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**AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HERITAGE HILLS HOME OWNERS ASSOCIATION**

This document is being re-recorded to correct technical errors in the document recorded on May 5, 2006 at recording number 2006-0612716. The documents recorded on May 5, 2006 at 2006-0612716 and June 16, 2006 at 2006-0813231 are no longer valid.

This Declaration is made on the date hereinafter set forth by the Heritage Hills Home owners Association ("Association").

This Amended and Restated Declaration of Covenants, Conditions and Restrictions for Heritage Hills Home Owners Association is made as of this 16th day of August, 2007, by Heritage Hills Home Owners Association, ("Association"), an Arizona non-profit corporation.

RECITALS

- A. The original Declaration of Covenants, Conditions and Restrictions for Heritage Hills Home Owners Association was recorded on March 31, 1970 at Docket Number 8067 Page 383, records of Maricopa County, Arizona (the "Declaration").
- B. Article XV, Section 7 of the Declaration provides that the Declaration may be amended at any time by an instrument signed by the then owners of not less than two-thirds (2/3) of the houses on said property.
- C. The Board of Directors of the Association proposed to the members that the Declaration be amended and restated. The amendment proposed by the Board of Directors was adopted and approved by the affirmative vote of Owners of not less than 2/3 of the total votes in the Association.

WITNESSETH

WHEREAS, the following property in the County of Maricopa, State of Arizona, which is more particularly described as :

Tracts 5 and 6, Valhalla Replated, which will represent Lots 1 through 39 in Unit 1 Heritage Hills, and Lots 40 through 74 in Unit 2 thereof, and Lots 75 through 107 in Unit 3 thereof; and

WHEREAS, said properties are subject to the following Amended and Restated Declaration of Covenants, Conditions and Restrictions;

NOW, THEREFORE, Association hereby declares that all of the properties described above shall be held, sold, and conveyed subject to the following covenants, conditions charges, lien, restrictions, easements and reservations (hereinafter collectively sometimes call "restrictions,") all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the real property, and all of which are hereby declared to be for the benefit of all of the property described herein and the owners thereof, their heirs, ^{Unofficial Document} successors, grantees and assigns. These 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 Amended and Restated 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 houses, of all of the remaining property, both real and personal, which is hereafter defined and referred to as the "common elements." Said restrictions establish and impose a general plan for the improvements and development of said property described of said property described herein and the adoption and establishment of covenants, conditions, charges, liens, easements and restrictions upon said land and upon any and all house units constructed or to be constructed thereon, and upon the use, occupancy and enjoyment thereof. Every conveyance of any of said houses, or property, or portion thereof, shall be and is subject to any of said houses, or property, or portion thereof, shall be and is subject to these covenants, conditions, charges, liens, easements and restrictions as follows:

ARTICLE I
DEFINITIONS

Section 1. "Association" shall mean and refer to HERITAGE HILLS HOME OWNERS ASSOCIATION, an Arizona corporation, its successors and assigns.

Section 2. "Properties" or "premises" shall mean and refer to that certain real property

hereinbefore described.

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 replats thereof. The common elements shall also include all recreational facilities, community and commercial facilities, if any, swimming pools, pumps, trees, pavements, streets, pipes, wires, conduits and other public utility lines in connection therewith.

Section 4. "Lot," "unit" and "house" 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 exceptions of the common area.

Section 5. "Member" shall mean and refer to every person or entity who holds membership in the Association.

Section 6. "Owner" shall mean and refer to the record holder of legal title to the fee interest in any lot, regardless of whether such holder actually resides on any part of the premises, and regardless of whether such holder has sold the lot under a contract of sale.

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ARTICLE II **MEMBERSHIP**

Membership in the Association shall be limited to owners of houses constructed or planned to be constructed on the property described above. An owner of a house shall automatically, upon becoming the owner of a house, 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.

A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of such house 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 name to the purchaser of such house, the Association shall have the right to record the transfer upon the books of the Association and issue a new membership for 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 owner of each house shall be entitled to one membership in the Association, and that there shall be no more than One membership for each house, which membership shall be subject to all of the provisions of the Association's Articles of Incorporation, Bylaws, Management and these Restrictions, as now in effect or duly adopted and amended.

ARTICLE III VOTING RIGHTS

Section 1. The Association shall have one class of voting membership. Members shall be entitled to one vote for each lot owned by said member.

