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**AMENDED AND RESTATED DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
PHASE SIX HOMEOWNERS ASSOCIATION, INC.**

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AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS

FOR

PHASE SIX HOMEOWNERS ASSOCIATION, INC.

This Amended and Restated Declaration of Covenants, Conditions and Restrictions (the "Declaration" or "CC&Rs") is made this 25 day of March, 2020 by Phase Six Homeowners Association, Inc., an Arizona non-profit corporation, herein referred to as the "Association."

WHEREAS, Malouf Brothers Development Company recorded Declarations of Covenants, Conditions and Restrictions for Briarwood VI on June 1, 1981 in Document No. 1981-0180865, recorded in the official records of Maricopa County, Arizona (the "Briarwood VI Declaration"). Malouf Brothers Development Company also recorded Declarations of Covenants, Conditions and Restrictions for Briarwood VI Phase 2 on June 22, 1983 in Document No. 1983-242650, recorded in the official records of Maricopa County, Arizona (the "Briarwood VI Phase 2 Declaration"). The Briarwood VI Declaration and Briarwood VI Phase 2 Declaration were subsequently amended by the following documents recorded as Document Numbers: 1984-360588, 1989-141774, 2007-1033920, 2010-543988, 2013-0510063 and 2019-008438. ("Amended Declarations").

WHEREAS, the Briarwood VI Declaration, Briarwood VI Phase 2 Declaration, Amended Declarations and this Amended and Restated Declaration of Covenants, Conditions and Restrictions govern the real property situated in the County of Maricopa, State of Arizona, described as:

BRIARWOOD SIX, a subdivision located in the NW 1/4 of the SW 1/4 of Section 35, T 3N, R 4E of the G&SR, B&M, Maricopa County, Arizona, as recorded in Book 227 of Maps, Page 49, records of Maricopa County, Arizona, AND

BRIARWOOD SIX PHASE 2, a subdivision located in the Northwest quarter of the Southwest quarter of Section 35, Township 3 North, Range 4 East of the G&SRB&M, Maricopa County, Arizona, as recorded in Book 253 of Maps, Page 31, records of Maricopa County, Arizona, AND

A replat of Lots 90-102 of Briarwood Six, Phase Two, as recorded in BK. 253, PG. 31. MCR., a subdivision located in the NW 1/4 of the SW 1/4 of Section 35, T 3N, R 4E of the G&SR. B&M, Maricopa County, Arizona as recorded in Book 271 of Maps, page 8, records of Maricopa County Arizona.

All of the foregoing described real property shall be hereinafter referred to as the "Property."

WHEREAS, Article IX, Section 3 of the current Declaration states that the Declaration may be amended by an instrument signed by the Owners of not less than fifty-one percent (51%) of the Lots.

NOW THEREFORE, this Amended and Restated Declaration of Covenants, Conditions and Restrictions upon recordation, supersedes the Original and Amended Declarations, in their entirety. The Association hereby declares that the Property is held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. The covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens set forth herein run with title to the Property; are binding upon all persons having or acquiring any interests in the Property or any part thereof; inures to the benefit of every portion of the Property and any interest therein; and inures to the benefit of and is binding upon the Association, its successors in interest, each Owner and his/her respective successors in interest.

ARTICLE I

DEFINITIONS

Section 1. "Architectural Committee" shall mean the committee created pursuant to ARTICLE VIII hereof.

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

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

Section 4. "Association" shall mean and refer to Phase Six Homeowners Association, Inc. an Arizona non-profit corporation, its successors and assigns. Phase Six Homeowners Association, Inc. is also known as Briarwood VI, Briarwood VI Phase 2, Phase Six – Homeowners Association, Inc. and Briarwood Six.

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

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

Section 7. "Common Area" shall mean all real property which is or becomes owned or leased by the Association for the common use and enjoyment of the Owners. The Common Area is described as Tracts A, B, C, D, E and F Briarwood VI, according to the Map recorded with the County Recorder of Maricopa County, Arizona in Book 227 of Maps, page 49 and Tracts G, H, I, J K, L M and N, Briarwood Six Phase Two, a subdivision according to the plat

recorded with the County Recorder of Maricopa County, Arizona in Book 253 of Maps, page 31 which plats are incorporated herein by this reference.

