

1582928099963-28-1-1--  
Hoyp

WHEN RECORDED RETURN TO:

PHILLIPS, MACEYKO AND BATTOCK, PLLC  
5010 E. Shea Boulevard, Suite 155  
Scottsdale, AZ 85254

SECOND AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR WHISPER MOUNTAIN

THIS Second Amended and Restated Declaration of Covenants, Conditions and Restrictions (hereinafter termed the "Declaration") is made on this 21<sup>st</sup> day of February, 2020 by Whisper Mountain Homeowners Association, an Arizona non-profit corporation (hereinafter sometimes termed "Association").

WITNESSETH:

WHEREAS, VIP Construction, Inc., an Arizona corporation ("Declarant") recorded a "Declaration of Covenants, Conditions and Restrictions for "Whisper Mountain" (the "Original Declaration" recorded in the office of the Records of Maricopa County, Arizona, in Recorder's No. 2004-1131498, and an Amended and Restated Declaration of Covenants, Conditions and Restrictions ("Previous Amended and Restated Declaration") recorded in the office of the Records of Maricopa County, Arizona, in Recorder's No. 2006-1189236, which governed the real property described on Exhibit "A" hereto ("Property").

WHEREAS, the Association, by and through its Members, approve to completely amend, restated and entirely replace the Previous Amended and Restated Declaration.

WHEREAS, this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Whisper Mountain is intended to supersede and replace the Amended and Restated Declaration of Covenants, Conditions and Restrictions in its entirety. Upon the recording of this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions in the official records of the County Recorder, of Maricopa County, Arizona, the Amended and Restated Declaration of Covenants, Conditions and Restrictions, and any prior amendment hereof, shall be of no further force and effect.

NOW, THEREFORE, the Previous Amended and Restated Declaration is hereby amended and restated as follows:

## **DECLARATION**

The Association hereby declares that all the Property (hereinafter sometimes referred to as Whisper Mountain) shall be held, sold, and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration which are for the purpose of protecting the value and desirability of, and which shall run with said real property, and be binding on all parties having any right, title or interest in said real property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

Each Owner and Occupant recognizes and agrees that their Ownership and/or Occupancy of a Lot is subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Further, all impositions and obligations imposed by this Declaration shall be deemed and taken to be covenants running with the land and equitable servitudes, and shall bind any Person having at any time any interest or estate in the Property, and shall inure to the benefit of any such Person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or instrument evidencing or creating such an interest.

### **ARTICLE 1 DEFINITIONS**

Section 1.1. “Annual Assessment” shall mean the Assessment levied pursuant to Section 6.3.

Section 1.2. “Architectural Committee” and/or “Architectural Review Committee” shall mean the committee established by the Board pursuant to Section 3.1 of this Declaration.

Section 1.3. “Architectural Committee Rules and Guidelines” and/or “Architectural Review Committee Rules and Guidelines” shall mean the rules adopted by the Architectural Review Committee, as said rules may be amended from time to time.

Section 1.4. “Articles” shall mean the Articles of Incorporation of the Association which have been, or will be, filed in the office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 1.5. “Assessment” shall mean Annual Assessment, Special Assessment or Supplemental Assessment.

Section 1.6. “Assessment Lien” means the lien created and imposed by Article 6.

Section 1.7. “Association” shall mean “Whisper Mountain Homeowners Association”, an Arizona nonprofit corporation.

Section 1.8. “Association Rules” shall mean the rules and regulations adopted by the Association, as the same may be amended from time to time.

Section 1.9. “Board” shall mean the Board of Directors of the Association.

Section 1.10. “Builder” shall mean a person or entity who is engaged in residential real estate development and who purchases one or more Lots from the Declarant for the purpose of constructing Improvements thereon for sale or lease.

Section 1.11. “Bylaws” shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.12. “Common Area” shall mean all real property, and all Improvements located thereon, owned by the Association for the common use and enjoyment of the Owners.

Section 1.13. “Declarant” shall mean VIP Construction, Inc., doing business as VIP Homes, its successors and any person or entity to whom it may expressly assign its rights under this Declaration.

