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Scottsdale, AZ 85253**

**AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
ELK RUN TOWNHOUSE OWNER'S ASSOCIATION,  
A CONDOMINIUM**

Unofficial Copy

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AMENDED AND RESTATED  
DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS

ELK RUN TOWNHOUSES OWNER'S ASSOCIATION,  
A CONDOMINIUM

This Declaration, made on the date hereinafter set forth by ELK RUN TOWNHOUSE OWNER'S ASSOCIATION, an Arizona Non-Profit Corporation, hereinafter referred to as the "Association".

W I T N E S S E T H:

WHEREAS, FIRST FLAGSTAFF INVESTMENTS, an Arizona General Partnership hereinafter referred to as the "Declarant" or "Developer", recorded a Declaration of Covenants, Conditions and Restrictions on January 11, 1983, at Docket 912, Page 738 official records of Coconino County, Arizona, and the Amendment to Declaration of Covenants, Conditions and Restrictions Amended Plat of Elk Run Townhouses on January 17, 1984, at Docket 961, Page 714 official records of Coconino County, Arizona ("Declaration") that governs certain real property in the City of Flagstaff, County of Coconino, State of Arizona ("Property" or "Properties"), which is more particularly described as follows:

LOTS 1 through 22, inclusive, 24 through 30, inclusive, 32 through 112, inclusive, 119 through 156 inclusive and Tracts A, B, and C, of the AMENDED FINAL PLAT OF ELK RUN TOWNHOUSES, recorded in Case 3, Maps 254, 254A, & 254B, records of Coconino County, Arizona, as corrected by the Affidavit of Correction in Docket 997, Page 79, records of Coconino County, Arizona, and the FINAL PLAT OR REPLAT OF LOTS 97 THROUGH 118 of the AMENDED FINAL PLAT OF ELK RUN TOWNHOUSES PHASE III recorded in Case 5, Map 78, records of Coconino County, Arizona.

WHEREAS, the Association, by and through its Members, wishes to amend and restate the Declaration in its entirety as set forth herein;

NOW, THEREFORE, the Association hereby declares that all of said Properties shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions which shall attach to all of said Properties and shall constitute covenants running with the land for the mutual benefit and protection of the Owners, the Association, CCC and all subsequent grantees and other persons having any right, title or interest in the said Properties or any parts thereof, their heirs, successors and assigns:

ARTICLE I  
DEFINITIONS

Section 1: "Articles of Incorporation" and "Bylaws" shall mean and refer to the Articles of Incorporation and Bylaws of the Association or of CCC (as amended from time to time), as hereinafter specified.

Section 2: "Association" shall mean and refer to "ELK RUN TOWNHOUSE OWNER'S ASSOCIATION", its successors and assigns.

Section 3: "Board" shall mean and refer to the Board of Directors of the Association or the CCC Association, as hereinafter specified.

Section 4: "CCC" shall mean and refer to CONTINENTAL COUNTRY CLUB, INC., an Arizona Non-Profit Corporation, its successors and assigns.

Section 5: "CCC Member" shall mean and refer to a social member of the CCC.

Section 6: "Common Area" shall mean all that area referred to as Tracts A, B and C in the final plat hereof, and all improvements thereon.

Section 7: "Declarant" shall mean and refer to FIRST FLAGSTAFF INVESTMENTS, an Arizona General Partnership, and/or its assignee MICHAEL & KEMPER GOODWIN, LTD., an Arizona Corporation, its successors and assigns.

Section 8: "Developer" shall mean and refer to FIRST FLAGSTAFF INVESTMENTS, an Arizona General Partnership, and/or its assignee MICHAEL & KEMPER GOODWIN, LTD., an Arizona Corporation, its successors and assigns.

Section 9: "Garage" shall mean and refer to a building designed to house a single vehicle, whether attached to or detached from a Townhouse, which garage is assigned to each of the 148 Townhouses. There are 132 detached Garages and 16 Garages attached to Townhouses. Any garage not located on a Lot is a limited common element allocated to the Townhouse to which the garage is assigned.

Section 10: "Lot" shall mean and refer to each numbered Lot, consisting of a Townhouse, exterior deck areas, an attached garage, where present, and landscaping or other improved or unimproved areas located within the physical Lot boundaries as depicted on the Amended Final Plat of ELK RUN TOWNHOUSES, recorded in Case 3, Maps 254, 254A, & 254B, records of Coconino County, Arizona, as corrected by the Affidavit of Correction in Docket 997, Page 79, records of Coconino County, Arizona, and the FINAL PLAT OR REPLAT OF LOTS 97 THROUGH 118 of the AMENDED FINAL PLAT OF ELK RUN TOWNHOUSES PHASE III recorded in Case 5, Map 78, records of Coconino County, Arizona, excepting such

areas as are reserved as a matter of public record or as created under this document in Article VIII pertaining thereto.

Section 11: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 12: "Property" or "Properties" shall mean and refer to that certain real property described heretofore.

Section 13: "Townhouse" shall mean and refer to the single family residential dwelling unit constructed upon the Lot.

ARTICLE II  
MEMBERSHIP IN THE ASSOCIATION

Section 1: Membership. Every Owner of a Lot, automatically by virtue of his or her ownership of a Lot, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot. Any conveyance of a Lot or Lots shall include therewith, whether or not specifically set forth in the deed, an undivided 1/148 interest in the Common Area. Said proportional interest in the Common Area cannot be conveyed separate from the conveyance of any Lot or Lots.

Section 2: Voting Rights. Each Owner 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 in the Association. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

Section 3: Board of Directors. The Board of Directors of the Association shall be elected by the Owners at the annual meetings of the Owners, in the manner provided in the Articles and Bylaws of the Association.

