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**AMENDED AND RESTATED DECLARATION OF RESTRICTIONS FOR  
 Colony Monterey Unit Six and Six-1**

Pursuant to Paragraph 24 of the Amended Declaration of Restrictions for Colony Monterey Unit Six and Six-1 recorded on April 11, 1996 in Document #960245705, Office of the Maricopa County Recorder, this Amended and Restated Declaration of Restrictions was approved by an instrument in writing, executed by the owners of not less than 75% of the Lots.

This Amended and Restated Declaration pertains to the following described real property situated in Maricopa County, Arizona:

Colony Monterey, Unit Six, a subdivision recorded in Book 112 of Maps, page 36 and Colony Monterey Unit Six-1, and Tract A, a subdivision recorded in Book 113 of Maps, page 14, all in the Office of the Maricopa County Recorder.

This real property is referred to as the "Property" and is held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens (collectively referred to as the "Restrictions"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These Restrictions run with title to the Property, are binding on all persons having or acquiring any interest in the Property and inure to the benefit of, are binding upon and enforceable by all Owners, the Association and their respective successors in interest.

The Amended Declaration of Restrictions for Colony Monterey Unit Six and Six-1 recorded on April 11, 1996 in Document #960245705, Office of the Maricopa County Recorder, together with the notice and resolutions pertaining to the imposition of fines that are recorded as follows: Document #19990331126 and Document #1999033127 recorded on April 7, 1999 and Document #19990402183 and Document #19990402184 recorded on April 28, 1999, are no longer of any force and effect, having been superseded, in their entirety by this Amended and Restated Declaration of Restrictions.

ARTICLE I  
DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases used in this Declaration have the following meanings:

Section 1.1. "Act" refers to the Arizona Planned Communities Act, A.R.S. §33-1801, *et. seq.*

Section 1.2. "Architectural Compliance Committee" or "ACC" refers to the committee established by the Board for the purpose of reviewing, approving or denying approval of plans and specifications for Improvements to the Lots.

Section 1.3. "Association" means Colony Monterey Association, an Arizona nonprofit corporation and any successor in interest to the corporation.

Section 1.4. "Board" means the Board of Directors of the Association.

Section 1.5. "Governing Documents" refers to this Declaration, the Articles of Incorporation, the Bylaws of the Association and any Rules and Regulations promulgated by the Board.

Section 1.6. "Lot" means any numbered parcel of real property within the Property shown on the Plat, together with the improvements constructed on such Lot.

Section 1.7. "Member" means the Owner of record of any Lot in the Subdivision.

Section 1.8. "Occupant" refers to any person, other than the Owner, who is living on a Lot. This includes the Owner's family, lessees (if allowed under Section 2.11) and the lessees' family.

Section 1.9. "Owner" means (1) the record Owner, whether one or more persons or entities, of equitable or beneficial title in fee simple (or legal title if it has been merged) of any Lot, or (2) the purchaser of a Lot under a recorded contract for the sale of real property as set forth in A.R.S. §33-741 *et. seq.* The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, or an occupant of the Lot, or a purchaser or vendee under any executory contract of sale which has not been fully consummated with a deed

to the purchaser recorded in the office of the Maricopa County Recorder.

Section 1.10. "Person" means a natural individual, corporation or other entity with the legal right to hold title to real property.

Section 1.11. "Plat" refers to Colony Monterey, Unit Six, as recorded in Book 112 of Maps at page 36 and Colony Monterey Unit Six-1 and Tract A, as recorded in Book 113 of Maps at page 14.

Section 1.12. "Property" means the real property described above, or any part thereof.

Section 1.13. "Recreation Area" means Tract A, of Colony Monterey Unit Six-1.

Section 1.14 "Resident" means the person occupying a Lot for an extended period of time.

Section 1.15 "Rules" mean any and all policies and procedures adopted by the Board and the ACC which govern the conduct and actions of Owners, Occupants, residents/visitors, and guests on the Lot and in the Common Areas that are not otherwise covered in this Declaration. Rules and Regulations, when adopted by the Board, have the same force and effect as the Restrictions set forth in this Declaration.

Section 1.16 "Subdivision" means Colony Monterey Unit Six and Six-1 according to the plats of record in the office of the Recorder of Maricopa County, Arizona.

## ARTICLE II USE RESTRICTIONS

Section 2.1. Single Family Use. The Property is restricted to single family dwellings for residential use (except for the Recreation Area which is used for recreational purposes only).

Section 2.2. Home Occupation. No gainful occupation, profession, trade or other nonresidential use can be conducted on the Property, except that an Owner may engage in a "Home Occupation", as provided below.

2.2.1. "Home Occupation" as permitted by this Section means private consultation and advice in trades and professions, and the sales or creation of art work, small wares and miscellaneous goods at a retail level, and includes consultation by professionals such as accountants, lawyers, and doctors, but no portion of the Property nor any Lot can be used for the full-time general practice of any

profession, nor as a lodge, regular club meeting place, religious institution, revivalist, cult or sect meeting place, nor may the interior of any Lot be used for medical or surgical treatment or procedures.

2.2.2. An Owner or occupant residing in a Lot may conduct a Home Occupation solely within the private confines of a Lot so long as: a) the existence or operation of the business activity is not apparent from outside of the Lot, and no sound or smell from outside of the Lot indicating the conduct of business is detectable; b) the business activity conforms to all zoning requirements for the Property; c) the business activity does not involve frequent or annoying traffic by Persons entering the Property who do not reside therein or door-to-door solicitation of residents of the Property; and d) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or hazardous or offensive use, nor threaten the security or safety of other residents of the Property.

2.2.3. No Home Occupation may involve heavy equipment or machinery, manufacturing, drilling, burning or conversion of any garage or carport into a business office or room.

2.2.4. No business conducted upon the Property or on any Lot may result in any change to the exterior appearance of any Lot, and no business conducted can involve signs, buildings, or structures in addition to the Lot.