Section 8. "Declaration" shall mean the amended and restated covenants, conditions and restrictions herein set forth in this entire document, as same may from time to time be amended.

Section 9. "Development" shall mean all real property located in the Property together with all real property which hereafter becomes subject to the terms of this Declaration.

Section 10. "Improvement" shall mean the buildings, garages, driveways, walks, fences, walls, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

Section 11. "Lot" shall mean any parcel of real property which is both covered by the Declaration and designated as a Lot on any recorded Subdivision Map covering property also subject to the Declaration, with the exception of the Common Area. A Lot shall be deemed "Developed" when all offsite streets, curbs, gutters, sidewalks and other utilities have been completely installed.

Section 12. "Member" shall mean any person, corporation, partnership, joint venture or other legal entity who is a member of the Association.

Section 13. "Owner(s)" shall mean and refer to the record owner, whether one or more persons or entities, of equitable or beneficial title (or legal title if same has merged) of any Lots; provided, however, that as to all Lots which are or become leased for an original term exceeding three (3) years, the Lessees, rather than the record owners, shall, prior to the termination of said leases, be deemed the Owners thereof. "Owner" shall include the purchaser under an executory contract of the improvements on any Lot. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation.

Section 14. "Property" shall mean and refer to that certain real property described on Page Seven hereof.

Section 15. "Public Purchaser" shall mean any person or other legal entity who becomes an Owner of any Lot.

Section 16. "The Homeowners Association Rules and Regulations" shall mean the rules adopted by the Board, as they may be amended from time to time.

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

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

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

Section 20. "Subdivision Map" or "Subdivision Plat" shall mean a recorded map or plat covering any or all of the property referred to in this Declaration.

Section 21. "Tract" shall mean any parcel of real property designated as a Tract on the recorded Subdivision Map within the Development.

Section 22. "Visible From Neighboring Property" shall refer to any given object that is or would be visible to a person six feet tall from a neighboring property, at an elevation no greater than the elevation of the adjacent property, roadway or Lot.

ARTICLE II

PROPERTY RIGHTS

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

- (a) the right of the Association to suspend the voting rights of an Owner for any period during which any assessment against the Owner's Lot remains unpaid; and for a period not to exceed 60 days for any infraction of this Declaration, Bylaws, Homeowners Association Rules, or other governing documents;
- (b) the right of the Association to dedicate or transfer all or any part of the Common Area or any interest therein 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 two-thirds (2/3) of the Members agreeing to such dedication or transfer has been recorded.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Declaration, Bylaws, Homeowners Association Rules or other governing documents, his/her right of enjoyment to the Common Area and facilities to the Members of his/her family, his/her tenants, or his/her guests or invitees.

ARTICLE III

GENERAL DECLARATION

Section 1. General Declaration. The Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the

subdivision, improvement and sale of said real property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of said real property and every part thereof. All of this Declaration shall run with all of said real property for all purposes and shall be binding upon and inure to the benefit of the Association, all Owners and their successors in interest.

ARTICLE IV

LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

Section 1. Permitted Uses and Restrictions – Single Family. The permitted uses, easements and restrictions of all property within the Development shall be as follows:

- A. **SINGLE FAMILY RESIDENTIAL USE.** All property shall be used, improved and devoted exclusively to Single Family Residential Use. No gainful occupation, profession, trade, business or other non-residential use shall be conducted on any such property with the exception of home based businesses described in subsection B. No structure whatever, other than one private, Single Family Residence, together with a private garage, shall be erected, placed or permitted to remain on any Lot. No, boat, truck, trailer, camper or recreation vehicle shall be used as a living area while located on the property.
- B. **HOME BASED BUSINESSES.** Home based businesses are allowed as follows: Home based business shall mean any occupation conducted within a Lot by the Owner of the Lot and does not affect the primary purpose of the Lot, which is single family residential use. There shall be no commodity sold on the premises and no home based business use shall generate pedestrian or vehicular traffic beyond that normal to the area in which it is located. There shall be no signs, buildings or structures indicating the existence of the home based business other than those permitted by this Declaration. A garage may not be used for home based business use. There shall be no use of material or mechanical equipment not recognized as part of normal household or hobby use.
- C. **RENTALS.** No Owner of a Single Family Residence shall rent or lease any portion of his/her residence for a period of less than sixty (60) days; provided that any Owner, as of January 4, 2019, may rent or lease his/her/their/its residence for a period of less than sixty (60) days, however, that such right to rent or lease the residence for less than sixty (60) days shall terminate upon transfer of title of the residence by the person(s) who are owners at the time of adoption of this provision. No Owner may lease less than his/her/their/its entire residence.
- D. **ANIMALS.** No swine, rodents, reptiles, fowl, poultry, horses, cows or other livestock, shall be maintained on any property within the Development, Dogs, cats and birds are permitted to be kept as pets, but only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any pet shall be maintained so as to be Visible From Neighboring Property. Owners must clean up after their pets in the Common Areas and

Lots. Upon the written request of any Owner, the Board of Directors shall conclusively determine, in its sole and absolute discretion, whether, for the purpose of this paragraph, a pet constitutes a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board of Directors shall be enforceable as other restrictions contained herein.

E. ANTENNAS. Except for antennas, satellite dishes and other over-the-air receiving devices covered by the FCC rules governing Over-the-Air Reception Devices; no antenna for the transmission or reception of television or radio signals or for the access to the internet shall be erected or installed on a Lot unless approved by the Architectural Committee. In the event that an antenna, satellite or over-the-air receiving device damages Common Areas, the Owner shall be responsible for the reimbursing the Association for the cost to repair the damage.

F. UTILITY SERVICE. No new lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals which are visible from the street or neighboring properties, shall be erected, placed or maintained anywhere in or upon any property within the Development, unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. All new lines, wires or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals visible from the street or adjoining property which are approved by the Architectural Committee must be painted to match the exterior of the home. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

G. IMPROVEMENTS AND ALTERATIONS. All improvements and alterations that meet any of the following criteria must be approved in writing by the Architectural Committee before any work is commenced. These criteria are as follows:

- (1). Any improvement or alteration to the front, side and back exterior of the Single Family Residence, roof, or back lot which is Visible from Neighboring Properties.
- (2). Any improvement or alteration which alters the appearance of the Lot or Single Family Residence.
- (3). Any construction or installation of an additional building or improvement or alteration to a fence.

In order to obtain the approval of the Architectural Committee, the Member must submit an Architectural Change Plan to the Committee. The Architectural Committee may in its sole discretion require the submission of all information that is necessary to evaluate the Architectural Change Plan. The Architectural Committee shall also have the right to refuse or deny any plans or specifications that are not suitable or desirable for aesthetic or

other reasons. The Architectural Committee may also deny approval of an Architectural Change Plan because the proposed change is not consistent with the overall harmony of the adjacent and or neighboring properties. No changes to an approved Architectural Change Plan may be made after such approval without additional submissions to the Architectural Committee.

The decision of the Architectural Committee may be appealed to the Board of Directors by the Owner applying for the change or by Owners of properties neighboring or adjacent to the property requesting the change. The party submitting the appeal shall have the right to request a hearing before the Board of Directors at a scheduled Board meeting. The written decision of the Board of Directors following this hearing shall be regarded as final. The Architectural Committee shall not be liable for damages to anyone submitting plans for approval or making any other request of the Architectural Committee, nor to any Owner, lessee or sublessee of any Lots by reason of mistake in judgment, negligence or nonfeasance of itself, its agents or employees, arising out of or in connection with the approval or disapproval, or failure to approve, any plans or other requests, and any and every Owner agrees not to bring action or suit to recover any damages against the Architectural Committee, the Board of Directors or any members thereof.

H. TEMPORARY OCCUPANCY. No trailer, mobile home or RV, basement of any complete building, tent, shack, garage or barn, and no temporary or incomplete buildings or structures of any kind shall be lived in or occupied in any manner, at any time, either temporarily or permanently, unless approved in writing by the Board of Directors. Temporary buildings or structures used during the construction of a dwelling on any such property shall be removed immediately after the completion of construction.