Section 4: Rules and Regulations. The Association shall have the right, through its Board of Directors, to promulgate Rules and Regulations which shall be binding upon all Owners. The 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 shall not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles of Incorporation or Bylaws. A copy of the Rules and Regulations as they may from time to time be adopted, amended, or repealed, shall be mailed or otherwise delivered to each Owner's Lot address and may be recorded. Upon such adoption said Rules and Regulations shall have the same force and effect as if set forth in and a part of the Declaration.

**Section 5: Indemnification.** The Association shall indemnify every officer, director, and agent of the Association against any and all expenses, including attorneys' fees, reasonably incurred by or imposed upon any officer or director of the Association in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or an agent of the Association, except for their own individual willful misfeasance, malfeasance, misconduct or bad faith. The officers, directors, and agents shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except indirectly to the extent that such officers or directors may also be Owners of the Association and therefore subject to assessment to fund a liability of the Association), and the Association shall indemnify and forever hold each such officer, director, and agent free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, agent or former officer, director, or agent of the Association, may be entitled. This indemnification shall be mandatory in all circumstances in which indemnification is permitted by law; provided, however, that the Association shall have the right to refuse indemnification if the person to whom indemnification would otherwise have been applicable shall have unreasonably refused to permit the Association, at its own expense and through counsel of its own choosing, to defend him or her in the action, suit, or other proceeding.

**Section 6: Limitation of Director Liability.** In accordance with the provisions of the Nonprofit Corporation Act (set forth at A.R.S. § 10-3101 et seq., as may be amended from time to time), each Director shall be immune from civil liability and shall not be subject to suit indirectly or by way of contribution for any act or omission resulting in damage or injury if said Director was acting in good faith and within the scope of his official capacity (which is any decision, act, or event undertaken by the Association in furtherance of the purpose or purposes for which it is organized) unless such damage or injury was caused by willful and wanton or grossly negligent conduct of the Director. This provision intends to give all Directors the full extent of immunity available under the Nonprofit Corporation Act.

**Section 7: Borrowing Power.** By a majority vote of the Board, the Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate. In connection therewith, the Association may assign its right to future income, including the right to receive assessments.

### ARTICLE III MEMBERSHIP IN CCC

**Section 1:** Each Owner shall automatically become a Social Member of the CCC; provided, however, that:



(a) such membership shall be appurtenant to each Lot and run with title thereto, such membership shall commence upon becoming an Owner and automatically terminate when he ceases to be an Owner, and upon transfer of his ownership interest the new Owner succeeding to such ownership interest shall likewise automatically succeed to such membership in the CCC.

(b) if there is more than one Owner of any Lot, all of the Owners of such Lot shall designate one person to be the member.

(c) if one person owns more than one Lot, such person shall be limited to only one membership in the CCC but shall be entitled to one vote for each Lot owned and shall be required to pay the assessments as provided herein with respect of such Lot owned.

(d) membership in the CCC shall be subject to the Articles and Bylaws of the CCC, and to payment of membership fees, dues, and assessments.

(e) the CCC may, in addition to any other remedies, suspend any member's use of the CCC amenities or limit his voting rights for failure to pay dues and assessments or for any violation of the Articles, Bylaws or Rules and Regulations of the CCC.

(f) a Social Member shall have only such non-proprietary rights to use the recreational areas of the CCC (golf course facilities are not part of CCC amenities) as may be designated by the Board of the CCC; provided, however, that this provision shall not be construed to prevent such member from obtaining a golfing membership in the Club if available at a cost determined by the CCC.

Section 2: In addition to the annual and special assessments provided herein, a member shall be required to pay such assessments as provided by the Certificate of Declaration of Common Areas in Coconino County, Arizona.

ARTICLE IV  
COVENANT FOR MAINTENANCE ASSESSMENTS  
BY THE ASSOCIATION AND BY CCC

Section 1: Creation of the Lien and Personal Obligation of Assessment. Each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant, agree to pay, and be individually responsible for, to both the Association and CCC, as provided by the Articles and Bylaws of such organizations, the Owner's proportionate share of: (a) annual assessments or charges, (b) special assessments, such assessments to be established and collected as hereinafter provided, (c) taxes on the common area, and (d) operational and maintenance costs of the common area. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

The annual and special assessments, taxes and cost of operation and maintenance on the common area, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made until paid. Each such proportionate share of assessments, taxes and operation and maintenance costs, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment fell due in addition to becoming a lien against Owner's Lot. CCC and the Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of annual or special assessments, fees or otherwise) and may carry forward as surplus any balances remaining (rather than apply such surplus to reduction of the annual assessment in future years) in such amounts as the CCC Board and the Board of the Association, in its discretion, may determine to be desirable for the greater financial security of the CCC and the Association.

Section 2: Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the Common Area, if applicable, and of the Townhouses situated upon the Lots, if applicable. The assessments levied by CCC shall be used to promote the recreation, health, safety, and welfare of the residents and Social Members of CCC and for the improvement and maintenance of the property owned or maintained by CCC.

Section 3: Special Assessments by the Association. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment for any proper Association purpose, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of the Owners who are voting in person or by absentee ballot at a meeting duly called for this purpose.

Section 4: Notice and Quorum for Any Action Authorized Under Section 3 and Section 7(c). Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and/or Section 7(c) shall be sent to all Owners not less than twenty (20) days nor more than forty (40) days in advance of the meeting. At the first such meeting called, the presence of Owners, in person or by absentee ballot, entitled to cast sixty percent (60%) of all the votes of the Owners 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 sixty (60) days following the preceding meeting.

Section 5: Special Assessments by CCC. In addition to the annual assessments authorized above, CCC may levy, in any assessment year, a special assessment for any proper CCC purpose, provided that any such assessment shall have the assent of two-thirds (2/3rds) of the votes of the CCC members who are voting in person or by absentee ballot at a meeting duly called for this purpose.

Section 6: Notice and Quorum for Any Action Authorized Under Section 5. Written notice of any meeting called for the purpose of taking any action authorized under Section 5 shall be sent to all CCC members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of CCC members, in person or by absentee ballot, entitled to cast sixty percent (60%) of all the votes of the membership 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 sixty (60) days following the preceding meeting.