Section 1.14. “Declaration” shall mean the covenants, conditions and restrictions herein set forth in this entire document, as same may from time to time be amended.

Section 1.15. “First Mortgage” shall mean and refer to any mortgage or deed of trust with first priority over any other mortgage or deed of trust.

Section 1.16. “First Mortgagee” shall mean and refer to the holder of any First Mortgage.

Section 1.17. “Improvement” shall mean buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping Improvements of every type and kind.

Section 1.18. “Lot” shall mean any parcel of real property designated as a Lot on the Plat.

Section 1.19. “Member” shall mean any person, corporation, partnership, joint venture, or other legal entity who is an owner of a Lot within the Property.

Section 1.20. “Owner” shall mean the record owner, whether one (1) or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) the Purchaser of a Lot under an executory contract for the sale of real property, (ii) persons or entities having an interest in a Lot merely as security for the performance of an obligation, or (iii) a lessee or tenant of a Lot. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the owner. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust shall be deemed to be the owner.

Section 1.21. “Plat” shall mean the Plat of survey of the Project, which Plat is recorded with the County Recorder of Maricopa County, Arizona.

Section 1.22. “Project Documents” shall mean this Declaration and the Articles, Bylaws, Association Rules, and Architectural Review Committee Rules and Guidelines.

Section 1.23. “Property” or “Project” shall mean the real property described on Exhibit A attached to this Declaration.

Section 1.24. “Purchaser” shall mean any person other than the Declarant who by means of a voluntary transfer acquires a legal or equitable interest in a Lot other than (a) a leasehold interest (including renewable options) of less than five (5) years or (b) as security for an obligation.

Section 1.25. “Single Family” shall mean a group of one (1) or more persons each related to the other by blood, marriage or legal adoption; or a group of persons not all so related, together with their domestic servants not to exceed three (3) in number, who maintain a common household in a dwelling.

Section 1.26. “Single Family Residential Use” shall mean the occupation or use of a residence by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county, or municipal rules and regulation.

Section 1.27. “Special Assessment” shall mean any Assessment levied pursuant to Section 6.5.

Section 1.28. “Supplemental Assessment” shall mean any Assessment levied pursuant to Section 6.4.

Section 1.29. “Visible From Neighboring Property” shall mean, with respect to any given object, that such object is, or would be, visible to a person six (6) feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

## ARTICLE 2 THE ASSOCIATION

Section 2.1. Rights, Powers, and Duties. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration.

Section 2.2 Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint, in accordance with the Articles and the Bylaws. In the event of any dispute, disagreement,

or question of interpretation or application of the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, then (subject to any judicial decision by a court of competent jurisdiction) the determination thereof by the Board shall be final and binding on each Owner, Member or other Person subject to this Declaration.

Section 2.3. Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association Rules 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 Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be available for inspection by the members at reasonable times. The Association may establish a system of fines and penalties.

### ARTICLE 3 ARCHITECTURAL REVIEW COMMITTEE

Section 3.1. Establishment. The Association shall have an Architectural Review Committee to perform the functions of the Architectural Review Committee set forth in this Declaration and to adopt the procedural rules and regulations for the performance of such duties, including procedures for preparation, submission and determination of the application for any approvals required by this Declaration. The Architectural Review Committee shall consist of such number of regular members as the Board may designate and such members shall be appointed by the Board. The chairperson of the Architectural Review Committee shall be a Board member, as required by statute. The remaining members of the Architectural Committee may be Board members or other individuals. The Architectural Review Committee Rules and Guidelines shall interpret and implement this Declaration by setting forth the procedures for Architectural Review Committee review and the standards for development within Whisper Mountain.

Section 3.2. Appeal. Any Owner aggrieved by a decision of the Architectural Review Committee may appeal the decision to the Board in accordance with procedures to be established by the Board. If the Board fails to allow an appeal or if the Board, after the appeal, again rules in a manner aggrieving the appellant, the decision of the Board is final. In the event the decision of the Architectural Review Committee is overruled by the Board on any issue or question, the prior decision of the Architectural Review Committee shall be deemed modified to the extent specified by the Board and, for purposes of this Declaration, such decision, as so modified shall thereafter be deemed the decision of the Architectural Review Committee. In this regard, the Board shall have the authority to modify or overrule the decision of the Architectural Review Committee on any matter presented to it.