Section 2. In the event any house 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 ASSOCIATION shall be suspended and shall remain suspended until all payments are brought current and all defaults remedied.

ARTICLE IV PROPERTY RIGHTS

Section 1. Members' Easement 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 house. It is expressly acknowledged and agreed by all parties concerned that this Article is for the mutual benefit of all owners of the houses and of the Association, and is necessary for the protection of said owners. It is understood and agreed that the rights of use and enjoyment of the common elements may be exercised by any person legally in possession of a house in a manner not in violation of the provisions hereof, but nothing herein shall be deemed to alter or amend the definition of "owner" under Article I, Section 6 hereof, or to affect the provisions of the Article III hereof with respect to voting rights. Such right and easement of enjoyment shall be subject to reasonable rules and regulation, as from time to time are promulgated by the Board of Directors, and which may include, but shall not be limited to:

- (1) The right of the Association to limit the number of guests of members who may use any of the common areas;

- (2) The right of the Association to charge reasonable admission and other fees for the use of any recreational facility situated upon the common areas;
- (3) the right of the Association, in accordance with its Articles and Bylaws, to borrow money; and
- (4) The right of the Association to dedicate or transfer all or any part of the common areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument signed by members entitled to cast two-thirds ($\frac{2}{3}$) of the votes of the Association 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.

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

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Section 3. Title to the Common Areas. The Association has a fee simple title to the Common Elements of the Association.

ARTICLE V

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Maintenance. It is anticipated that residential dwelling units will be constructed on various parcels within the house project's property and that the ownership of individual units shall be evidenced by a deed of a lot together with the improvements thereon constituting a "house." Maintenance, upkeep and repairs of individual houses and lots shall be the sole responsibility of the individual owners thereof and not in any manner the responsibility of the Board of Directors. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the common elements, 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 Bylaws not inconsistent herewith.

The Association, or its duly delegated representative, shall maintain and otherwise manage all property up to the lot lines, including, but not limited to the landscaping, parking areas, streets and recreational facilities, roofs, common elements and exteriors of the buildings located upon the above-

described common properties, 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 house project will reflect a high pride of ownership. All maintenance and repair of the individual house units shall be the sole obligation and expense of the individual unit owners.

Section 2. Creation of the Lien and Personal Obligation of Assessments: 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: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be fixed, established and collected from time to time as hereinafter provided. The annual and special assessments, together with late fees, interest (at least 12 percent per annum) thereon and costs of collection thereof including attorneys' fees and costs, 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, together with such late fees, interest (at 12 percent per annum), costs and reasonable attorney's 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, but such personal obligation and liability of the "owner" shall not be deemed to limit or discharge the charge on the land and continuing lien upon the property against which such assessment is made.

Section 3. Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of promoting the recreation, health, 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 houses situated upon the properties.

Section 4. Establishment, Basis and Maximum of Assessments. The owner of each such house, for themselves, their heirs, successors and assigns, further covenant that each such house shall be subject to an assessment in an amount to be determined by the Association in the following manner:

- (a) Such house unit's pro rata share of the actual cost to the Association of all taxes, repair, construction, replacement and maintenance of the common elements and houses, and landscaping and pathways within the street rights-of-way in the subdivision as may from time to time be authorized by the Board of Directors, and other facilities and activities including, but not limited to, mowing grass, caring for the grounds, sprinkler system, swimming pool, recreational buildings, and other charges required by this

Amended and Restated Declaration of Covenants, Conditions and Restrictions;

- (b) Such house unit's pro rata share of the actual cost to the Association of such recreational facilities as may from time to time be provided by the Association;
- (c) Such house unit's pro rata share of such sum as the Board of Directors of the Association shall determine to be fair and prudent for the establishment and maintenance of a reserve for repair, maintenance, taxes and other charges as specified herein, including fire and other hazard insurance premiums as hereinafter provided, and a liability insurance premium for a liability insurance policy in the face amount of not less than \$500,000.00, which policy, in addition to public liability shall cover repair and construction work to all of the assets and property owned by or to be maintained by the Association. The disposition of liability insurance proceeds shall be made upon majority vote of the Board of Directors, but in all events shall be used to and for the purpose of the Association;
- (d) Such house unit's pro rata share of such additional sum as the Board of Directors of the Association shall determine to be necessary to meet the primary purposes of the Association;
- (e) Each house unit's pro rata share shall be 1/107th of the total amount determined under sub-paragraphs a, b, c and d above.