Section 7: Rate of Annual Assessment for the Association.

(a) The annual assessment rate (not including the CCC assessment) as of January 1, 2008 is \$1,560.00 per year (\$130.00 per month). Each Owner may pay to the Association the annual assessment in one lump sum payment; otherwise, each Owner shall pay to the Association his or her annual assessment in twelve (12) equal monthly installments on or before the fifth (5th) day of each calendar month.

(b) The maximum annual assessment for the Association may be increased each fiscal year not more than fourteen percent (14%) above the maximum assessment for the previous year without a vote of the Owners.

(c) The maximum annual assessment may be increased above fourteen percent (14%) in any fiscal year by a vote of two-thirds (2/3rds) of the Owners who are voting in person or by absentee ballot, at a meeting duly called for that purpose.

(d) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum. If, during the fiscal year, the Board determines that the annual assessment is insufficient to meet Association expenses, the Board may increase the annual assessment to an amount not in excess of the maximum annual assessment by giving each Owner of a Lot notice of the amount of the new annual assessment at least thirty (30) days in advance of effective date of the increase.

(e) Notwithstanding anything to the contrary contained herein, the Board shall not impose an annual assessment in any fiscal year that is more than twenty percent (20%) greater than the immediately preceding fiscal year's annual assessment without the approval of the majority of the Members, or as otherwise provided by Arizona law.

Section 8: Date of Establishment and Notice of Annual Assessments. The Board is authorized to adopt and amend budgets from time to time in accordance with the limits set in Section 7 herein. The Board of Directors shall fix the amount of the annual assessment against each Lot and give notice of the annual assessment to each Owner of a Lot at least thirty (30) days in advance of each annual assessment period. Such notice shall be in writing and shall be

addressed to the last known address of the Lot Owner in the files of the Association. Notices shall be deemed delivered when mailed by United States Mail addressed to the Lot Owner at such address or when delivered in person to such Owner. Failure of the Association to notify Owners of the amount of the annual assessment for the upcoming fiscal year, as herein provided, shall not relieve the Owners of the obligation to continue to pay annual assessments in the amount of the previous fiscal year's annual assessment until notified by the Association of the amount of the annual assessment for the current fiscal year. Each Owner may pay to the Association the annual assessment in one lump sum payment or in twelve (12) equal monthly installments on or before the fifth (5th) day of each calendar month. Each Owner must pay special assessments within thirty (30) days after their levy or at such other times as the Board shall designate. All assessments shall be paid at such place as the Board shall designate. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment and other charges on a specified Lot have been paid.

Section 9: Effect of Nonpayment of Assessments. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum. The Association or its agents have the right and power to bring all actions against such Owner for the collection of assessments and to enforce the lien by all methods available for the enforcement of such liens without waiving any other legal remedies available to it including, but not limited to, bringing an action at law against the Owner personally obligated to pay the same, and foreclosing the lien against the Lot pursuant to Arizona law pertaining to foreclosure of realty mortgages. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use or abandonment of his or her Lot or by non-use of the Common Areas. The proceeds of a judicial sale following the foreclosure of such assessment lien shall first be paid to discharge court costs, other litigation costs including but not limited to reasonable attorney's fees, all interest accruing thereon, and all other expenses of such sale. Any balance of proceeds after satisfaction of such amounts and all other amounts due shall be paid to the Lot Owner, and the Lot Owner may redeem such Lot after the foreclosure sale as provided for by law.

Section 10: Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. 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 assessments as to payments which become 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.

Section 11: Statement of Unpaid Assessments. Within fifteen (15) days of a written request from a lienholder, escrow agent, Lot Owner or person designated by a Townhouse owner, the Association shall furnish a statement setting forth the amount of unpaid assessments against the Lot. The Association may charge its reasonable costs for providing this statement to the party

requesting the statement.

ARTICLE V  
PARTY WALL

Section 1: General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Townhouses upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provision of this Article, the general rules of law regarding party walls and liability for property damage due to negligent or willful acts or omissions shall apply thereto.

Section 2: Sharing of Repair and Maintenance. In the event any such party wall is damaged or destroyed due to ordinary wear and tear over time or by some cause other than the act of one of the adjoining Owners, the Owner's agents, licensees, invitees, tenants, guests, family, or pets, the cost of reasonable repair and maintenance of such party wall shall be shared by the Owners who make use of the wall in proportion to such use.

Section 3: Repair and Maintenance Necessitated by Owner. No Owner shall penetrate or cause to be penetrated any party wall except as shall be necessary for the hanging of pictures and other standard wall surface hanging items in a customary manner. In the event any such party wall is damaged or destroyed through the act of one adjoining Owner, or any of his agents, licensees, invitees, tenants, guests, family, or pets, (whether or not such act is negligent or otherwise culpable) so as to deprive the other adjoining Owner of the full use and enjoyment of such wall, then the first of such Owners shall forthwith proceed to rebuild and repair the same to as good condition as formerly without cost to the adjoining Owner.

Section 4: Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall share the cost of restoration thereof in proportion to such use without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule regarding liability for negligent or willful acts or omissions.

Section 5: Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6: Dispute Resolution. In the event of a dispute between Owners with respect to the repair or rebuilding of a party wall or with respect to the sharing of the cost thereof, then upon written request of one of such Owners addressed to the Association, the matter shall be submitted to the Board of Directors of the Association. The determination of a majority of the Directors shall be final. A Director who is an Owner involved in the dispute shall not take part in

the determination.