Section 3.3. Fee. The Architectural Review Committee may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.. The

Architectural Review Committee may employ an architect and other design professionals and the fees for such services shall be included in review fees.

Section 3.4. Appointment of Architectural Review Committee Members. Architectural Review Committee members are appointed by the Board and may be replaced at the discretion of the Board.

Section 3.5. Non-Liability for Approval of Plans. Plans and specifications shall be approved by the Architectural Review Committee as to style, exterior design, appearance and location, but the Architectural Review Committee takes no responsibility for engineering design or for compliance with zoning ordinances and building codes and by approving any plans thereof, the Association nor the Board assume any liability or responsibility therefor, or for any defect in any structure constructed from such plans and specifications. Neither the Architectural Review Committee, any member thereof, the Association nor the Board shall be liable to any Owner or other person for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications, or (c) the development, or manner of development, of any property within Whisper Mountain. Approval of plans and specifications by the Architectural Review Committee is not, and shall not be deemed to be, a representation or warranty, whether express or implied, that said plans or specifications comply with applicable governmental ordinances or regulations including, without limitation, zoning ordinances and building codes, and industry standards for design or construction.

#### ARTICLE 4 MEMBERSHIP

Section 4.1. Identity of Members. Members (and “Membership”) in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as his Ownership ceases for any reason, at which time his Membership in the Association shall automatically cease.

Section 4.2. Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a Membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such Purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

## ARTICLE 5 VOTING RIGHTS

Section 5.1. Members. Members shall be all Owners of Lots. Each Member shall be entitled to one (1) vote for each Lot owned.

Section 5.2. Joint Ownership. When more than one (1) person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other owners of the same Lot. In the event more than one (1) ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

Section 5.3. Corporate Ownership. In the event any Lot is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said Membership, and in the absence of such designation and until such designation is made, the chief executive officer, if any, of such corporation, partnership or association shall have the power to vote the Membership, and if there is no chief executive officer, then the Board of Directors or general partner of such corporation, partnership or association shall designate who shall have the power to vote the Membership.

Section 5.4. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Project Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including collection and/or attorneys' fees, are brought current, and for a period not to exceed sixty (60) days for any infractions of the Project Documents and for successive sixty (60) day periods if the infraction has not been corrected.

## ARTICLE 6 COVENANT FOR MAINTENANCE ASSESSMENTS

Section 6.1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association: (1) Regular Assessments and Supplemental Assessments (collectively, "Annual Assessments"), (2) Special Assessments for capital improvements. The Annual and Special Assessments, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees and costs and fees of collection, including but not limited to, fees charged by a collection agency, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not a suit is filed, shall be a charge on the land and shall be a

continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest and all costs, including but not limited to reasonable attorneys' fees and costs and collection fees/costs, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not a suit is filed shall also be the personal obligation of the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 6.2. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for the upkeep, maintenance, and improvement of the Common Area and such portions of the Lots, and such portions of the Improvements located thereon, as the Association is obligated to maintain under Sections 10.1 and 10.2 of this Declaration, and for promoting the recreation, health, safety and welfare of the Owners and residents of Lots within the Property, to enhance the quality of life within the Property, to preserve the value of the Property, to pay the costs of administration of the Association and to pay all other Common Expenses.

### Section 6.3. Annual Assessment.

6.3.1 Annual Assessments shall include Regular Assessments and Supplemental Assessments, as set forth herein.

6.3.2 The Board shall set the amount of the Regular Assessment.

6.3.3 In no event shall the Board increase the amount of the Regular Assessments payable by Lots by more than 10% greater than the immediately preceding fiscal year's Regular Assessment without approval of the Majority of the Members present (in person or by absentee ballot) at a meeting at which quorum (as set forth in Sec. 6.5.2) is present and notice (as set forth in Sec. 6.5.2) is provided.