2.2.5. The Board has the sole and absolute discretion to determine whether, in a particular case, conducting a Home Occupation violates the Governing Documents. If the Board makes that determination, it has the authority to require that the Home Occupation in question cease immediately.

Section 2.3. Only New Construction is Permitted. All buildings or structures erected on the Property were new construction and no buildings or structures can be move from other locations onto the Property. No manufactured, prefabricated or mobile homes are permitted.

Section 2.4. Animals. No livestock or poultry can be kept on any Lot other than commonly accepted household pets, so long as they are not kept, bred or maintained for any commercial purpose. There will be a weight limit of 50 pounds for non-service animals. No animal can become a nuisance. A "reasonable number" as used in this Section 2.4 ordinarily means not more than two pets per household, provided, however, that an Owner may have two dogs and one cat or two cats

and one dog. Dogs and cats are not allowed to run loose within the Property and must be on a leash if they are not within the enclosed, private back or side yard on the Lot. Barking dogs are deemed to be a nuisance. The Board may determine, in its sole and absolute discretion, whether an animal is a generally recognized house or yard pet, whether such animal is a nuisance, or whether the number of animals is reasonable. The Association has the right to require that residents complaining about another resident's pet be resolved solely between the Residents or that such Residents use the procedures and ordinances promulgated by the City of Scottsdale to resolve the dispute. The Board has the right to promulgate rules pertaining to pets.

Section 2.5. Nuisances. No advertising signs, billboards, unsightly objects or nuisance can be erected, placed or permitted to remain on any of the Lots. No Lot can be used in any way for any purpose which may endanger the health or unreasonably disturb the Owner or resident of any Lot.

Section 2.6. Signs. Signs are limited to the following:

2.6.1. An Owner or an Owner's agent may install one "for sale" sign on the lot. Such sign must be a commercially produced sign that cannot be any larger than the industry standard size sign of 18 by 24 inches with a rider that does not exceed 6 by 18 inches. Such signs must be removed within three days of the close of escrow on the purchase of a Lot for any sale. Signs that are not commercially produced are prohibited.

2.6.2. Temporary open house signs that are industry standard size and that are owned or used by the Owner or the Owner's real estate agent are permitted on the lot for sale, but cannot be located in any easement or the Common Area. An Open House for the sale of a Lot cannot be held prior to 8:00 a.m. or after 6:00 p.m.

2.6.3. The Owner of the Lot is responsible for any damages to the electrical, water, irrigation, or sewer lines under the Lot that are caused by the installation of any "for sale" sign on the Lot. Construction/remodel company signs are permitted in front of the Lot under construction or in the Common Areas; provided, however, that only one special sign containing the address of the Lot and containing the permits for construction projects are allowed.

2.6.4. Political signs are permitted, but cannot be installed earlier than 71 days before the day of an election and must be removed within three days after an election day. The maximum aggregate total dimensions of all political signs on

an Owner's Lot cannot exceed nine square feet.

2.6.5. Signs required by legal proceedings or those signs that the Association cannot prohibit under applicable law are allowed.

2.6.6. Any signs that are approved in advance by the Board are permitted.

Section 2.7. Clotheslines. All clotheslines, equipment, garbage containers, incinerators, service yards, wood piles and storage piles must be kept screened adequate planting or fencing so they are concealed from the view of neighboring Lots and streets. All rubbish, trash or garbage must be removed from the Lots and cannot be allowed to on any portion of the Property.

Section 2.8. Fences and Walls. No fences or walls can be erected on any Lot, except for those that were installed during the initial construction of the homes or which have been approved by the Board in accordance with the architectural control provisions in this Declaration.

Section 2.9. Diseases and Insects. No Owner can permit any condition to exist on any Lot that induce, breed or harbor infectious plant diseases or noxious insects.

Section 2.10. Vehicles. No vehicles can be parked on city streets if they exceed 22 feet in length. If they are 22 feet or less in length, they may be parked on the city streets for a period not to exceed 72 hours, or such other period of time as provided by the ordinances in Scottsdale. No vehicle in excess of 22 feet in length may be parked on a Lot. Vehicles 22 feet or less must be parked in the carport except that to the extent that there is no room to park the vehicles in the carport the vehicle may be parked on the driveway for a period not to exceed 72 hours.

Section 2.11. Leasing. It is the intent of the Association to restrict the use and occupancy of the Lots, solely to the Owners and therefore, no leasing is permitted. An Owner may make a written request of the Board to make an exception to the Owner-occupied requirement, provided, however, that the Board has no obligation to make an exception, under any circumstances and granting a requested exception is in the sole discretion of the Board. Any request for an exception to the "no lease" requirement must set forth the names and ages of all proposed occupants of the Lots, the reason the exception is being requested and the length of time for which the exception is requested. Any Owner making a request for an exception must also provide the Board with any other information that the Board may request.

Section 2.12. Architectural Control.

2.12.1. No building, fence, wall or other structure or improvement can be constructed, erected or maintained on any Lot until the plans and specifications, including, but without limitation, and requested grading plans, showing the nature, kind, shape, height, materials, floor plans, location, and approximate cost of such work have been submitted to and approved by the Board, or the ACC, if the Board has established such a committee. The Board will permanently retain a copy of the approved plans in its files. The Board has the right to refuse to approve any plans or specifications that are not suitable or desirable in its opinion for aesthetic reasons, or any other reason, and in denying approval of the plans and specifications, it has the right to take into consideration the suitability of the proposed buildings or other structure or improvement and the materials out of which it is being built, the harmony of such proposed improvement with the surrounding Lots and the effect the building or other structure will have on the adjacent or neighboring Lots. All subsequent changes, modifications or alterations to any building, fence, wall or other structure or improvement are subject to the prior approval of the Board or the ACC.

