or residents of such persons' respective residential Lots, or which shall in any way increase the rate of insurance on the Common Area.

Section 11. No trade or business may be conducted on any Lot or in or from any residence, except that an Owner or other resident of a Lot may conduct business activity within a 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 persons coming on to the Lot or the door-to-door solicitation of other Owners and residents, and (iv) the business activity is consistent with the residential character of the Project and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Properties, 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 meaning, 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 thereof for periods of not less than thirty (30) consecutive days shall not be considered a trade or business within the meaning of this Section. Additionally, garage sales shall not be considered a trade or business within the meaning of this section. Garage sales are permitted in carport areas only and all attendees must park in visitor parking or on nearby public streets. Parking in private drives or private carports of other Owners is not permitted.

Section 12. The Board may, at its option and in extenuating circumstances, grant variances from the restrictions, limitations, rules and regulations set forth in this Article XII if the Board determines in its discretion that (i) a restriction, limitation, rule or regulation would create an unreasonable hardship or burden on an Owner, lessee or resident and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the other Owners, lessees or residents or the Properties and is consistent with the high quality of life intended for residents of the Properties.

ARTICLE XIII

EASEMENTS

There is hereby created a blanket easement upon, across, over and under the above described premises for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewers, gas, telephones and electricity, and a master television antenna system. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain electrical and/or telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of said townhouses. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities may be installed or relocated on said premises except as initially programmed and approved by the major builder of said premises or thereafter approved by the said builder or the Association's Board of Directors. This easement shall in no way affect any other recorded easements on said premises.

Each townhouse and the common elements shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the original builder. 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 multi-family structure is partially or totally destroyed, and then rebuilt, the owners of townhouses agree that minor encroachments of parts of the adjacent townhouse units or common elements due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

ARTICLE XIV

RIGHTS AND DUTIES OF FIRST MORTGAGEE

Notwithstanding and prevailing over any other provisions of this Declaration, of the Association's Articles of Incorporation or By-Laws, or any rules, regulations of management agreements, the following provisions shall apply to and benefit each holder of a first mortgage upon a townhouse unit (called the first mortgagee):

- (a) The first mortgagee shall not in any case or manner be personally liable for the payment of any assessment or charge, nor for the observance or performance of any covenant, restriction, regulation, rule, Association Articles of Incorporation or By-Laws, or Management Agreement, except for those matters which are enforceable by injunctive or other equitable actions, nor requiring the payment of money, except as hereinafter provided.
- (b) During the pendency of any proceeding to foreclose the first mortgage, including any period of redemption, the first mortgagee (or any receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the owner of the mortgaged townhouse, including but not limited to the right to vote as a member of the Association to the exclusion of the owner's exercise of such rights and privileges.
- (c) At such time as the first mortgagee shall become record owner of a lot and townhouse, said first mortgagee shall be subject to all of the terms and conditions of these Covenants, Conditions and Restrictions, including, but not limited to, the obligation to pay for all assessments and charges accruing thereafter, in the same manner as any owner,
- (d) The first mortgagee, or any other party acquiring title to a mortgaged townhouse unit through foreclosure suit or through any equivalent proceedings such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged townhouse unit free and clear of any lien authorized by or arising out of any of the provisions of this Declaration which secures the payment of any assessment for charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption. Any such unpaid assessment shall nevertheless continue to

exist as the personal obligation of the defaulting owner of the respective townhouse unit to the Association, and the Board of Directors shall use reasonable efforts to collect the same from the owner even after he is no longer a member of the Association. There shall be a lien upon the interest of the first mortgagee or other party which acquires title to a mortgaged unit by foreclosure suit or by equivalent procedures for all assessments authorized by this Declaration which accrue and are assessed after the date the acquirer has acquired title to the unit free and clear of any right of redemption.

ARTICLE XV

ANNEXATION OF ADDITIONAL PROPERTIES

Annexation of additional property shall require the assent of two-thirds (2/3) of the Class A members at a meeting duly called for this purpose, written notice of which shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The presence of members or of proxies entitled to cast sixty percent (60%) of the votes of each class of membership shall constitute a quorum. If the required quorum is not forthcoming at any meeting, another meeting may be called subject to the notice requirement set forth above and the required quorum at such subsequent meeting shall be one-half (1/2) of the required quorum of the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting. In the event that two-thirds (2/3) of the Class A membership is not present in person or by proxy, members not present may give their written assent to the action taken thereat.