6.3.4 Supplemental Assessments. If the Association determines that the total Regular Assessments for the current year are, or will become, inadequate to meet all Common Expenses for whatever reason, including Common Expenses in excess of the estimated Common Expenses used in preparation of the Association's budget for that year, the Board shall then immediately determine the approximate amount of the inadequacy and issue a supplemental estimate of the Common Expenses and determine the Supplemental Assessment amount to be paid by each Owner for the balance of the year, and the date or dates when due. The combined Regular and Supplemental Assessment shall not be more than 20% greater than the total Annual Assessment amount levied in the immediately preceding fiscal year. If the estimated total Annual Assessments for the current year prove to be excessive in light of the actual Common Expenses, the Association may, at the discretion of the Board, retain the excess as additional working capital or reserves, reduce the amount of the Regular Assessments for the succeeding year.



#### Section 6.4. Special Assessments.

6.4.1 In addition to the Annual Regular Assessments, the Association may levy Special Assessments for any proper Association purpose and for defraying, in whole or in part, any Common Expense. Without the vote of a Majority of Members present (in person or by absentee ballot) at a meeting, at which quorum as provided in Section 6.5.2 is present and properly noticed as provided in Section 6.5.2, the Association shall not impose Special Assessments in an amount which in any one year exceeds ten percent of the estimated annual Common Expenses. Any reserves collected by the Association for the future maintenance and repair of the Common Areas, or any portion thereof, shall not be included in determining the foregoing limitation on any Special Assessments.

6.4.2 Notice and Quorum. Written notice of any meeting called for the purpose of taking action under Section 6.5.1 shall be sent to all Members not less than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of Members, in person or by written consent entitled to cast sixty percent (60%) of all the votes of Members 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 6.5. Uniform Rate of Assessment. Annual and Special Assessments must be fixed at a uniform rate for all Lots.

Section 6.6. Time and Manner of Payment; Late Charges and Interest. The manner and timing of payment of Assessments shall be designated by the Board. The Board may, in its discretion, establish late fees and charge interest at the Default Rate of Interest on any Assessment not paid by its due date. The Board may in its discretion and without waiving the imposition of a late charge or interest in any other instance, waive the late charge and/or interest in any particular instance. A Member who is delinquent in payment of Assessments shall also be liable for attorneys' fees and other related costs incurred by the Association as a result of the delinquency, and if any suit, action or other proceeding is brought to collect any delinquent Assessment or charge, then there shall be added to the amount thereof costs of suit and reasonable attorneys' fees to be fixed by the court and included in any judgment or award rendered thereon.

Section 6.7. Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each person or entity who purchases a Lot, or otherwise becomes the Owner of a Lot, shall pay to the Association immediately upon becoming the Owner of the Lot the greater of \$500, or a sum equal to one-sixth (1/6th) of the current Annual Assessment for the Lot. ("Working Capital Fee"). The Working Capital Fee shall become due at the close of escrow or immediately upon the transfer of title to the Lot, whichever occurs first. Such payment shall be required upon each transfer of title to each Lot except with respect to (1) transfer of a Lot among family members, as defined in A.R.S. 42-12053 (as amended, repealed, or re-codified) or (2) transfer of a Lot into a revocable living trust for the benefit of the trustor, where the Owner(s) of the Lot becomes the trustor of the trust. Any Working Capital Fee not paid as required under this Section shall become a part of the Assessment Lien on the Lot and collectible in the same manner as an Annual Assessments.

Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses, or any other purpose permitted under this Declaration. Payments made pursuant to this Section shall be nonrefundable and shall not be offset or credited against or considered as advance payment of any Assessments levied by the Association pursuant to this Declaration.

Section 6.8. Transfer Fee. Except as otherwise provided in this Section, in addition to the Working Capital Fee and any fees charged by the Association pursuant to Section 6.3, each purchaser of a Lot shall pay to the Association immediately upon becoming the Owner of a Lot a transfer fee in such amount as is established from time to time by the Board (in accordance with any restrictions set forth by law) to cover the expenses of the Association (or its management company) to change its records, to administer the change in ownership, and to pay any ancillary expenses related thereto. The transfer fee is not intended to compensate the Association for the costs incurred in the preparation of the statement which the Association is required to deliver to a purchaser under A.R.S. § 33-1806(A) and, therefore, the transfer fee shall be in addition to the fee which the Association is entitled to charge pursuant to A.R.S. § 33-1806(C).