ARTICLE VI  
MAINTENANCE

Section 1: Maintenance by the Association. The Association shall maintain the Common Area, including maintenance of landscaping such as trees, shrubs, and grass, as well as streets, driveways, parking areas, and sidewalks including snow removal from streets, driveways, parking areas, and common sidewalks, the latter as defined in Association Rules and Regulations. In addition, the Association shall provide exterior maintenance upon each Townhouse and the corresponding Lot which is subject to assessment hereunder, as follows: (a) paint, repair, replace and care of roofs, including skylights, decks, exterior building surfaces including without limitation, walls and railings of deck areas, doors, and siding and (b) maintenance of any landscaping on a Lot except for landscaping within the gated or enclosed areas of the patios and decks. Such exterior maintenance of Townhouses shall not include windows and other glass surfaces, screens, and fixtures or additions made or installed by Owners. The Association shall maintain the exterior and structural portions of the Garages, whether attached to the Townhouse or detached therefrom, including the garage door, but not including the automatic garage door opener.

Section 2: Maintenance Necessitated by an Owner. In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, or the Owner's agents, licensees, invitees, tenants, guests, family, or pets, the cost of such maintenance or repairs shall be paid by said Owner, upon demand, to the Association. Notwithstanding the foregoing, Owners are responsible for the cost of treating or repairing termite or other damage resulting from the storage of firewood. The Association may enforce collection of amounts due under this Section in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

Section 3: Maintenance by Owners. Each Owner shall maintain the portions of their Lot not otherwise maintained by the Association pursuant to Section 1 herein. This maintenance will include, but not be limited to, all repairs of internal installations, wires, pipes, and conduits of utilities within the Townhouse, such as water, light, gas, power, sewage, telephone, television, internet, air conditioning, and sanitary installations. Owners shall also be responsible for landscaping and snow removal within the gated or enclosed areas of the patios and decks. Further, each Owner shall be responsible for all maintenance and repair work within the Townhouse, which if omitted would affect other Townhouses, and each Owner shall be responsible for the damages and liabilities that his or her failure to do so may engender.

ARTICLE VII  
USE RESTRICTIONS

Section 1: Single Family Residential Use. Each of said Lots is hereby restricted to use as a single family dwelling for residential use by a single family only. "Single Family" shall be defined as a group of one or more persons each related to the other by blood, marriage or legal adoption who maintain a common household, or a group of not more than two (2) unrelated adults with their dependents who maintain a common household.

Section 2: Business and Related Use. No business, professional, commercial, activities of any kind whatsoever shall be conducted on any portion of any Lot or the Properties, except that an Owner or other resident of a Lot may conduct a business activity upon the Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the Lot; (b) the business activity conforms to all applicable zoning ordinances or requirements for the Lot; (c) the business activity does not involve an unreasonable number of persons coming onto the Lot or any door-to-door solicitation of Owners or other residents in the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Properties, as may be determined from time to time in the sole discretion of the Board. Furthermore, no advertising or directional signs may be placed upon the Lot or any portion of the Common Areas regarding the business activity. The terms "business" and "trade" as used in this section shall be construed to have ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time; (b) such activity is intended or does generate a profit; or (c) a license is required for such activity.

Section 3: Animals. No animals, fish or fowl of any kind shall be raised, bred or kept on any of said Lots provided, however, that a reasonable number of ordinary domestic pets (not wild or exotic pets) will be permitted so long as (a) such pets are kept within the boundaries of the Lot of their Owner or, if on the Common Area, on a leash in the control of a human being, (b) such pets do not make an unreasonable amount of noise, or become a nuisance to other Lot Owners, (c) such pets are not kept, bred or maintained for any commercial purpose, and (d) no kennels, pens or similar structures or enclosures are constructed or maintained upon any of said Lots except with specific prior written permission and approval of the Board. Owners must immediately clean up after their pets. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal is an ordinary domestic pet, or a nuisance, or whether the number of pets on any such Lot is reasonable.

Section 4: Signs. No advertising signs, billboards, or objects determined to be unsightly by the Board of Directors shall be erected, placed or permitted to stand upon any of

said Lots, except (a) signs the nature, number and location of which have been approved in advance and in writing by the Board of Directors, (b) one "For Rent" sign upon the front of a Townhouse or assigned Garage and one such sign at or on the rear of a Townhouse, each of which shall not be over four (4) square feet nor higher than four (4) feet, (c) "For Sale" signs no larger than eighteen by twenty-four inches (18" x 24") and sign riders no larger than six by twenty-four inches (6" x 24"), (d) political signs as permitted by the City of Flagstaff and Coconino County may be placed on the Lot up to forty-five (45) days before an election and up to seven (7) days after an election, (e) signs which, by law, may not be prohibited, and (f) signs required by legal proceedings.

**Section 5: Speakers and Amplifiers.** No outside speakers, amplifiers or other sound producing equipment shall be permitted to be installed or maintained on any Lot. No radio antenna shall be permitted to be installed or maintained on the exterior of any building or structure on the Properties.

**Section 6: Fires & Fire Prevention.** No open fires or burning (including fireworks) shall be permitted on any part of the Properties and no incinerators or like shall be placed, allowed or maintained upon any Lot. Incineration of any materials shall not be permitted. Charcoal grills, hibachis, chimineas and similar cooking or heating devices are prohibited on wood decks but may be used on non-flammable surfaces elsewhere unless such use is prevented or restricted by fire protection rules or regulations. Natural gas, propane gas and electric grills or barbecues are not prohibited on wood decks but must be used with careful regard for the proximity of flammable surfaces, and must be used in accordance with fire protection rules or regulations. All fireplaces and flues must be used and maintained in a safe condition by the Owner. Due to the large number of trees in the area of this subdivision and the possibility of forest fires from time to time:

- (a) No Lot Owner shall maintain any flammable materials or otherwise use his or her Lot in a manner which would create a fire danger to any of said Lots;
- (b) The Association and each Lot Owner shall be bound by all fire protection rules and regulations issued by the Association, the CCC and the City of Flagstaff.
- (c) Firewood may only be stored in a Lot Owner's assigned Garages, away from wood surfaces, except as allowed by the Rules and Regulations or by written approval of the Board of Directors.