The amount to be prorated among the members of the Association pursuant to sub-paragraphs (a), (b), (c), (d) and (e) above, 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 prepared by a certified public accountant.

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.

At the time of the first conveyance of each house unit and from time to time thereafter, the Board of Directors, or the designated representative, shall notify the owner, or owners, of each house

unit as to the amount of the estimated annual assessment and shall each month collect for each house unit, one-twelfth (1/12th) of said house unit's proportional share of said annual assessment.

Notwithstanding any provisions herein contained to the contrary, the Association shall not impose a regular assessment that is twenty (20) percent greater than the immediately preceding years assessment without the affirmative vote of fifty-one percent of the members of the Association.

Section 5. 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 provide for the construction of additional recreational and other common facilities, or the alteration, 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 house project. Any such demolition, removal, construction, improvement or additions, or charges, for additional maintenance or services, 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 members present at a duly called meeting at which a quorum is present.

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For purposes of this Section 5, the presence of at a duly called meeting of members or of proxies entitled to cast sixty percent (60%) of all 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 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 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all lots and may be collected on a monthly basis.

Section 7. Effect of Nonpayment of Assessments and Remedies of the Association. Each house 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. The Association may charge a late fee once the assessment is fifteen (15) days past due. Each house 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 twelve per cent (12%) per annum and shall become a lien upon said owner's lot and house, and shall continue to be such lien until fully paid. This lien shall be subordinate to the lien of any first mortgage.

Each such owner expressly vests in the Association, the Association's Board of Directors, or its agents, the right and power to bring all actions 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 action brought in the name of the Association in a like manner as a mortgage of real property, and such owner hereby expressly grants to the Association a 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 house owners. The Association, acting on behalf of the unit owners, shall have the power to bid on an interest foreclosed at foreclosure sale and to acquire and hold, lease, mortgage and convey the same. In the event any person, corporation or association authorized to enforce the provisions of this Declaration 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 attorney's fees and costs thereby incurred by said enforcing party in the event said enforcing party prevails in any such action.

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

Section 8. 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; (b) the common areas; and (c) all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Arizona. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

ARTICLE VI **PARTY WALLS**

The rights and duties of the owners of houses within this housing project with respect to party walls shall be governed by the following in the event that there would be any party walls constructed in any parts of the said Heritage Hills subdivision:

- (a) Each wall, including patio walls, which is constructed as a part of the original construction of the house structure, any part of which is placed on the dividing line

between separate house 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, Unofficial Document 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 house 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 (5) days,

then by an 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 bo arbitrators.

- (h) These covenants shall be binding upon the heirs and assigns of any owners.

ARTICLE VII

ARCHITECTURAL CONTROL

No change, alteration, demolition or improvement to an existing home, building, fence, roof, wall, or any other structure or new construction of a new or replacement home shall be commenced, erected or maintained on any lot until the plans and specifications for the same, showing all construction details, including the nature, shape, height, materials, floor plans, location and approximate cost thereof, shall have been submitted to and approved in writing by the Association's Board of Directors. In addition, roof material and color must be approved in writing by the Association's Board of Directors. The Association's Board of Directors shall have the right to deny approval of any plans or specifications which are not, in its opinion, suitable or desirable for aesthetic or any other reasons, and shall have the right to take into consideration the harmony and conformity of the building with the surrounding buildings and the suitability of the same with the surrounding area and the effect of such structure or building as seen from adjacent or neighboring properties. All subsequent exterior additions, replacements, alterations, repainting or improvements of any building, fence, wall or other structure, also shall be subject to the prior approval of the Association's Board of Directors.

The Association's Board of Directors shall have the authority to adopt reasonable rules and regulations regarding construction activities on any Lot or Common Areas located within Heritage Hills Home Owners Association. In addition, the Association or the Association's Board of Directors may require a completion bond and/or security deposit for any construction activities on a Lot in an amount to be determined by the Association, but not to exceed \$4,000.00 per Lot.

In the event the Association fails to approve or disapprove such plans and specifications within thirty (30) days after submission thereof, 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 the otherwise manage all property up to the exterior lot lines, including but not limited to, the landscaping, parking areas, streets and recreational facilities, common elements, 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 repairs, management and maintenance of said property so that said house project will reflect a high pride of ownership. All maintenance and repair of the individual house units shall be the sole obligation and expense of the individual owners, except to the extent the exterior maintenance and repair is provided by the Association.