I. TRAILERS AND MOTOR VEHICLES. Except with approval of the Board of Directors, no mobile home, boat, recreational vehicle, trailer of any kind, truck camper, or permanent tent or similar structure shall be kept, placed or maintained or constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed or repaired, upon any property or street (public or private) within the Development in such a manner as will be Visible From Neighboring Property; provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or the construction of any improvement approved by the Architectural Committee. Garages shall be used for parking vehicles and storage purposes only and shall not be converted for living or recreational activities. Only off-street parking of recreational trailers and recreational vehicles shall be permitted. Such parking shall be permitted for no longer than twenty-four (24) hours for Owners, their guests and construction and service vehicles.

J. LANDSCAPING, MAINTENANCE OF LAWNS AND PLANTINGS.

(1) The Association, as part of the common expense, will perform the following landscaping and maintenance:

- (a) Manage and repair front yard irrigation systems;
- (b) Mow and fertilize front yard lawns;

- (c) Provide for seasonal grass seed changes in front yards;
- (d) Prune front yard trees and shrubbery;
- (e) Maintain front yard trees and plantings which were approved by the landscape committee;
- (f) Remove dead or dying trees and dead leaves, etc., from front yards;
- (g) Remove and replace front yard trees that have died or are dying;

(2) Owners may request that the landscape committee remove and/or replace viable front yard trees and/or plants. All costs associated with the removal and/or replacement of viable trees or plants will be paid by the Lot Owner.

(3) Owners are responsible for the maintenance of all other landscaping on their Lot. Owners shall maintain such landscaping in a neat and attractive manner so as not to present a nuisance to neighboring Lots.

(4) The Association shall send a written demand that an Owner remove, prune or otherwise maintain trees and plantings deemed a hazard and/or found to be nuisance.

K. MAINTENANCE AND REPAIR OF BUILDINGS. No building, improvement or structure upon any Lot shall be permitted to fall into disrepair, and each building and structure shall at all times be kept in good condition and adequately painted or otherwise finished. The Association shall be responsible for painting or otherwise finishing the exterior of all buildings, improvements and structures on all Lots, and each Owner shall permit the painters authorized by the Association to come onto their Lot to complete said painting. If an Owner should fail to allow Association authorized painters onto their Lot the Owner shall be responsible for all attorneys' fees and court costs resulting from their failure to grant such permission. Except for painting or otherwise finishing pursuant to the foregoing, each Owner shall maintain in good repair the exterior surfaces, including but not limited to, walls, roofs, porches, patios and appurtenant. Nothing shall be done in or to any building which will impair the structural integrity of any building except in connection with alterations or repairs specifically permitted or required under this Declaration. Garages must be kept in a neat and tidy manner at all times when the interior of the same is visible from the street or adjoining property.

L. NUISANCES. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property within the Development, and no odors shall be permitted to arise therefor, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Properties. The Board of Directors, in its sole discretion, has the right to determine the existence of, and notify Owners of, any such nuisance. When the violating Owner has had reasonable time to abate the nuisance or annoyance and has not acted appropriately, the Board can take actions as appropriate, including imposing fines, etc.