2.12.2. The Property is currently listed on the Scottsdale Historical Register and protection for historic properties is provided through the Scottsdale Historic Preservation Ordinance. As a result, in addition to obtaining Board/ACC Approval of improvements, each Owner after obtaining Board/ACC approval, must submit his/her plans to the Historic Preservation Commission for its review and approval. The Historic Preservation Commission is responsible for approving all exterior alterations and demolition requests for buildings on the Scottsdale Historic Register, including the Property subject to Board/ACC approval.

Section 2.13. Antennas. Except for those antennas that are permitted under the Federal Telecommunications Act of 1996, no television, radio, or other electronic towers, aerials, antennas, including ham radio antennas, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication can be erected, constructed, placed or permitted on any Lot. The Association is empowered to

adopt rules governing the types of antennas that are permitted and to establish reasonable, nondiscriminatory restrictions relating to the location and safety of antennas structures. To the extent that reception of an acceptable signal would not be impaired, an antenna permitted pursuant to rules of the Association may only be installed in a side or rear yard location, not visible from the street or (when reasonably feasible) from neighboring property or integrated with the Dwelling Unit and surrounding landscaping to prevent or limit such visibility. Antennas must be installed in compliance with all applicable laws and regulations.

### ARTICLE III

#### THE ASSOCIATION

- Section 3.1. Membership in the Association. Each Owner of a Lot, by virtue of being the Owner, is automatically a Member of the Association. Membership in the Association is appurtenant to ownership of the Lot and cannot be transferred, pledged, or alienated in any way, except upon the transfer of ownership of a Lot, and then only to the transferee. Any transfer of ownership of a Lot will automatically transfer the membership associated with that Lot to the new Owner. Any attempted transfer of membership separate from the appurtenant Lot is void.
- Section 3.2. Voting Rights. Matters upon which the Members of the Association are entitled to vote will be decided by a majority of votes present at a meeting, in person or by absentee ballot. There is only one vote for each Lot owned whether owned by one or more persons. Co-owners must provide written notice to the Association advising which of the Owners has the right to exercise the vote attributable to the Lot. In the absence of such designation, the Board has the power to designate the Owner having the power to vote on behalf of the Lot. When ownership of a Lot is transferred, the membership attributable to that Lot will automatically transferred to the new Owner so that membership in the Association will always be part of the ownership in the Lot.
- Section 3.3. Suspension of Voting Rights. The voting rights of any Member are automatically suspended for any period during which any assessment against the Lot is unpaid and delinquent and during any period in which the Board has determined that the Member is in violation of the Governing Documents.
- Section 3.4. Rights of Mortgagees to Vote. Any Mortgagee acquiring title to a Lot pursuant to a foreclosure or a trustee's sale automatically become entitled to exercise all



the voting rights which belonged to the Owner of the Lot once any assessments due are paid.

- Section 3.5. Purpose of Association. The Association is an Arizona nonprofit corporation serving as the governing body for all Owners for the improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Area and any other areas for which the Association is responsible under the terms of the Governing Documents; the assessment of expenses; payment of losses; disposition of casualty insurance proceeds; and other matters as provided in the Governing Documents. All funds received by the Association will be held and applied by it for the Owners and Occupants in accordance with the provisions of the Governing Documents.
- Section 3.6. Rights and Responsibilities of Association. The Association, through the Board, unless specifically provided otherwise, has the right to enforce all of the provisions in the Governing Documents. The Association is responsible for the proper and efficient management and operation of the Common Area and any other areas for which it is responsible under the terms of this Declaration or for which it assumes responsibility.
- Section 3.7. Articles and Bylaws. The manner in which the Association holds meeting and handles other corporate matters is controlled by the Governing Documents. The provisions of the Declaration control in the event of any conflict between the documents.
- Section 3.8. Board Election. The Board will be elected by a majority vote of those Members voting in person or by absentee ballot at the annual meeting of the Members at which a quorum is present. The Bylaws contain the procedures for the election of the Board members.
- Section 3.9. Rules and Regulations of the Association.  
 3.9.1. The Board is empowered to adopt, amend or repeal such rules and regulations as it deems reasonable and appropriate (collectively the "Rules"). The Rules are binding on the Owners and Occupants subject to this Declaration and govern the use and/or occupancy of the Lots within the Property. The Rules may include the establishment of a system of fines and penalties for violations of the Governing Documents. Fines and Penalties may only be levied after the Owner in violation has been given notice of the violation and an opportunity for a hearing before the Board. The Rules will govern such matters as the Board deems to be in furtherance of the purposes of the Association, including, without limitation, the use of the Recreation Area. The Rules may be amended at any special or regular meeting of the Board.

3.9.2. The Rules are incorporated by reference in this Declaration and have the same force and effect as if they were set forth in and were part of this Declaration. The Rules are binding on all Persons having any interest in, or making any use of, any part of the Property, whether or not copies of the Rules are actually received by those Persons. The Rules, as adopted, amended or repealed, are available for the review of any Owner or the Owner's designee at the principal office of the Association. It is the responsibility of each person subject to the Rules to review and keep informed of any changes in the Rules. In the event of any conflict between any provision of the Rules and any provisions of this Declaration, or the Articles or Bylaws, the provisions of the Rules are superseded by the provisions of this Declaration, and the Articles or Bylaws to the extent of any such conflict.

Section 3.10. Non-Liability of Officers and Directors and Indemnification. To the fullest extent permitted by law, neither the Board, nor any committee established by the Board, nor any officers, directors or employees of the Association, are liable to any Owner or to the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, act, inaction, omission, error, negligence or the like made in good faith and which the Board or such committees or officers reasonably believed to be within the scope of their respective duties or rights.

3.10.1. To the fullest extent permitted by law, every director, officer or committee member of the Association, will be indemnified by the Association, so long as that person was acting in good faith and within the scope of his/her duties.

Every other person serving as an employee or direct agent of the Association, or otherwise acting on behalf of, and at the request of, the Association, may, in the discretion of the Board, be indemnified by the Association.