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.

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ARTICLE IX
INTERIOR AND OTHER MAINTENANCE

Each owner shall be responsible for the upkeep and maintenance of the exterior and interior of his house and for the upkeep and maintenance of all other areas, features or parts of his house and property not otherwise maintained by the Association. All fixtures and equipment installed within a house unit, commencing at the lot line, shall be maintained and kept in repair by the owner thereof. Termite control shall be the responsibility of the owner. An owner shall do no act nor any work that will impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other house units or their owners.

ARTICLE X
DAMAGE OR DESTRUCTION OF PROPERTY

In the event any house or property is damaged or destroyed by an owner or any of his guests, tenants, licensees, agents or members of his family, or is destroyed in some other manner (including, but not limited to fire, act of God, etc.) such owner shall, within the thirty (30) days from the date of the occurrence of the damage or destruction, repair and rebuild the exterior of said house and any damage to adjacent houses or property in a good workmanlike manner in conformance with the original plans and specifications used in the construction of said houses. In the event such owner

refuses or fails to so repair and rebuild any and all such damage to the exterior of the house and adjacent property within said thirty (30) day period, the Association, by and through its Board of Directors, is hereby irrevocably authorized by such owner to repair and rebuild any such house and/or adjacent property in good workmanlike manner in conformance with the original plans and specifications of the houses. The owner shall then repay the Association in the amount actually expended for such repairs.

Each house 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 house and shall continue to be such lien until fully paid. Said charges shall bear interest from the date of delinquency at the rate of twelve per cent (12%) 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 house, hereby expressly vests in the Association, or its agents, the right and power to being 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, including those specified in Article V, Section 4, sub-paragraphs (a), (b), (c), (d) and (e) above, 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 costs 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 or its Board of Directors. If no such rules have been adopted by the Association or its Board of Directors. If no such rules have been adopted, then the matter shall be submitted to three arbitrators, one chose 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, if any, situated on any of the common areas, against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of any repair or reconstruction work in the event of damage or destruction from any hazard, and shall also obtain a broad form public liability for the Association or any of its agents. Said insurance may include coverage against vandalism. In addition, the Board of Directors, or its duly authorized agent, shall have the authority to and shall obtain directors and officers insurance for the Directors and Officers of the Association. Premiums for all such insurance shall be common expenses. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association or for the Directors and Officers policy in the names of the individual Directors. Insurance on individual houses obtained by such house owners may be written in the name of the individual owners. Premiums for insurance obtained by the Board of Directors on individual houses shall not be part of the common expense, but shall be an expense of the specific house so covered and a debt owed by the owners, and shall be collectible by any lawful procedure permitted by the laws of the State of Arizona. In addition, if said debt is not paid within a reasonable time period as determined by the Board of Directors after notice of such debt, such amount shall automatically become a lien upon such owner's lot and house and shall continue to be such lien until fully paid. This lien shall be subordinate to the lien of any first mortgage, and shall be enforceable in the same manner as any lien created by failure to pay the maintenance assessments. 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 house 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 the event the insurance proceeds are insufficient to pay the costs of repairing and/or rebuilding to the same condition as formerly, the Board of Directors shall levy a special assessment against all house owners of the damaged building to make up any deficiency, except that the special assessment shall be levied against all house owners, as established by Article V,

Section 4, sub-paragraph (e) above, to make up any deficiency for repair or rebuilding of the common elements not a physical part of a house 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 interest 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 house, garage, 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 garage, carport and storage area and the exterior of the house in a good workmanlike manner in conformance with the original plans and specifications of said house. In the event such owner refuses or fails to so repair and rebuild and all such damage to the exterior of the house 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 house and/or carport and/or storage area in a good workmanlike manner in conformance with the original plans and specifications of the houses. The owner shall then repay the Association in the amount actually expended for such repairs. Each lot owner further agrees that these charges for repairs or rebuilding, 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 house and shall continue to be such lien until fully paid. Said charges shall bear interest from the date of delinquency at the rate of twelve per cent (12%) 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.

ARTICLE XII

USE RESTRICTIONS

Section 1. Each lot in the premises shall be known as and limited in use to a single family house lot, and construction thereon shall be limited to a house no more than two stories in height. 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. No subsequent buildings or structures other than houses shall be built on any lot where the builder theretofore programmed and constructed a house. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be placed or used on any portion of the premises at any time as a residence either temporarily or permanently.