- M. **TRASH CONTAINERS AND COLLECTION.** No garbage or trash shall be placed or kept except in covered containers. In no event shall such containers be maintained so as to be Visible From Neighboring Property except for collection days and, then, only the shortest time reasonably necessary to effect such collection. All rubbish, trash or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot.
- N. **CONSTRUCTION TRAILERS AND DUMPSTERS.** Trailers and dumpsters which are used in connection with the construction or repair of a Lot must be placed in the driveway of said Lot and are not permitted to be located on the street. If the driveway is unable to accommodate the trailer or dumpster due to the length and/or grade of the driveways, the trailer or dumpster may be placed in the street for no longer than fourteen (14) days without prior approval.
- O. **CLOTHES DRYING FACILITIES.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed and maintained on any property unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be Visible From Neighboring Property.
- P. **ENCROACHMENTS.** No tree, shrub, or planting of any kind shall be allowed to overhang or otherwise to encroach upon any sidewalk, street or pedestrian way, from ground level to a height of twelve (12) feet, without the prior approval of the Architectural Committee. No fence, wall, hedge or shrub planting which obstructs sight-lines at elevations between two (2) and six (6) feet above the roadways shall be placed or permitted to remain on any corner lot within the triangular area formed by the street property lines and a line connecting them at points twenty-five (25) feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sight-line limitation shall apply to any Lot within ten (10) feet from the intersection of a street property line with the edge of driveway or alley pavement. No tree shall be permitted to remain within such intersection unless the foliage line is maintained a sufficient height to prevent obstruction of such sight-lines.
- Q. **RIGHT OF WAY.** During reasonable hours, and after written notice, except in the event of an emergency, any member of the Architectural Committee, or its authorized representative, shall have the right to enter upon and inspect any property and the improvements thereon, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with, and such persons shall not be deemed guilty of trespass by reason of such entry.
- R. **MACHINERY AND EQUIPMENT.** No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any property except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a residence. No elevated tanks or large containers of any kind shall be erected, placed or permitted upon any Lot, except for use in connection with any residence thereon, and except as shall have first been approved by the Architectural

Committee. All such approved tanks or containers shall be buried or kept screened by adequate planting or fence work and shall not be Visible From Neighboring Property.

S. DISEASES AND INSECTS. No Owner shall permit anything or condition to exist upon property which shall induce, breed, or harbor infectious plant diseases or noxious insects.

T. RESTRICTION ON FURTHER SUBDIVISION. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Board of Directors. No portion or a Lot but for the entire Lot, together with the improvements thereon, may be rented.

U. SIGNS. No signs other than the following shall be allowed within the Association in accordance with the Planned Community Act without written permission from the Association:

- (1) One 'for sale' sign which may be no larger than an industry standard for sale sign (not to exceed 18 x 24 inches) and a sign rider (not to exceed 6 x 24 inches) located on an Owner's Lot;
- (2) One 'for rent' sign which may be no larger than an industry standard for sale sign (not to exceed 18 x 24 inches) located on an Owner's Lot;
- (3) Two 'open house' signs which may be no larger than an industry standard for sale sign (not to exceed 18 x 24 inches) located on an Owner's Lot;
- (4) Political signs earlier than 71 days before the day of an election and later than 3 days after an election day;

The 'for sale', 'for rent' and 'open house' signs must be professionally manufactured or produced.

V. UTILITY 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 to affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of said residences. 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 with prior approval of the Board of Directors. This easement shall in no way affect any other recorded easements on said premises.

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

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

- (1) The Owners of contiguous Lots who have a Party Wall or Party Fence shall equally have the right to use such wall or fence provided that such use by one Owner does not interfere with the use and enjoyment of same by any other Owner.
- (2) In the event that any Party Fence or Party Wall is damaged or destroyed through the act or omission of an Owner or any of his/her agents or guests or members of his/her family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall or Party Fence without cost to the other adjoining Lot Owner or Owners.
- (3) In the event any such Party Wall or Party Fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his/her agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint expense. Such expense shall be divided between the Owners in the same proportion as the number of lineal feet of the damaged and destroyed portion of the Party Wall or Party Fence adjoining each Owners Lot.
- (4) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Party Wall or Party Fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.
- (5) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall or Party Fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Architectural Committee, the decision of which may be appealed to the Board of Directors, whose decision shall be final and binding.
- (6) Each Owner shall permit other Owners or their representatives, when so required, to enter his/her Lot for the purpose of repairing or maintaining a Party Wall or Party Fence, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of emergency, such right of entry shall be immediate.

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

A. **Maintenance by Association.** The Association shall be responsible for the maintenance, repair and replacement of the Common Areas.

- (1) The Association shall do all such acts which the Board deems necessary to preserve and protect the property and the beauty thereof, in accordance with the general purposes specified in this Declaration; and
- (2) The Board shall be the sole judges as to the appropriate maintenance and use of all grounds within the Common Area.