**Section 7: Storage.** No tanks of any kind, elevated above the surface of the ground or visible in any manner, shall be erected, placed, or permitted on any of said Lots. No exterior clothes line equipment of any kind shall be permitted on any part of the Properties. No unsightly objects shall be permitted on or under any of the decks on any Lot. Garments, rugs, clothing, towels, and similar items may not be hung from windows, balconies, or from any of the facades of the Townhouses.



**Section 8: Refuse.** All rubbish, trash or garbage shall be kept in closed trash or recycling containers and not allowed to accumulate on any of said Lots, and all of said containers shall be kept only in the trash collection areas designated by the Board of the Association. Furniture, appliances or other large items may not be disposed of in any container. If containers are full, residents must seek other containers that are not full or haul the trash or recyclables, as well as furniture and appliances, to an approved dump. Fireplace ashes must be disposed of only in the steel containers provided.

**Section 9: Vehicles.** No mobile home, tent, trailer, boat, bus or similar facility or vehicle, no vehicle exceeding twenty-four feet (24') in length, and no vehicle of any type which is rusted, dented, abandoned or inoperable shall at any time be placed upon, stored, or lived in on any of said Lots or the Common Area without the prior written approval of the Board of Directors. Vehicles required by law to be permitted to park on streets and driveways shall not be subject to this restriction. For purposes of this Section, an inoperable vehicle is one that is not running, has one or more flat tire(s) for ten (10) or more days, is up on blocks, is not properly licensed, or is not currently registered. No vehicle, equipment, furniture, or other objects may be repaired, modified or otherwise worked on at any time upon any of said Lots or on any street adjacent to any of said Lots, provided however, that the Board may permit minor repairs to vehicles if such repairs can be completed in one day.

**Section 10: Parking.** Parking on private streets within the Properties is permitted only for short periods for loading and unloading. Vehicles required by law to be permitted to park on streets and driveways shall not be subject to this restriction. All parking, loading and unloading is prohibited in designated fire lanes. Vehicles parked on designated driveways, parking spaces, or concrete aprons shall not overhang into the private streets or impede free access to Garages. Vehicles shall not be parked on any Common Area that is unpaved. Owners are responsible for the cleaning of any leaks or spills on the streets, driveways, parking areas, aprons or sidewalks, whether caused by the Owner or the Owner's agents, licensees, invitees, tenants, guests, or family.

**Section 11: Nuisances.** No noxious or offensive activity may be carried on or permitted on any part of the Properties, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood, including without limitation annoying or offensive sound or odor. No hazardous activities shall be conducted upon any part of the Properties, nor shall any improvements or conditions which are unsafe or hazardous to any person or property be permitted.

**Section 12: Leasing.** An entire Lot may be rented to a Single Family for a minimum of thirty (30) days. No sub-leases shall be allowed. If the Board of Directors creates and/or adopts a "rental registration form", the Owner shall submit such form to the Association for every rental. Any agreement for the lease of a Lot must be in writing and must be expressly subject to this Declaration, the Articles, the Bylaws, the Rules and Regulations, and any other documents governing the Association. The lease must contain a provision that any violation of the

Declaration, the Articles of Incorporation, the Bylaws, Rules and Regulations, or any other documents governing the Association shall be a default under the lease and is grounds for eviction. Any continuing violation or repeated violations (violation occurring three or more times), of the Declaration shall be a default under the lease. The Owner shall remain liable for compliance with the Declaration, Articles, Bylaws, Rules and Regulations, and any other documents governing the Association, and shall be responsible for any violations thereof by his tenant or his tenant's agents, licensees, invitees, guests, family, or pets. All notices shall be sent to the Owner. Each Owner shall provide a copy of the Declaration, Articles, By-Laws, Rules and Regulations, and any other documents governing the Association to each tenant of his Lot. By becoming a tenant, each tenant agrees to be bound by the Declaration, Articles, Bylaws, and any other documents governing the Association and recognizes that any continuing violation or repeated violations of the Declaration is grounds for eviction from the Lot. If a tenant commits violations that are grounds for eviction, the Association may provide notice to the Owner of the tenant's violations, and require that the Owner evict the tenant for the violations. If the Owner fails to make a good faith effort to evict the tenant, the Association may impose reasonable monetary penalties against the Owner as determined by the Board, and may exercise any other remedies available under the Declaration and Arizona law.

Section 13: Garages. Garages shall primarily be used for the storage of vehicles. Garages shall not be converted to or used as game rooms, media rooms, other recreational areas, or living quarters. Garage doors shall remain closed except while an Owner is working in the Garage or taking vehicles, equipment, tools, or other similar items in or out of the Garage.

Section 14: Common Area. No planting or gardening shall be done on the Common Areas except in areas designated by the Association or as otherwise approved in writing by the Board of Directors of the Association. No Owner shall build, erect, or maintain buildings or appurtenances thereto on any Common Areas or portion thereof. No Owner may store any objects on the Common Areas except as otherwise provided herein.

Section 15: Antennas & Satellite Dishes.

(a) Unless governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, no antenna or other device for the transmission or reception of television, internet or radio signals or any other form of electromagnetic radiation or any associated equipment shall be erected, used or maintained outdoors on any Lot or Common Area, whether attached to a building or structure or otherwise, so as to be visible from the Common Area or the street, unless approved in writing by the Board.

(b) Any device governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, shall comply with any applicable antenna installation rules of the Association and shall be mounted, to the extent reasonably possible, so as to not be visible from the Common Area or the street.