Section 2. No noxious or offensive activity may be carried on or permitted on any lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood; nor shall any part of the premises be used for commercial, religious or institutional purposes. If a business

is conducted on or out of a lot, employees must consist of family members whose legal residence is on the Lot and the business may not cause increased noise, pollution, traffic, parking problems, distasteful smell or a nuisance.

Section 3. No animals, fish or birds of any kind shall be raised, bred or kept in the premises; except that commonly accepted household pets may be kept, provided that such pets are not kept, bred or maintained for any commercial purposes.

Section 4. All clotheslines, equipment, service yards, woodpiles or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring houses and streets. To the extent feasible, all rubbish, trash or garbage shall be kept in containers and shall not be allowed to accumulate on the premises and shall be screened from view of neighboring houses and streets until the date of pickup of a trash collection service. No rubbish, trash or garbage shall be burned on the premises. Incinerators of every kind shall be prohibited.

Section 5. Gas, electric, power, telephone, water, sewer, cable television and other utility or service lines (used for the general benefit of the lot owners) and other utility or service lines of every kind of character (whether now or hereafter Unofficial Document invented or used) shall be placed and kept underground up to the walls of the buildings on the premises (except to the extent, if any, such underground placement may be prohibited by law, or by the nature of the service to be rendered, such underground placement prevents the lines from being functional). This restriction shall apply to the service and utility lines for each and every lot and common areas, as well as to the distribution lines located in the streets or elsewhere in the subdivision. However, the foregoing shall not prohibit service pedestals and above-ground switch cabinets and transformers, where required.

Section 6. No planting or gardening shall be done in the Association's Common Areas without the prior written approval of the Association's Board of Directors. No hedges or walls shall be erected or maintained upon any Lot except such as are installed in accordance with the original construction of the buildings located thereon or may thereafter be approved by the Association and/or the City of Phoenix.

Section 7. Fences or walls on any individual lot shall be of uniform heights and material on all side yards facing the street and on all rear yards. The material shall be desert beige prefabricated block or slump block masonry, desert beige color, or any combination thereof, and not more than five (5) feet in height. The desert beige prefabricated block or desert beige slump block shall be exposed on any side facing a street and no the entire rear of the lot. All fences on the rear of the lot must be built on the rear lot line and must meet by joining, any fence previously built on an adjoining lot or lots.

Fences or walls adjacent to or part of a house may conform to the material and finish used on such house, with heights up to eight (8) feet for the front of such house and on sides adjacent to such house only, and in conformity with foregoing provisions. Interior sides of such walls or fences may be finished to the individual wishes of the lot owners. Any fence or wall design must be approved by the Association's Board of Directors or an Architectural Board appointed by the Board of Directors.

Section 8. All radio, television, satellite dishes and other antennas of every kind or nature shall be placed and maintained upon the premises (or the improvements located thereon) so that no portion thereof shall be visible from the outside of any house or common area or other neighboring property or the streets. The Association or the Association's Board of Directors may require the Lot Owner to screen the satellite dish or antenna by landscaping or some other means or to paint the satellite dish or antenna a color that would blend in with the background against which the antenna system is mounted. However, this Section may not unreasonably delay or prevent installation, maintenance or use of an antenna system, unreasonably increase the cost of installation, maintenance or use of an antenna system or preclude the reception of an acceptable quality signal.

All satellite dishes greater than one meter in size and all television or radio masts/antennas which exceed twelve (12) feet in height above the roofline must receive the prior written approval of the Heritage Hills Home Owners Association prior to installation.

If any laws pertaining to satellite dishes and antennas are changed or modified after the recordation of this Amended and Restated Declaration, the laws pertaining to satellite dishes and antennas shall supercede this Section to the extent the laws conflict with the Section.

Section 9. No sign (other than a name and address sign or a security company sign, not exceeding " x 30" in size) of any nature whatsoever shall be permitted on any lot provided, however, that one sign of not more than five (5) square feet may be temporarily erected or placed on a lot for the purpose of advertising the property for sale or rent) and provided further, that this restriction shall not apply to the activities of the Association in furtherance of its powers and purposes as herein set forth.