B. **Damage or Destruction of Common Area by Owners.** In the event any Common Area is damaged or destroyed by an Owner or any of his/her guests, tenants, licensees, agents or members of his family, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications to the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The cost necessary for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

ARTICLE V

THE HOMEOWNERS ASSOCIATION

Section 1. Organization

A. **The Association.** The Association is a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

B. **Board of Directors and Officers.** The affairs of the Association shall be conducted by a Board of Directors and such Officers as the Directors may elect or appoint, in accordance with the Articles and the Bylaws, as may be amended from time to time.

Section 2. Powers and Duties of the Association. The Association shall have such rights, duties and powers as set forth in this Declaration, the Articles and Bylaws, as may be amended from time to time.

Section 3. The Homeowners Association. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal the Rules and Regulations. These Rules and Regulations may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner; provided, however that the Rules may not discriminate among

Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules and Regulations shall be mailed or otherwise delivered to each Owner.

Section 4. Personal Liability. No member of the Board or any Committee of the Association, or the Manager, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence on the part of the Association, the Board, the Manager or any other representative of employees of the Association, , or any other Committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him/her, acted in good faith, without willful or intentional misconduct, with the care an ordinarily prudent person in a like position would exercise under similar circumstances, or in a manner the person reasonably believes to be in the best interests of the Association.

ARTICLE VI

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The Association shall have one class of voting membership:

Class A. Class A members shall be all Owners and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. If a Lot has more than one Member, the Members shall determine among themselves who shall cast a ballot for the Lot, but in no event shall more than one ballot be cast with respect to any Lot.

Section 3. The vote for each such Lot must be cast as a unit, and fractional votes shall not be allowed. If any Owner or Owners casts a vote representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he/she/they were acting with the authority and consent of all other Owners of the same Lot. In the event more than one vote is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

Section 4. In any election of the members of the Board, every Owner entitled to vote at such an election shall have the right to cumulate his/her/its votes and give one candidate, or divide among any number of the candidates, a number of votes equal to the number of Lots owned by the Owner multiplied by the number of votes per Lot he/she/they are entitled to cast multiplied by the number of directors to be elected. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.

Section 5. In the event any Owner shall be in arrears in the payment of any amounts due under any of the provisions herein, or shall be in default in the performance of or in breach of any of the terms herein, said Owner's right to vote as a Member of the Association may be

suspended and may remain suspended until all payments are brought current and all defaults and breaches remedied.

Section 6. Each Member shall have such other rights, duties and obligations as set forth in the Articles and Bylaws, as same may be amended from time to time.

Section 7. The Association membership of each Owner of a Lot within the Development shall be appurtenant to said Lot. The rights and obligations of any Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of the Owner's interest in his/her Lot and then only to the transferee of said interest in such Lot. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to said Lot shall operate to transfer said membership to the new Owner thereof.

ARTICLE VII

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed, lease or other document of conveyance, therefor, whether or not it shall be so expressed in such deed, lease or other document of conveyance, is deemed to covenant and agree to pay to the Association annual assessments or charges, and special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and attorneys' fees, 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 interest, costs, and 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 for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Development and for the improvement and maintenance of the Common Area, and of the homes and lots situated in the Development.

Section 3. Annual Assessments. Annual assessments may not be increased by more than fifteen percent (15%) than the immediately preceding fiscal year's assessment without the approval of at least fifty-one percent (51%) of the Membership.

Section 4. Special Assessments For Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area and Lots in the Development, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by absentee ballot at a meeting duly called for this purpose.

Section 5. Notice and Quorum for any Action Authorized Under Section 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 4 shall be sent to all Members not less than ten (10) days, nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members, in person or by absentee ballot, entitled to cast sixty percent (60%) of all the votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly, quarterly, semi-annual or annual basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. Monthly payments for the annual assessment shall be due on the first (1) day of each month and shall be considered delinquent fifteen (15) days after the due date.