3.10.2. Any such indemnification is limited to all expenses and liabilities, including attorney fees, reasonably incurred by or imposed upon such Person in connection with any proceeding to which he/she may be a party or in which he/she may become involved, because that Person served in such capacity on behalf of the Association or incurred in any settlement, whether or not that Person is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses were incurred.

Section 3.11. Managing Agent. All powers, duties and rights of the Association or the Board, as provided by law, may be delegated to a managing agent under a management

agreement; provided, however, that no such delegation will relieve the Association of its obligation to perform any such delegated duty. Any agreement for professional management cannot exceed a term of one year, although the term may be renewed by agreement of the parties for successive one-year periods. Any agreement for professional management must provide for termination by either party with or without cause and without the payment of a termination or other fee upon 90 days' written notice; provided, however, that the Association may terminate any management agreement for cause upon 30 days written notice.

Section 3.12. Disputes. In the event of any dispute or disagreement between any Owners or any other persons subject to this Declaration relating to the Property or any question of interpretation or application of the provisions of the Governing Documents, this Declaration controls.

Section 3.13. Records and Accounting. The Association will keep, or cause to be kept, true and correct books and records of the accounts at the sole cost and expense of the Association in accordance with generally accepted accounting principles. Such books and records, together with current copies of the Governing Documents are available for inspection by all Owners at reasonable times during regular business hours. Copies of such documents may be obtained by any Member at the expense of that Member.

Section 3.14. The Association will (1) maintain, operate and otherwise manage the Recreation Area and all facilities located in the Recreation Area; (2) maintain the landscaping in the Recreation Area; (3) purchase and maintain policies of public liability and hazard insurance for all parts of the Property, except the Lots; (4) purchase fidelity insurance for all Persons responsible for the handling the funds belonging to the Association, as deemed necessary by the Board; and (5) pay all ad valorem real property taxes and all special improvements or assessments levied and assessed against all parts of the Property, excepting the Lots.

Section 3.15. The right to use and enjoy the Recreation Area is granted to the Members, Occupants and their guests, subject to the terms and conditions of the Governing Documents.

ARTICLE IV  
ASSESSMENTS

- Section 4.1. Annual Assessments. Each Member agrees by taking title to a Lot to pay the Association a sum equal to his/her pro rata share of the aggregate of the following.
- 4.1.1. The actual or estimated cost of operating and maintaining the Recreation Area, including, but not limited to the cost of repairing and replacing equipment and facilities.
  - 4.1.2. The actual or estimated cost of landscaping and lawn maintenance and replacement.
  - 4.1.3. The actual or estimated cost of public liability insurance, hazard insurance and fidelity insurance carried by the Association.
  - 4.1.4. The actual or estimated cost of general administrative services and any other overhead of the Association.
  - 4.1.5. The actual or estimated amounts required to pay and discharge all other items of expense which are incident to the ownership of the Recreation Area including, but without limitation, real estate taxes and assessments.
  - 4.1.6. An amount determined by the Board to be reasonable and prudent for the establishment and maintenance of reserves for repair, maintenance and replacement of the improvements, equipment and facilities located on or outside of the Recreation Area and to meet any of the costs referred to above.
- Section 4.2. Uniform Rate of Assessment. Both annual and special assessments must be set at a uniform rate for all Lots and may be collected on an annual or other periodic basis. However, the uniform rate may be periodically revised to reflect revisions in the Annual Assessments based on actual operating costs of the Association.
- Section 4.3. Increases in Assessments. Any increases in the Annual Assessments from year to year will not exceed the maximum permitted under the Planned Communities Act. As of the recordation of this Amended and Restated Declaration, the maximum increase permitted under the Act is 20% above the previous year's assessment rate. Any increase above 20% must be approved by a majority of the Members.

- Section 4.4. Special Assessments. In addition to the Annual Assessments, the Board may levy Special Assessments to correct an inadequacy in the current operating account or to pay for such other matters as the Board, in its sole discretion, deems appropriate, including any additions to the improvements in the Recreation Areas, or the replacement of any capital items in such Recreation Areas. The Board will determine the due date of any Special Assessment. Special Assessments must be approved by a vote of 2/3rds of the Owners voting in person or by absentee ballot at any meeting of the Members of the Association.
- Section 4.5. Reimbursement Assessments. The Association may levy a Reimbursement Assessment against any Owner if a failure to comply with the Governing Documents has (1) necessitated an expenditure of money by the Association to bring the Owner or his/her Lot into compliance, including any attorney fees which were incurred by the Association; or (2) resulted in the imposition of a fine or penalty by the Board, after notice of the violation and an opportunity for a hearing has been given to the Owner. Except as limited by law, the Association may collect Reimbursement Assessments in the same manner as Annual Assessments.
- Section 4.6. Estoppel Certificate. The Association will, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the assessments on a Lot is binding upon the Association as of the date of its issuance.
- Section 4.7. Effect of Non-Payment of Assessments: Remedies of the Association. Each Owner agrees to pay interest, late charges and all costs incurred in the collection and enforcement of the assessments in the following manner:
- 4.7.1. Additional Charges. In addition to any other amounts due or any other relief or remedy obtained against an Owner who is delinquent in the payment of any Assessments, each Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Association may incur in the process of collecting funds from any Owner. All additional charges will be included in any judgment in any suit to collect delinquent assessments or may be levied against a Lot as a Reimbursement Assessment. Additional charges will include, but not be limited to, the following:

- 4.7.1.1. Attorney Fees. Reasonable attorney fees and costs incurred in the event an attorney is employed to collect any assessment or sum due, including the placement of the lien, or the filing of a suit or otherwise;
- 4.7.1.2. Late Charges. A late charge equal to 10% of the amount due or \$15.00, whichever is greater. An assessment is deemed to be delinquent if it is not paid within 15 days from its due date.
- 4.7.1.3. Costs of Suit. Litigation expenses, including expert witness fees, and court costs incurred;
- 4.7.1.4. Interest. Interest on all sums due from the Owner, including delinquent assessments, costs of collection, attorney fees and late charges, at an annual percentage rate to be established by the Board, but not less than 10% per annum;
- 4.7.1.5 Transfer and Disclosure Fees. The Board may assess at the time of the property transfer a Disclosure Fee not to exceed \$400.00 per transfer and in addition a Transfer Fee appropriate to fund the Association's reserves/capital expenses.
- 4.7.1.6. Other. Any other additional costs that the Association may incur in the process of collecting delinquent assessments or other sums due to the Association.
- 4.7.2. Application of Payments. All payments received by the Association will first be applied to the principal amount due which includes the late charges and any collection costs and attorney fees incurred by the Association, and then to any interest which has accrued on these sums.
- 4.7.3 Remedies. In addition to all other remedies provided by law, the Board or any authorized representative, has the right to enforce the obligation to pay the Assessments in any manner provided by law or by either or both of the following procedures:
- 4.7.3.1. Suit. The Association may file a lawsuit against any Owner who is personally obligated to pay delinquent assessments. Any judgment obtained in the Association's favor will include the amount of the delinquent assessments, any additional charges incurred by the Association in the collection of the amounts due, attorney fees, court costs, litigation expenses and any other amounts which the court may award. A proceeding to obtain a judgment for unpaid assessments may be maintained without the necessity of foreclosing or waiving the Association's lien.

4.7.3.2. Lien. To the full extent permitted by Arizona law, the Association's lien for any unpaid Assessment arises when the assessment is not paid within 15 days of its due date. The recording of the Amended Declaration of Restrictions for Colony Monterey Unit Six and Six-1 recorded on April 11, 1996 in Document #960245705, Office of the Maricopa County Recorder, constituted record notice and perfection of the Association's lien. The Association is not required to record an Assessment Lien, but may do so to provide notice to third parties of its interest in the Lot. Except for the transfer of a Lot pursuant to a foreclosure proceeding, the sale or transfer of a Lot does not affect the Assessment Lien. The Association may commence and maintain proceedings to foreclose its lien in the same manner as the foreclosure of mortgages. The Assessment Lien is prior and superior to all other liens, except (1) all taxes, bonds, assessments and other levies which, by law, are superior to the Association's lien; and (2) the lien of any mortgage or deed of trust which is recorded before the date this Declaration was recorded.

Section 4.8. No Exemption of Owner. No Owner is exempt from liability for the payment of Assessments because he/she has abandoned his/her Lot, or for any other reason, including any allegation that the Board is not performing its obligations under the Governing Documents.

Section 4.9. Reserves. Any reserves that are collected as part of the Annual Assessments will be deposited by the Association in a separate bank account to be held for the purposes for which they are collected. Such reserves will be deemed a funds. The reserves are for the maintenance, repair, and replacement of any Improvements for which the Association is responsible and for unforeseen contingencies. The Board is only responsible for providing for such reserves as the Board in good faith deems reasonable, and no Member of the Board is liable to any Owner or to the Association if the amount in the reserve account proves to be inadequate.

Section 4.10. Transfer Fee. At the time title is transferred to a purchaser, the purchaser of a Lot will pay the Association a transfer fee in an amount determined by the Board to compensate the Association for the administrative costs resulting from the transfer of such Lot.

Section 4.11. Fines and Penalties.

4.11.1. Right to Impose Fines. If any Owner, Occupant, or his/her family, guest, or invitee violates the Governing Documents, after providing the Owner with notice of the violation and an opportunity for a hearing, the Board may levy a reasonable and appropriate fine upon the Owner for each violation.

However, for each day that a violation continues after written notice to cease has been mailed, it will be considered a separate violation and subject to the imposition of the fine.

4.11.2. Procedures for Imposing Fines. The Board will establish a procedure by which it imposes such penalties, including notice of the violation and the right to a hearing if requested by an Owner. Late fees and interest can be imposed upon any fine which is not timely paid.

4.11.3. Fines imposed by the Board are may be collected in any manner authorized by law.

Section 4.12. Owner's Maintenance Obligations. If the Owner of any Lot fails to maintain the Lot and any improvements on the Lot in a manner satisfactory to the Board, the Association through its agents, employees and independent contractors have the right to enter onto such Lot and to repair, maintain, rehabilitate and restore the Lot or the exterior of the improvements on the Lot. Once the work has been completed, the Board will send an invoice to the Owner of the Lot which must be paid within 15 days after the invoice is provided to the Owner. Any invoice that is not timely paid will accrue late charges equal to 10 per annum of the amount due and any unpaid sum become a Reimbursement Assessment subject to the same collection procedures as Annual Assessments.

## ARTICLE V PARTY WALLS

The rights and duties of the Owners of Lots within the Property regarding party walls are governed by the following:

Section 5.1. Each wall that was constructed as a part of the original construction of the homes on the Lots, any part of which is placed on the dividing line between Lots, is a party wall. With respect to each party wall, the adjoining Owners will assume the burdens and be entitled to the benefits of these restrictive covenants and to the extent not inconsistent, the general rules of law regarding party walls will apply.

Section 5.2. If any party wall is damaged or destroyed through the act of an adjoining Owner or any of his/her agents, guests, invitees or members of his/her family (whether or not such act is negligent or otherwise culpable) and such action deprives the adjoining Owner of the full use and enjoyment of such wall, then the Owner



causing the damage or destruction must rebuild or repair the wall to its original condition and in compliance with all applicable building codes, without cost to the adjoining Owner.