Section 10. No commercial vehicles (i.e. vehicles which have commercial equipment, commercial signage, racks or a capacity of over two tons), buses, trailers, boats, campers, etc. (other than passenger automobiles) shall be permitted on any lot or any common areas in any year without prior written approval each year from HERITAGE HILLS HOMES OWNERS ASSOCIATION with respect to the manner of screening or concealing the same from view of neighboring property and streets. Parking in Common Area parking spaces is provided only for short term, temporary parking by visitors. Habitual parking in common area parking spaces by owners is prohibited.

Section 11. None of the lots shall be resubdivided into smaller lots or conveyed or encumbered in less than the full original dimensions as shown on the plat of this subdivision. Nothing herein shall prevent the dedication or conveyance of or granting of easements over portions of lots for public utilities or other public or quasi-public purposes, in which event the remaining portion of any such lot shall, for the purpose of these restrictions, be considered as a whole lot.

Section 12. 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.

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 utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable 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 and (subject to the requirements of Article XII, Section 6.) to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of said houses. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on said 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 house 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 structure is partially or totally destroyed and then rebuilt, the owners of houses agree that minor encroachments of parts of the adjacent house 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 bylaws, or any rules, regulations of management agreements, the following provisions shall apply to and benefit each holder of a first mortgagee upon a house 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 Bylaws, 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 house, 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. Unofficial Document

(c) At such time as the first mortgagee shall become record owner of a lot and house, 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 house unit through foreclosure suit or through any equivalent proceedings as such, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged house 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, except as follows: Any such unpaid assessment against the house unit foreclosed against may be treated as an expense common to all of the house units, which expense may be collected by a pro-rata assessment may be enforced as a lien against each house unit in the manner provided for other assessments authorized in this declaration. Any such unpaid assessment shall nevertheless continue to exist as the personal obligation of the defaulting owner of the respective house 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 for foreclosure suit or by equivalent procedures for all assessments authorized by this Declaration which accrue and are assessed after the date of the acquirer

has acquired title to the unit free and clear of any right of redemption.

ARTICLE XV
GENERAL PROVISIONS

Section 1. Binding Effect and Enforcement. The covenants, conditions, charges, liens, reservations, easements and restrictions contained herein shall run with the land and shall be binding upon all persons purchasing, owning, leasing, subleasing or occupying or otherwise having any interest in any house on said property, their heirs, executors, administrators, successors, grantees and assigns. After the date on which this instrument has been recorded, these restrictions may be enforced by any one or more of the following: (a) 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; (b) the owner or owners of any lot, hereafter having jurisdiction of any nature whatsoever over or with respect to all or any part of the premises. Any person who acquires title to a lot, except through delivery of a sheriff's deed as a result of a foreclosure proceeding or by a deed in lieu of foreclosure, shall take title to such lot subject to the lien hereof for all charges pursuant to Articles V and X that have accrued prior to such acquisition of tile, and subject to the lien hereof for all said charges that shall accrue subsequent to the date said person takes title; and provided also that the breach of any of said restrictions may be enjoined, abated or reviewed by appropriate proceeding notwithstanding the lien or existence of any such mortgage. Unofficial Document 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 of 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 houses may contain the restrictions herein by reference to this instrument. However, the terms and conditions of this instrument shall be binding upon all persons affected by its terms, regardless of whether any reference is made to this instrument in the deed or other instrument of conveyance. 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 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 any such enforcing party prevailing in any such action. Nothing herein shall be deemed to indicate that damages at law constitute an adequate remedy for violation of a restriction herein.

Section 2. Waiver or Abandonment. The waiver of, or failure to enforce, any breach or

violation of any restriction herein contained shall not be deemed to be a waiver or abandonment of such restrictions, or a waiver of the right to enforce any subsequent breach or violation of such restrictions. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce these restrictions) had knowledge of the breach or violation. No restriction contained herein shall be deemed to have been waived or abandoned unless this Declaration is amended to delete such restriction pursuant to Article XV, Section 7.

Section 3. Equal Treatment of Owners. These restrictions shall be applied to all owners with discrimination. *(See "Declaration of Scrivener's Error" at the end of this document.)*

Section 4. 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 even 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 o paragraphs, or section or sections had not been inserted.

Section 5. Gender. Unofficial Document The singular, wherever used herein, shall be construed to mean plural when applicable, and the necessary grammatical changes required to the provisions hereof apply either to corporations or individuals, men and women, in all cases be assumed a s though in each case fully expressed.