(c) While the Owner has the right to place on the roofs of the Townhouse on the Owner's Lot any device governed by 47 C.F.R. § 1.400 (Over-the-Air Reception Devices Rule), as amended, repealed, or recodified, the Owner is advised that the Association has the obligation, under Article VI, Section 1 of this Declaration, for the maintenance, repair, and replacement of the roofs, as needed. If the Association determines that it is necessary or desirable to cause the roof to be maintained, repaired, or replaced, and if it is necessary for the devices described herein to be temporarily removed to complete the work on the roofs, the Association will give the Owner at least seven (7) days written notice of the day by which the device must be removed, and the Owner shall be responsible for removing the device and then re-installing the device after the work is completed. If an Owner fails to remove the device after being given at least seven (7) days written notice by the Association, the Association is hereby authorized to remove the device and deliver it to the Owner; the Owner may re-install the device after the work is completed. Any cost to the Association for removing the device shall be paid by the Owner to the Association; any charges not paid within thirty (30) days after demand from the Association, shall be a debt, and shall be collectible in the same manner as delinquent assessments and by any lawful procedure allowed by the laws of the State of Arizona.

Section 16: Window Coverings. Window coverings and decorations, including curtains, drapes, blinds and shutters, shall be maintained in good condition. Reflective materials (including, but without limitation, aluminum foil, reflective screens, glass, or mirrors), paper, cardboard, signs, and stored materials shall not be installed or placed upon the outside or inside of any windows of a Townhouse or Garage without the prior written approval of the Board of Directors. Awnings, shades, screens, window air conditioners, screen doors, security doors, replacement windows and doors, deck railing screens, wires, conduits, cables, pipes or other items visible from the exterior of a Townhouse shall not be constructed or installed without the prior written consent of the Board of Directors, as further provided in Article IX hereof.

Section 17: Bicycles, Skates, Scooters, and Skateboards. Bicycles, skates and non-motorized scooters are allowed only on the private streets within the Properties, except that children may operate same on the sidewalks, driveways, or concrete aprons. Skateboards and unlicensed motorized scooters and motor bikes are not allowed anywhere on the Common Area.

Section 18: Central Air Conditioning. Central air conditioning may be installed in Townhouses only with the prior written approval of the Board of Directors. The factors considered by the Board may include, but are not limited to, the proposed location of the condenser, the proposed screening of the condenser, and the noise level of the air conditioning unit.

Section 19: Flags and Flagpoles. An Owner may install one (1) flagpole on the Lot with the prior written approval of the Association in accordance with Article IX herein. The following flags may be flown on the Lot in accordance with the Federal Flag Code (P.L. 94-344): the United States flag, the Arizona state flag, the flag of the United States Army, Navy, Air Force, Marine Corps, or Coast Guard, the POW/MIA flag, or an Arizona Indian Nations flag.

Other flags may be flown only with the prior written approval of the Board of Directors.

ARTICLE VIII  
EASEMENTS

Section 1: Easement of Ingress and Egress. All Owners of Lots shall have an easement for ingress and egress over, across, and through the streets, driveways, parking areas, concrete aprons, and sidewalks within the Properties. Owners may delegate this easement to the Owner's agents, licensees, invitees, tenants, guests, and family, subject to rules and regulations adopted by the Board of Directors.

Section 2: Blanket Easement. There is hereby created a blanket easement upon, across, over and under the above described premises for ingress, egress, installation, repairing, replacing and maintaining all utilities, including but not limited to, water, sewers, gas, telephones and electricity. By virtue of this easement, it shall be expressly permissible for the providing electrical, telephone, and other utilities companies to erect and maintain the necessary poles and other necessary equipment on said property and to affix and maintain electrical, telephone, and other utilities wires, circuits and conduits on, above, across and under the roofs and exterior walls of said Townhouses. Notwithstanding anything to the contrary contained in this paragraph, no additional sewers, electrical lines, water lines, or other utilities may be installed and no existing utilities may be relocated on said Properties except as approved by the Board of Directors of both the Association and the CCC. This easement shall in no way affect any other recorded easements on said premises.

Section 3: Easement for Encroachments. Each Townhouse shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Developer. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event a Townhouse is partially or totally destroyed, and then rebuilt, the Owners of said Lots agree that minor encroachments of parts of the adjacent Townhouses or Common Area due to construction shall be permitted and that a valid easement for said encroachment and the maintenance thereof shall exist.

Section 4: Easement for Maintenance. Each Townhouse shall be subject to an easement for maintenance by the Association. An Owner hereby grants a right of entry to the management agent or to any other person authorized by the Board of Directors or the Association in case of any emergency originating in or threatening the Owner's Townhouse, whether the Owner is present at the time or not. An Owner shall reasonably permit other Owners, or their representatives, when so required, to enter the Owner's Townhouse for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services required to be maintained by Owners, provided that requests for entry are made in advance and that entry is at a time convenient to the Owner. In case of an emergency, as determined by the management agent or Board of Directors, such right of entry shall be immediate.

ARTICLE IX  
ARCHITECTURAL CONTROL

No modification, addition, change, or alteration to any building, fence, wall, or other structure on the Lot affecting the exterior appearance of structures on the Lot (including without limitation doors, windows, skylights, paint colors, trim, shape and character of any of the buildings or improvements upon the Lots) shall be commenced, erected, or maintained unless approved in writing by the Board of Directors of the Association or by a representative designated by the Board of Directors. An Owner shall not make structural modifications or alterations in or to the Townhouse without first obtaining the written approval of the Board of Directors of the Association or by a representative designated by the Board of Directors. In the event the Board fails to approve or disapprove such plans and specifications within forty-five (45) days after submission thereof or after re-submission thereof as required by the Board of Directors, approval will not be required and this Article will be deemed to have been fully complied with. However, any improvement commenced, erected, or maintained after the Board of Directors fails to approve or disapprove such plans and specifications within forty-five (45) days of submission must still comply with all other provisions of this Declaration. The Board or the committee designated by the Board shall have the power to make and amend reasonable procedures and guidelines for carrying out their duties in this Article IX. Nothing contained herein shall be construed to limit the right of an Owner to make any change or addition to or remodel the interior of the Owner's Townhouse or to paint the interior of Owner's Townhouse any color desired, except to the extent such change, addition, remodeling or painting is visible from outside such Townhouse, affects the exterior appearance of such Townhouse, or negatively affects the structural integrity or party wall of that Townhouse.