- Section 5.3. If any party wall is damaged or destroyed by some cause other than the act or neglect of an adjoining Owner, his/her agents, guests, invitees or members of his/her family (including ordinary wear and tear and deterioration as the result of the lapse of time), then in that event, both of the adjoining Owners must rebuild or repair the wall to its original condition and in compliance with all applicable building codes, at their joint and equal expense.
- Section 5.4. In addition to meeting the other requirements of these restrictive covenants and of any building code or similar regulations or ordinances, any Owner proposing to modify, make additions to, or rebuild the improvements on his/her Lot in any manner that requires the extension or alteration of any party wall must first obtain the written consent of each adjoining Lot Owner.
- Section 5.5. In the event of a dispute, claim or controversy between Owners regarding the repair or rebuilding of a party wall or regarding who is responsible for the payment of the costs of repairing or rebuilding, the issue shall be resolved by arbitration unless specified in these restrictions.
- Section 5.6. The provisions in this Article V are binding upon the heirs, successors-in-interest and assigns of the Owners of Lots, provided, however, that no person is liable for any act or omission regarding any party wall unless the alleged act or omission occurred when such Person was the Owner of the Lot on which any portion of the party wall is situated.

## ARTICLE VI EASEMENTS

Each Lot, the Recreation Area, and all buildings, structures and other improvements on the Property are subject to an easement for encroachments created by the construction, structures, settlings and overhangs as designed or constructed by the developer. A valid easement for these encroachments and for the maintenance of such encroachments exists for so long as such encroachments remain. If a building or other structure is partially or totally destroyed and then rebuilt, minor encroachments of parts of adjoining Lots, the Recreation Area, buildings or other improvements are permitted and a valid easement for such encroachment and its maintenance exists.

ARTICLE VII  
GENERAL PROVISIONS

- Section 7.1. Term. The provisions, conditions, restrictions and covenants in the Governing Documents will run with title to the land and continue and remain in full force and effect at all times and against all Persons.
- Section 7.2. Amendments. This Declaration may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such Amendment has been approved by the vote or written consent of the Owners, of not less than 67% of the Lots. Such amendment is effective upon its recordation with the Maricopa County Recorder, Maricopa County, Arizona.
- 7.2.1. Non-Uniform Amendments. No amendment is invalid solely because it affects property within the Property in a non-uniform manner.
- Section 7.3. Enforcement and Non-Waiver.
- 7.3.1. Each Owner has the right to enforce the Governing Documents by filing a lawsuit against any other Owner, in equity or in law, or taking any other type of action against that Owner. In the event such an action is filed, the successful party is entitled to an award of reasonable attorney fees, litigation expenses and costs incurred.
- 7.3.2. The Board may adopt procedural Rules for handling violations of the Governing Documents. Such Rules may set forth procedures for conducting hearings before the Board or a hearing panel established by the Board, imposing fines, and proceeding to court to obtain equitable relief.
- 7.3.3. The Association may enforce the Governing Documents in any manner provided for in this Declaration or by law, including, but not limited to:
- 7.3.3.1 Imposing reasonable monetary penalties after notice and an opportunity be heard is given to the Owner;
- 7.3.3.2 Exercising self-help or taking action to abate any violation of the Governing Documents;

7.3.3.3 Requiring an Owner, at the Owner's expense, to remove any Improvement on the Owner's Lot in violation of the Governing Documents and to restore the Lot to its previous condition. After notice stating a time within which the Owner must perform, if the Owner fails to take action, the Board or its designee has the right to enter the Lot, remove the Improvement in violation and restore the Lot to substantially the same condition as previously existed and any such action will not be deemed a trespass;

7.3.3.4. Without liability to the Association or Board, prohibiting any Person engaged by an Owner who fails to comply with the terms and provisions of the Governing Documents, from continuing or performing any further activities in the Property; and

7.3.3.5. Filing a lawsuit to enjoin a violation of the Governing Documents, to compel compliance with the Governing Documents, to recover fines or money damages or to obtain such other relief to which the Association may be entitled.

- 7.3.4. The Association is not obligated to take any enforcement action if the Board determines, in its sole discretion, that by virtue of the Association's finances, possible defenses, the time and expense of litigation or other enforcement action, the likelihood of a result favorable to the Association, or other facts deemed relevant by the Board, enforcement action would not be appropriate or in the best interests of the Association.
- 7.3.5. All rights and remedies of the Association under the Governing Documents or at law or in equity are cumulative, and the exercise of one right or remedy will not act as a waiver of the Association's right to exercise another right or remedy.
- 7.3.6. No delay or failure by the Association or any Owner in exercising any right under this Declaration or any of the other Governing Documents will operate as a waiver of such right or any other right, and no single or partial exercise of any such right will preclude any other or further exercise of such right or the exercise of any other right.
- 7.3.7. No claim or cause of action will accrue against the Board, the Association or any Owner for their neglect or refusal to exercise such right of enforcement.
- 7.3.8. All expenses incurred by the Association in enforcing the Governing Documents, or in defending any action or claim brought by any Owner, including but not limited to attorney fees and all costs and expenses of

enforcement, (whether taxable costs or not) must be paid to the Association by the Owner involved in such action or claim, if the Association is the prevailing party. The Association has the right to enter the Lot for the purpose of repairing, modifying, or demolishing improvements which are not in conformance with the provisions of this Declaration and all expenses incurred in connection therewith will become a Reimbursement Assessment.

- Section 7.4. Judicial Construction. Except for judicial construction of the provisions of the Governing Documents, the Association, through its Board, has the exclusive right to construe and interpret the provisions of this Declaration, including without limitation, the use restrictions in Article II. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions of this Declaration is final, conclusive and binding as to all persons and property benefitted or bound by this Declaration.
- Section 7.5. Violation of Rules. If any Owner, his/her family or any licensee, occupant or invitee violates the Governing Documents, the Board may, in addition to any other enforcement provisions in the Governing Documents, suspend the right of the Person in violation, to use the Common Areas, under such conditions as the Board may specify, for a period not to exceed 60 days for each violation. Each day an infraction continues is a separate violation. Before invoking any such suspension, the Board will give such Person the right to a hearing before the Board.
- Section 7.6. Violation of Law. Each and every provision of the Governing Documents, as amended from time to time, is subject to all applicable governmental ordinances and subdivision regulations and any future amendments thereto. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any of the Property is declared to be a violation of the Governing Documents and subject to any or all of the enforcement procedures set forth herein or in the Bylaws.
- Section 7.7. Non-Waiver. The failure of the Board, the Association, the ACC, or by any Owner to enforce any of the provisions in the Governing Documents is not a waiver of the right to enforce any such provisions in the future.
- Section 7.8. Severability. Invalidation of any one of these covenants or restrictions by judgment, court order, or waiver, will not affect the enforceability of any other provisions which will remain in full force and effect.