Section 6. 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 7. Amendment. These restrictions shall remain in full force and effect for a period twenty (20) years from the date hereof. Thereafter, they shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked or amended by an amendment in writing, executed by the then owners of not less than fifty-one (51) percent of the lots in the premises which said instrument shall be recorded in the office of the Recorder for the County of Maricopa, State of Arizona.

Section 8. Fines and Penalties. Pursuant to Arizona Revised Statutes Section 33-1803(b), the Association/ Board of Directors shall have the power to impose monetary penalties upon the owner(s) of lots for violations of the Declaration, Bylaws, and Rules and Regulations of the

Association. This power shall apply to violations by the owner(s) and the owner(s) shall be liable for any violation committed by a family member, guest, tenant, or other occupant of the lot owner(s). The amount of monetary penalties shall be determined based on the nature of the offense, the attitude of the offending owner(s) and the number of violations. The amount so established by the Association's Board of Directors shall range from a minimum of \$20.00 to a maximum of \$500.00 per occurrence. The owners in question shall be given an opportunity to be heard by the Board or its enforcement committee appointed by the Board prior to the assessing of any monetary penalties, and written notice of said hearing shall be given at least 15 days in advance of the hearing by regular mail or by hand-delivery at the last known address of the owner(s). Once it has been determined that the owner is guilty of a continuing violation, the Board may impose reasonable monetary penalties for each subsequent day of the violation and such continuing penalties shall remain in effect until the owner(s) notify the Board that the violation has ceased and the Board has confirmed that this, in fact, is the case. Any penalties assessed against the owner(s) may be enforced against the lot of the owner(s) in the same manner established in the Declaration in regard to delinquent maintenance assessments and said owner(s) shall be liable in this manner for all violations committed by family members, guests, tenants or any other occupant of the owner(s).

Unofficial Document

IN WITNESS WHEREOF, the undersigned, has hereunto set its hand and seal this 2nd DAY OF May, 2006.

HERITAGE HILLS HOME OWNERS ASSOCIATION

BY: 

PRESIDENT

ATTEST

By: 

SECRETARY

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 2nd day of May, 2006, by Bart Steiner, the President of Heritage Hills Home Owners Association, Inc., an Arizona non-profit corporation, on behalf of the non-profit corporation.

Notary Public: Marion E. Mulcahy
My Commission Expires: 10/31/07



STATE OF ARIZONA)
) ss.
County of Maricopa)

Unofficial Document

The foregoing instrument was acknowledged before me this 2nd day of May, 2006, by Karen Leff, the Secretary of Heritage Hills Home Owners Association, Inc., an Arizona non-profit corporation, on behalf of the non-profit corporation.

Notary Public: Marion E. Mulcahy
My Commission Expires: 10/31/07



When Recorded Mail to:

Mulcahy Law Firm, P.C.
3001 E Camelback Rd. # 130,
Phoenix, AZ 85016

DoSE-2-1-1--
PaLumboa

DECLARATION OF SCRIVENER'S ERROR

WHEREAS, an Amended and Restated Declaration of Covenants, Conditions and Restrictions for Heritage Hills ("Declaration") was recorded on August 8, 2007 at Docket 2007-0924406 which affects the real property known as:

Tracts 5 and 6, Valhalla Replated, now known as Lots 1 through 39 in Unit One Heritage Hills as recorded in the Amended Site Plan in Book 136 at Page 10, Lots 40 through 74 in Unit Two and Lots 75 through 107 in Unit Three as shown in the Plat for Heritage Hills Unit Two as recorded in Book 151 at Page 1.

WHEREAS, Article XV, Section 3 of the Declaration states:

Section 3. Equal Treatment of Owners. These restrictions shall be applied to all owners with discrimination.

WHEREAS, Article XV, Section 3 should state that the restrictions apply to all owners "without" discrimination. Consequently, there was an inadvertent typographical error in that Section at the time the document was prepared by the Mulcahy Law Firm.

NOW THEREFORE, the undersigned, being an employee of the Mulcahy Law Firm, PC, attests and affirms that there was an inadvertent scrivener's error when the Declaration was prepared and recorded in 2007 and that the correct verbiage in Article XV, Section 3 of the Declaration is:

Section 3. Equal Treatment of Owners. These restrictions shall be applied

June 10, 2015