ARTICLE X  
INSURANCE

Section 1: Property Insurance.

(a) Insurance on Townhouses Maintained by Owners. The Association does not carry insurance on the Townhouses as of the date this Declaration is recorded due to the finding that insurance on the Townhouses was not reasonably available to the Association. Each Owner shall be responsible for covering all portions of the Townhouse that are not covered by the insurance, if any, maintained by the Association on the Townhouse. The Association may, but is not obligated to, provide coverage of the Townhouses that is reasonably available and is in the best interest of the Association and the Owners, as determined by the Board of Directors. The Board of Directors may opt to not carry insurance on the Townhouses and may require the Owners of Lots to carry property insurance on the Townhouses. If, in the future, the Board of Directors determines that it would be in the best interest of the Association and the Owners for the Association to carry insurance on the Townhouses, the Board of Directors may modify the

insurance coverage upon providing the Owners with thirty (30) days written notice of the change to insurance coverage. If, on the other hand, in the future, the Association determines that it is in the best interest of the Association and the Owners to modify such insurance carried by the Association on the Townhouses, the Board of Directors may modify the insurance coverage upon providing the Owners with thirty (30) days written notice of the change to insurance coverage so that the Owners may obtain the necessary additional coverage on the Townhouses.

(b) Insurance Maintained by the Association. The Board of the Association shall have the authority, and to the extent reasonably available (as determined by the Board of the Association), shall obtain a multi-peril type policy covering the Common Area, providing, at a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, location and use, including, without limitation, sprinkler leakage, debris removal, cost of demolition, vandalism, malicious mischief, and windstorm damage, in an amount not less than 80% of the insurable value (based upon replacement cost as determined at least once every two years by the Board). In accordance with Section 1(A) and Section 1(C) of this Article X, the Board of the Association may extend such insurance to cover the exterior portions, structural portions, and the roofs of the Townhouses on the Lots, excluding the interiors and non-structural portions of the Townhouses, otherwise known as "bare walls coverage" of the Townhouses.

(c) Features of Insurance Maintained by Association. To the extent reasonably available, the insurance obtained by the Association pursuant to this Section 1 shall provide the following:

- (i) Each Owner is an insured person under the policy with respect to liability arising out of his or her interest in the Common Area or membership in the Association;
- (ii) The insurer waives its right to subrogation under the policy against any Owner or members of the Owner's household;
- (iii) No act or omission by any Owner, unless acting within the scope of his or her authority on behalf of the Association, will void the policy or be a condition to recovery under the policy; and
- (iv) If, at the time of a loss under the policy, there is other insurance in the name of an Owner covering the same property covered by the policy, the Association's policy provides primary insurance.

(d) Limitation of Insurance on Townhouses. The Association does not intend to carry insurance coverage for the following portions of the Townhouses:

- (i) Floor coverings of any kind, including but not limited to: carpeting,

vinyl goods, ceramic tile, hardwood flooring. In the event of a loss, coverage will stop at the upper surface of the sub-flooring.

(ii) Wall coverings of any kind; no coverage is intended to be provided for dry wall or plastered surfaces, or for anything permanently attached to these surfaces. In the event of a loss, coverage stops at the inside surface of the vertical stud wall or wood-lath, as applicable, and the lowest surface of the ceiling joist or rafter.

(iii) Cabinetry, built-in appliances, or electrical/plumbing fixtures, including all HVAC equipment located inside or outside of the Townhouse.

(e) Insurance Deductible. The Board shall have the sole and final authority to establish rules and regulations governing who is responsible for paying the deductible if a loss occurs. The Board may choose to split the cost of the deductible between two or more Owners at its discretion. If an Owner is required to pay the amount of the deductible to the Association to perform any repair or reconstruction work, said amount shall be paid within sixty (60) days of its due date, as established by the Association. Any unpaid deductible shall be collectible in the same manner as a delinquent assessment.

Section 2: Liability Insurance. The Board shall have the authority, and to the extent reasonably available, shall obtain comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000.00. Such insurance shall cover all occurrences that are commonly insured for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area.

Section 3: Other Insurance. The Board shall also have the authority to obtain other liability insurance as it may deem desirable, including, but not limited to, fidelity insurance, directors' and officers' insurance, and workmen's compensation insurance, if applicable.

Section 4: Payment of Insurance Premiums. The premiums for insurance maintained by the Association shall be shared equally by all Owners of Lots. Such cost shall be payable to the Association at such times and in such manner as determined by the Board of Directors, and may be imposed separately from any annual assessments or special assessments. Such cost, if not paid by the Owner to the Association within thirty (30) days of its due date, shall be a lien on the Lot and collectible in the same manner as assessments.

Section 5: Owners' Insurance. In addition to the aforesaid insurance carried by the Association, any Owner may, at his or her own expense, carry any and all other insurance the Owner deems advisable. It shall be the individual responsibility of each Owner at his or her own expense to provide, as the Owner sees fit, personal liability insurance, theft and other insurance covering personal and/or real property damage and loss. Insurance on individual Lots may be written in the name of the individual Owners as their interests may appear.

**Section 6: Payment of Insurance Proceeds.** Any loss covered by the Association's property insurance shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Owners and lienholders as their interest may appear. Subject to the provisions of Section 7 below, the proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the condominium is terminated.

**Section 7: Damage or Destruction of Property Covered by Insurance.** In the event property covered by the Association's insurance is damaged or destroyed, the property shall be repaired or replaced promptly by the Association unless any of the following apply:

- (a) The condominium is terminated.
- (b) Repair or replacement would be illegal under any state or local health or safety statute or ordinance.
- (c) Eighty percent (80%) of the Lot Owners, including every Owner of a Lot or limited common element which will not be rebuilt, vote not to rebuild.