Section 7.9. Construction.

- 7.9.1. Restrictions Severable. Notwithstanding any other provision in this Declaration, each provision in this Declaration is independent and severable, and the invalidity or partial invalidity of any provision or any portion thereof will not affect the validity or enforceability of any other provision.
- 7.9.2. References to Restrictions. Any and all instruments of conveyance of any interest in any Lot or the Property may contain references to this Declaration, but ownership of a Lot is subject to the Restrictions in this Declaration as though they were set forth in any deed to the Lot. The Governing Documents are binding upon all persons owning or occupying a Lot, whether or not an express reference is made to this Declaration.
- 7.9.3. Rule Against Perpetuities. The rule against perpetuities does not apply to this Declaration.
- 7.9.4. Singular Includes Plural; Gender. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular; and the masculine, feminine or neuter will each include the masculine, feminine and neuter.
- 7.9.5. Captions. All captions and titles used in this Declaration are intended solely for convenience or reference purposes only and in no way define, limit or describe the true intent and meaning of its provisions.

Section 7.10. Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it is deemed to have been delivered 72 hours after a copy was deposited in the United States mail, postage prepaid, addressed as follows (or to such other address as the Association designates in writing):  
 If to the Association: to the address set forth in the records of the Arizona Corporation Commissions. If to an Owner: to the address of the Owner within the Property. The address of any of the above parties may be changed at any time by party concerned by delivering written notice of a change of address to the Association. Each Owner will provide his/her correct mailing address to the Association, and will promptly notify the Association in writing of any subsequent change of address.

Section 7.11. Binding Effect. By accepting a deed or acquiring any ownership interest in any of the Property included within this Declaration, each person or entity, for him/herself, or his heirs, personal representatives, successors, transferees and

assigns, binds him/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 thereof. In addition, each such person acknowledges that this Declaration sets forth a general scheme for the Property and evidences his/her intent that all the Restrictions, conditions, covenants, rules, and regulations will run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees. Furthermore, each such person fully understands and acknowledges that this Declaration is mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

Section 7.12. Resale of Lot by Owner. Each Owner must notify the Association, not less than 10 business days prior to the closing of any sale of such Owner's Lot, of the name and address of the purchaser, as well as the scheduled closing date for the sale. The Association will, upon receipt of such information, mail or otherwise deliver to such purchaser any information required by the Act or under the Bylaws or by applicable law.

Section 7.13. Conformance with Applicable Law. In the event of any adoption of any local, state or federal law or regulation that conflicts with the terms of the Governing Documents, the applicable local, state or federal law or regulation will modify to the fullest extent of the law, the terms of the Governing Documents without the necessity of the Association amending the Governing Documents to conform to such law or regulation.

## ARTICLE VIII AGE RESTRICTIONS

Section 8.1. At least one occupant of each Lot must be 55 years of age or older, provided, however, that if an occupant who is 55 years of age or older dies, the remaining occupants of the Lot who are 18 years of age or older, may continue to occupy the Lot even though none of those persons is 55 years of age or older.

Section 8.2. No person under the age of 18 years may occupy a Lot for more than 30 days in any 12-month period. For purposes of this Section 8.2, a person is deemed to occupy a Lot if he/she stays overnight on the Lot or is present on the Lot for more than ten (10) hours during a 24-hour period.

Section 8.3. The provisions of this Article VIII are for the purpose of establishing the policies and procedures necessary for the Property to qualify as housing for older persons under the Fair Housing Amendments Act of 1988 as such act is amended from

time to time. The Board is authorized to adopt such other policies and procedures that may be necessary to ensure that the Property meets all of the requirements for such exemption.

Section 8.4. If there is any change in the number or identity of the persons occupying a Lot as a result of transfer, sale, gift, assignment, death, birth, marriage, separation, divorce or otherwise, the Owner of the Lot must promptly provide written notice to the Board of the names and ages of all occupants of the Lot together with any other information that the Board may reasonably request.

Section 8.5. An Owner or Potential Buyer may make a written request of the Board asking That it make an exception to the age requirements. The Board, in its sole discretion, has the authority to grant the exemption and to determine that if the exemption is granted, it would not jeopardize the housing for older persons' status of the Property. In no event may there be less than 80% of the Lots occupied by residents who are at least 55 years of age or older. The Board is under no obligation to make any exception under any circumstances and the granting of any requested exception does not mean that the Board is obligated to grant any exceptions in any future situation. Any request for an exception must set forth the names and ages of all proposed occupants of the Lot, the reason the exception is being requested and the length of time for which the exception is requested. Any Owner making such a request must also provide the Board with any other information that the Board requests.

Section 8.6. To ensure that this Property qualifies as housing for older persons under the Fair Housing Amendments Act of 1988, at least 80% of the Lots must be occupied at all times by one person who is 55 years of age or older. To ensure that this requirement is being met at all times, each Owner must within 10 days after being requested to do so by the Board, provide the Association with an affidavit signed by the Owner certifying that at least one occupant of the Owner's Lot is 55 years of age or older. In addition, if requested to do so by the Board, the Owner must promptly furnish the Association with any other documents and information that may be requested by the Association to verify the accuracy of the affidavits submitted to the Association by the Owner. Moreover, the Association will verify the age of all occupants at least every two years and each Owner agrees that he/she willfully cooperate with the Board to effectuate such verification.