Section 8. Effect of Nonpayment of Assessments; Remedies of the Association. Each Owner of any Lot shall be deemed to covenant and agree to pay the Association the assessments provided for herein and agrees to the enforcement of the assessments in the manner herein specified. In the event the Association employs an attorney for collection of any assessment, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each Owner and Member agrees to pay attorney's fees and costs thereby incurred in addition to any other amounts due or any other relief or remedy obtained against said Owner or Member. In the event of a default in payment of any such assessment when due, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in any manner provided by law or in equity, or without any limitation of the foregoing, by either or both of the following procedures:

A. **Enforcement by Suit.** The Board may cause a lawsuit to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of ten percent (10%) per annum from the date of delinquency until paid, court costs, and attorneys' fees in such amount as the Court may adjudge against the delinquent Owner.

B. **Enforcement by Lien.** There is hereby created a claim of lien, with power of sale, on each and every Lot within the Development to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots under the Declaration, together with interest thereon at the rate of ten percent (10%) per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including attorneys' fees. At any time within ninety (90) days after the

occurrence of any default in the payment of any such assessment, the Association, or any authorized representative shall make a written demand for payment by certified or registered mail, return receipt requested. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or, even without such a written demand being made, the Association may elect to file such a claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by an officer of the Association, and shall contain substantially the following information:

1. The name of the delinquent Owner;
2. The legal description and street address of the Lot against which claim of lien is made;
3. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and attorneys' fees (with any proper offset allowed). Per the Planned Community Act, fines and administrative costs, collection costs and attorneys' fees and costs associated with the fines shall not be included in the amounts claimed in a lien;
4. That the claim of lien is made by the Association pursuant to the Declaration, and
5. That a lien is claimed against said Lot in the amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such Assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the liens which are specifically described in Section 9 hereinafter. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event such foreclosure is by action in Court, attorneys' fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot in the Development, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 9. Subordination of the Lien to Mortgages. The lien of assessments provided for herein shall be subordinate to the lien of any first mortgage or deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such

assessment as to payment which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. No breach of the covenants, conditions or restrictions in this Declaration, nor the enforcement thereof or of any lien provision herein, shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value. However, all of the covenants, conditions and restrictions in this Declaration shall be binding upon any owner whose title is derived through foreclosure or exercise of a power of sale.

ARTICLE VIII

ARCHITECTURAL COMMITTEE

Section 1. Organization, Power of Appointment and Removal of Members. There shall be an Architectural Committee, organized as follows:

- A. **Committee Composition.** The Architectural Committee shall consist of three regular Members and one alternate member. At least one member of the Board of Directors shall serve on the Architectural Committee and they shall serve as chairperson of the committee. The Board shall designate which member shall serve on the Architectural Committee. The Chairperson shall appoint a Secretary who shall keep minutes of each meeting. Such minutes shall be submitted to the Board within ten days of such Committee meeting.
- B. **Alternate Members.** In the event of the absence or disability of one regular member of said Committee, the remaining regular members shall designate the alternate member to act as substitute for the absent or disabled regular member for the duration of such absence or disability. The alternate member shall attend all meetings.
- C. **Appointment and Removal.** The right to appoint and remove all regular and alternate members of the Architectural Committee at any time, shall be and is hereby vested solely in the Board, provided, however, that no regular or alternate member may be removed from the Architectural Committee by the Board except by the vote or written consent of two-thirds of all of the members of the Board.
- D. **Resignation.** Any regular or alternate member of the Architectural Committee may at any time resign from the Committee by giving written notice thereof to the Board.
- E. **Vacancies.** Vacancies on the Architectural Committee however caused, shall be filled by the Board. A vacancy or vacancies on the Architectural Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate number.

Section 2. Duties. It shall be the duty of the Architectural Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Committee Rules, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by the Declaration. The Architectural Committee is responsible for maintaining an overview of the approval process and a list of the applicable

requirements necessary for approval by the Architectural Committee. These documents may be obtained from the Association website or from the Architectural Committee Chairperson.

Section 3. Meetings and Compensation. The Architectural Committee shall meet from time to time as necessary to perform its duties hereunder. The vote or written consent of a majority of the regular members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of this Declaration. The Secretary shall keep and maintain a written record of all actions taken by it at such meetings or otherwise. All meetings must be noticed 48 hours in advance.