**Section 8: Maintenance, Repair, and Reconstruction Necessitated by Owner.** Notwithstanding the foregoing, if the Board determines in its sole discretion that an Owner, or an Owner's agents, licensees, invitees, tenants, guests, family, or pets, through negligence or willful conduct, damages or destroys property which the Association is obligated to maintain, repair, or reconstruct, then the Owner is liable to the Association for any cost of the maintenance, repair, or reconstruction that is not covered by the Association's insurance or that is in excess of the Association's insurance proceeds. Such cost shall be a lien on the Lot and collectible in the same manner as assessments.

## ARTICLE XI GENERAL PROVISIONS

**Section 1: Right of Enforcement.** The restrictions and burdens imposed by the covenants in this Declaration constitute a general scheme for the benefit of the Association and all Owners of Lots and all of such restrictions and covenants shall inure to the benefit of the Lot Owners, and shall be enforceable by every person, partnership, association or corporation who now or at any time hereafter owns title or any interest of any kind in or to said Property, and all of such restrictions and covenants shall be binding upon every person, partnership, association or corporation who now or at any time hereafter owns or has any interest in said Property. All covenants in this Declaration are intended to and shall constitute covenants running with the land



or equitable servitudes upon the land, as the case may be, and are intended to and shall be binding upon any present or future Owner of any interest in and to said Property. Each Owner of a Lot, and the respective successors, assigns heirs and personal representatives of each, and the Association shall have the right to enforce the Declaration through action for specific performance, injunction, or any other right or remedy available at law, in equity or otherwise. Failure by anyone to enforce any condition, restriction, covenant or charges herein contained shall not constitute a waiver of the right to do so thereafter.

**Section 2: Methods of Enforcement.** In the event of any violation or breach of, or any default under, any of the restrictions, conditions, covenants, reservations or other provisions contained herein, any one or more of the following remedies (as may be applicable) shall be available:

(a) In the event of any violation or breach of, or default under Article VII hereof pertaining to fire danger which poses an imminent fire danger or hazard to any other Owners of said Lots or their property, CCC or the Association shall have the right to go upon such Lot without notice and take such action as may be necessary to alleviate such imminent dangerous or hazardous condition, and any expenses thereby incurred by CCC or the Association shall become a lien upon such Lot which may be collected in the same manner as assessments;

(b) For any other violation or breach of, or default hereunder, CCC or the Association shall have the right, after ten (10) days notice in writing to the defaulting Owner, to go upon such Lot and take such action as may be necessary to correct such violation, breach or default, including, but not limited to, removal of any unauthorized improvements or fixtures and unauthorized restorations of the premises, removal of any unauthorized personal property and placing the same in storage at the expense of the defaulting Owner, repainting the exterior of any building which has been painted in an unapproved manner or color, replacement of any trees removed without approval, and cleaning up any unsightly material or debris upon any Lot. Any expenses thereby incurred by CCC or the Association shall become a lien upon such Lot which may be collected in the same manner as assessments;

(c) CCC, the Association, or any Owner, or any combination thereof may, in addition to any other remedy available at equity or law, prosecute an action or other proceedings against such defaulting Owner for injunctive relief, specific performance, damages, a judgment for payment of money and collection thereof, or the appointment of a receiver to take possession of the improvements upon such Lot.

**Section 3: Costs of Enforcement.** In the event the Association acts to enforce the terms of this Declaration, regardless of whether suit is filed, the Association shall be entitled to recover, in addition to any other remedy, reimbursement for attorneys' fees, court costs, costs of investigation and other related expenses incurred in connection therewith, including, but not limited to the Association's administrative costs and fees. Said attorneys' fees, costs and expenses

shall be the personal liability of the breaching Owner and shall also be a lien against said Owner's Lot. If, however, a lawsuit is filed, and the Owner is the prevailing party in such lawsuit, the Owner shall not be required to pay the Association's attorney's fees, court costs, costs of investigation and other related expenses incurred therewith.

Section 4: Severability. Invalidation of any of these covenants or any portion thereof, by judgment or court order shall in no way affect any other provision or any portion thereof which shall remain in full force and effect.

Section 5: Amendment. The Declaration may be amended through the approval of Owners of not less than sixty-seven percent (67%) of the Lots. Notwithstanding the above or any other provision contained herein, Article III, Section 1, regarding mandatory membership in CCC shall not be amended or deleted without the express written approval of the Board of Directors of CCC. Any amendment must be recorded.

Section 6: Annexation. Additional residential properties and a Common Area may be annexed to the Properties by the Association with the consent of two-thirds (2/3rds) of the Lot Owners.

Section 7: Interpretation. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by the Declaration.

Section 8: Attorney's Fees. In the event the Association incurs legal expenses and costs, including, but not limited to, attorney's fees, in bringing claims against Owners or defending claims brought by Owners in an administrative action or proceeding, including, but not limited to, proceedings before an Administrative Law Judge, the Association shall be entitled to recover its attorney's fees and costs from the Owner involved in the administrative proceeding if the Association is the prevailing party.

IN WITNESS WHEREOF, the President of the Association hereby certifies that the provisions contained with this Amended and Restated Declaration have been approved by the required percentage of the Owners.

ELK RUN TOWNHOUSE OWNER'S ASSOCIATION, an  
Arizona Non-Profit Corporation,

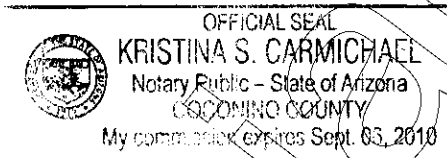
By Richard C Thomas  
President

STATE OF ARIZONA )  
 ) ss.  
County of Coconino )

On this 25<sup>th</sup> day of Sept., 2008 before me personally appeared Richard Thomas, whose identity was proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this document, and who acknowledged that he/she signed this document.

Kristina S. Carmichael  
Notary Public

Notary Seal:



N:\HOA\Continental Country Club sub-associations\Elk Run Townhouses - 2538\General Counsel\Review of CC&Rs\Documents\CC&R, A&R mod AS 8-14-08.wpd