The President and Secretary attest that this Amended and Restated Declaration of Restrictions was approved by the Owners of not less than 75% of the Lots, as evidenced by the attached consents to such Amended and Restated Declaration.

Dated: January 31, 2018

COLONY MONTEREY ASSOCIATION

Karen L. Brosnan  
President

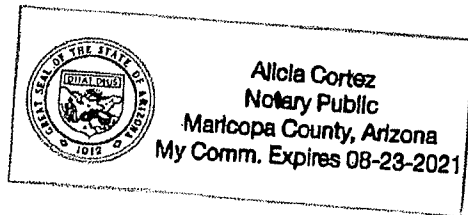
Attest:

Phyllis J. Gass  
Secretary

STATE OF ARIZONA     )  
  ) ss  
County of Maricopa     )

On this 31 day of January, 2018, Karen Brosnan the President and Phyllis Gass, the Secretary of COLONY MONTEREY ASSOCIATION, appeared before me and indicated that they were authorized to execute this Amended and Restated Declaration of Restrictions on behalf of the Association.

Alicia Cortez  
Notary Public



My commission expires: 08-23-2021  
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**Recorded at the Request of:**

Beth Mulcahy, Esq.  
Mulcahy Law Firm, P.C.  
3001 East Camelback Rd, Suite 130  
Phoenix, Arizona 85016  
Attorney for Colony Monterey  
Association Unit Six and Six-1

ColMonSixAmn-100-1-1--  
henrya

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**AMENDED AND RESTATED DECLARATION OF RESTRICTIONS FOR  
COLONY MONTEREY UNIT SIX AND SIX-1**

**This document is being re-recorded for the sole purpose of including the affidavits of owners.**

**DO NOT REMOVE**

**This is part of the official documents**

**WHEN RECORDED, MAIL TO:**  
Beth Mulcahy  
Mulcahy Law Firm, P.C.  
3001 E. Camelback Road, Suite  
130  
Phoenix, Arizona 85016

firstamendccrsMont-2-1-1--  
garcia

**First Amendment to the Amended and Restated Declaration of Restrictions for Colony Monterey Unit Six and Six-1**

This First Amendment to the Amended and Restated Declaration of Restrictions for Colony Monterey Unit Six and Six-1 ("Amendment") is made this 30<sup>th</sup> day of May, 2023, by Colony Monterey Association (aka Villa Monterey Unit Six) ("Association").

**RECITALS**

A. The planned community known as Colony Monterey Association (aka Villa Monterey Unit Six) was subject to the Amended and Restated Declaration of Restrictions recorded on 02/05/2018 in Document No. 2018-0089942 and re-recorded on 02/06/2018 in Document No. 2018-0092321 ("Declaration"), official records of Maricopa County, and subjected the real property described in the Declaration to the Declaration and required that the property be held, sold, used, and conveyed subject to the easements, restrictions, covenants and conditions, which run with the title to the real property subject to this Declaration.

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

C. In order to amend the Declaration, the Association must obtain the vote of written consent of not less than sixty-seven (67%) of the Lots. The Association has obtained the vote of written consent of not less than sixty-seven (67%) of the Lots.

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

1. Amend the Declaration adding the following language as Article IV, Section 4.13:

**Section 4.13. Capital Contribution Fee (Transfer Fee)**

(a) Except as provided in the Subsection (b), each person or entity who/that purchases or otherwise becomes the Owner of a Lot, whether by Deed, by a Trustee's deed upon Sale, by a Deed in Lieu of Foreclosure, or any similar means, on or after the recording date of this Amendment, shall pay to the Association, immediately upon becoming the Owner of the Lot, a Capital Contribution Fee in an amount equal to two times the then Annual Assessment amount. The amount of the Capital Contribution Fee may be increased by the Board from time to time after this Amendment is recorded, provided any such increase is approved by a majority vote of all Members.

(b) No Capital Contribution Fee shall be payable with respect to: (i) the transfer or conveyance of a Lot by device or intestate succession; (ii) a transfer or conveyance of a Lot for estate planning purposes; or (iii) a transfer or conveyance to a corporation, partnership or other

entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment for the Capital Contribution Fee in which event a Capital Contribution Fee shall be payable with respect to such transfer or conveyance.

(c) All Capital Contribution Fees shall be deposited in a separate reserve account, not commingled with any other funds of the Association, and shall be deemed a contribution to the capital of the Association. Capital Contribution Fees shall be non-refundable and shall not be considered as an advance payment of assessments.

(d) Capital Contribution Fees shall be exclusively used by the Association as required by Arizona law for the construction or installation of buildings on the common area or for additions, repairs, maintenance or other improvements to existing buildings or other improvements on the common area. All of the expenditures of Capital Contribution Fees as herein provided are hereby deemed and shall be construed to touch and concern the land which is appurtenant to the title of each and every Lot as provided in the Declaration.

2. The terms used in this Amendment without definition shall have the same meanings given to such terms in the Declaration (as amended).
3. By attesting to this Amendment, the undersigned certifies that the amendments to the Declaration set forth in this Amendment were properly adopted in accordance with the requirements of the Declaration.
4. Except as expressly amended by this Amendment, the Declaration shall remain in full force and effect. In the event of any inconsistency or conflict between the provisions of this Amendment and the Declaration this Amendment shall prevail.

**Colony Monterey Association (aka Villa Monterey Unit Six)**

BY: *Suzanne Cary* (Signature)

Suzanne Cary (Print Name)  
ITS: President

STATE OF ARIZONA     )  
  ) ss.  
COUNTY OF MARICOPA )

The foregoing instrument was acknowledged before me this 30 day of May, 2023, by Suzanne Cary, the President of Colony Monterey Association (aka Villa Monterey Unit Six), an Arizona non-profit corporation, on behalf of the non-profit corporation.

Notary Public: *[Signature]*

My commission Expires: October 5, 2025