ARTICLE XVI

GENERAL PROVISIONS

Section 1. Binding Effect and Enforcement. The covenants, restrictions, reservations and conditions contained herein shall run with the land and shall be binding upon all persons purchasing, leasing, subleasing or occupying any townhouse on said property, their heirs, executors, administrators, successors, grantees and assigns. After the date on which this instrument has been recorded, these covenants, restrictions, reservations and conditions may be enforced by the Association or its Board of Directors, which shall have the right and duty to enforce the same and expend Association moneys in pursuance thereof, and also may be enforced by the owner of any townhouse or any one or more of said parties. Failure of the Association or any Owner to take enforcement action with respect to a violation of the

Project Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Project Documents in the future. Any breach of said covenants, restrictions, reservations and conditions shall be binding upon and effective against any owner of said premises, other than one whose title thereto is acquired by foreclosure of a mortgage and the sheriff's sale or any procedure or proceeding in lieu of foreclosure thereof. Any purchaser who acquired title, except through foreclosure of a mortgage and a sheriff's sale, shall take title to said premises subject to the lien hereof for all such charges pursuant to Article V and X that have accrued prior to such acquisition of title, and subject to the lien hereof for all said charges that shall accrue subsequent to the date said purchaser takes title, and provided also that the breach of any of said covenants, restrictions, reservations and conditions may be enjoined, abated or reviewed by appropriate proceedings, notwithstanding the lien or existence of any such mortgage. The personal obligation to pay the annual and special assessments as provided in Article V, Section 2 of this instrument shall not pass to a successor in title unless the obligation is expressly assumed by the successor in title or unless, prior to such transfer of title as evidenced by the records of the County Recorder or other appropriate governmental agency, a lien for such assessments shall have been filed in writing with the County Recorder or other appropriate governmental agency. All instruments of conveyance of any interest of all or any part of said townhouses shall contain reference to this instrument and shall be subject to the covenants, conditions, reservations and restrictions herein as fully as though the terms and conditions of this instrument were therein set forth in full, however, the terms and conditions of this instrument shall be binding upon all persons affected by its terms, whether express reference is made to this instrument or not. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenants either to restrain violation or to recover damages. In the event the Association employs an attorney or attorneys to enforce said lien or the collection of any amounts due pursuant to this declaration, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, the owner, owners and parties against who the action is brought shall pay all attorneys' fees and costs thereby incurred by the Association regardless of whether or not a civil action is actually commenced.

Section 2. Equal Treatment of Owners. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any owner or owners in favor of the other owners.

- Section 3.** **Severability.** The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained therein should be invalid or should operate to render this agreement invalid, this agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, or section or sections had not been inserted.
- Section 4.** **Gender.** The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.
- Section 5.** **Topical Headings.** The marginal or topical headings of the paragraphs contained in this Declaration are for convenience only and do not define, limit or construe the contents of the paragraphs or of this Declaration.
- Section 6.** **Law, Ordinances and Regulations.** Any violation of state, municipal, or local law, ordinance or regulation 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 herein.
- Section 7.** **Amendment.** These covenants, restrictions, reservations and conditions may be amended at any time by an instrument signed by the then owners of not less than seventy-five percent (75%) of the townhouses on said property.
- Section 8.** **Termination.** These covenants, restrictions, reservations and conditions shall continue in full force and effect unless terminated by the affirmative vote or written consent, or any combination thereof, of the Owners representing ninety percent (90%) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon these covenants, restrictions, reservations and conditions shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles of Incorporation.

IN WITNESS WHEREOF, Park Orleans Townhouses Corp., an Arizona nonprofit corporation, has executed this Amended and Restated Declaration of Covenants, Conditions and Restrictions as of this 26th day of January, 2012.

PARK ORLEANS TOWNHOUSES CORP.
an Arizona nonprofit corporation

By: *Larry August*
Its: President

State of Arizona)
) ss.
County of Maricopa)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 26th day of JANUARY, 2012 by LARRY AUGUST, the President of Park Orleans Townhouses Corp., an Arizona nonprofit corporation, for and on behalf of the corporation.

My Commission Expires:

Scott Brend
Notary Public