Section 4. Architectural Committee Rules. The Architectural Committee may, from time to time, adopt, amend and repeal, by unanimous vote or written consent, rules and regulations, to be known as "Architectural Committee Rules". Said Rules shall interpret and implement the Declaration by setting forth the standards and procedures for Architectural Committee review and the guidelines for architectural design, placement of improvements, landscaping, color schemes, exterior finishes and materials and similar features which are recommended for use in the Development. Said Rules must be submitted to the Board of Directors for approval.

Section 5. Waiver. The approval by the Architectural Committee of any plans, drawings or specifications for any work done on proposed, or for any other matter requiring the approval of the Architectural Committee under the Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

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

Section 7. Time for Approval. In the event said Board, or its designated committee, fails to approve or disapprove plans and specifications within thirty (30) days after the complete plans and specifications, along any further information requested by the Committee, have been submitted to it, approval will not be required, and this Article will be deemed to have been fully complied with.

Section 8. Appeal. In the event that the Architectural Committee approves or disapproves of an Owner's architectural request, that Owner or any party whose Lot is

immediately adjacent to the requesting Owner's Lot, shall have the right to submit a written appeal with the Board of Directors. Written appeals must be submitted with ten (10) days of the Committees written disapproval. The Board of Directors may then review the Owner's architectural request or the Owner may request a hearing with the Board if he/she so chooses. The Board of Directors will provide its written decision within thirty (30) days of consideration. The decision of the Board of Directors shall be final.

ARTICLE IX

GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration and other Association documents. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. The Association may impose reasonable fines for violations of the provisions of this Declaration and the other Association documents. The Board of Directors has the power to create a fine schedule or policy and shall provide a copy of said schedule or policy to the Owners. The Board may amend the fine schedule or policy by a vote of a majority of the Board.

Section 2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 3. Amendment. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended by an instrument signed by the Owners of not less than fifty-one percent (51%) of the Lots. Any amendment must be recorded.

Section 4. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, the Association or any Owner or Owners of Lots within the Development. However, any other provision to the contrary notwithstanding, the Association, the Board, or the duly authorized agent of any of them, may enforce by self-help any of the provisions of this Amended and Restated Declaration for Phase Six Homeowners Association, Inc.

Section 5. Violation of Law. Any violation of any state, municipal, or local law, ordinances or regulation, pertaining to the ownership, occupation or use of any property within subject property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth in this Declaration.

Section 6. Remedies Cumulative. Each remedy provided by this Declaration is cumulative and not exclusive.

Section 7. Delivery of Notices and Documents. Any written notice or other documents relating to or required by the Declaration may be delivered either personally, electronically, by fax or by mail. If by mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States mail, postage prepaid.

If mail is sent to an Owner, the mail shall be sent to the address of any Lot within the Development owned, or to any other address last furnished by an Owner to the Association;

Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 8. The Declaration. By acceptance of a deed, lease or document of conveyance, or by acquiring any ownership interest in any of the real property included within this Declaration, each person or entity, for himself, herself or itself, his/her heirs, personal representatives, successors, transferees, and assigns, binds himself/herself, his/her heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments hereto. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the real property covered hereby and hereby evidences his/her interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future Owners, lessees, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

The President of Phase Six Homeowners Association, Inc., certifies that the provisions contained within this Amended and Restated Declaration have been approved by a vote of the required percentage of Owners.

DATED this 17 day of MARCH, 2020.

Phase Six Owners Association, Inc.

By: George P. Tyson

Printed Name: GEORGE P. TYSON

Its: President

STATE OF ARIZONA)
) ss.
County of Maricopa)

ALL-PURPOSE ACKNOWLEDGEMENT

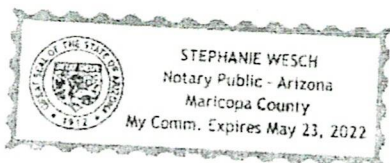
STATE OF ARIZONA
COUNTY OF MARICOPA
CUSTOMER NAME GEORGE P TYSON

On 3/17/20 before me, STEPHANIE WESCH, a Notary Public,
(DATE)

personally appeared, GEORGE P TYSON,

____ personally known to me OR proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of the which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Stephanie Wesch
NOTARY SIGNATURE

My Commission Expires: May 23, 2022