Section 6.9. Rules Regarding Billing and Collection Procedures. Annual Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special Assessments and Supplemental Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of such Member's liability for any Assessment or charge under this Declaration. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

Section 6.10. Effect of Nonpayment of Assessments; Remedies of the Association. Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of interest set from time to time by the Board. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any Assessment, or any installment of an Assessment, within fifteen (15) days after such payment was due.

The Association shall have a lien on each Lot for: (a) all Assessments levied against the Lot; (b) all interest, lien fees, late charges and other fees and charges assessed against the Lot or payable by the Owner of the Lot; (c) all attorney fees and costs, court costs, title report fees, costs and collection costs/fees and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot whether or not suit is filed by the Association; (d) any amounts payable to the Association pursuant to Section 10.4 or 10.5 and (e) any other amounts payable to the Association pursuant to the Project Documents and/or Arizona Law.

The recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the recording of the Notice, including all fees in which the Association may lien a Lot.

The Assessment Lien shall have priority over all liens or claims except for: (a) liens and encumbrances recorded before the recording of the Original Declaration of the Association; (b) liens for real estate taxes and other governmental Assessments and charges against the Lot; and (c) any recorded first mortgage on the Lot, a seller's interest in a first contract for sale pursuant to Title 33, Chapter 6, Article 3 of the Arizona Revised Statutes recorded prior to the Association's lien or a recorded first deed of trust on the Lot. Any First Mortgagee or any other person acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid Assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot, even though he is no longer the Owner of the Lot.

The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, fines, reasonable attorneys' fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with interest, lien fees, late fees, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (a) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien or (b) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale. Pursuing one enforcement remedy shall in no way limit any and/or all other legal remedies that the Association may pursue. Nothing herein shall be construed as requiring that the Association take any action described hereunder in any particular instance, and the failure of the Association to take such action at any time shall not constitute a waiver of the right to take such action at a later time or in a different instance. Nothing in this Article shall be construed as requiring that the Association take any action in any particular instance, and the failure of the Association to take such action at any time shall not constitute a waiver of the right to take action at a later time or in a different instance.

Section 6.11. Exemption of Owner. No Owner of a Lot may exempt himself from liability for Annual, Supplemental, or Special Assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by any reason, including but not limited to, claims (1) of waiver and non-use of any of the Common Area and facilities; (2) of

the abandonment of his Lot; (3) that the Association, Board or Committee(s) failed to properly exercise its duties and powers provided in the Project Documents; (4) that the Assessment for any period exceed Common Expenses. The obligation to pay Assessments is a separate and independent obligation on the part of each Owner. No diminution or abatement of Assessments or off-set shall be claimed or allowed for any alleged failure of the Association, the Board or the Architectural Review Committee to take some action or perform some function required of it.

6.12 Homestead Waiver. Each Owner to the extent permitted by law, hereby waives, to the extent of any liens created pursuant to this Declaration, whether the liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter.

### 6.13 Reserves.

6.13.1 The Board may, but shall not be required to, periodically prepare a reserve budget which shall take into account the number and nature of replaceable assets, the useful life of each asset and the anticipated repair and replacement cost. The Board may establish a contribution to the reserves in an amount sufficient to permit the Association to meet its projected needs as shown on the reserve budget with respect to the amount and timing of annual Assessments over the period of the budget. Any contributions to the reserves assessed pursuant to this Subsection 6.15.1, may be assessed as a portion of the Regular Assessment on each Lot.

6.13.2 Any reserves collected by the Association shall be deposited by the Association in a separate bank account to be held in trust for the purposes for which they are collected and are to be segregated from and not commingled with any other funds of the Association, except to the extent that the Association's regularly employed accountant deems it desirable to do otherwise on the basis of standard accounting principles in similar contexts or the laws, tax or otherwise, of the State of Arizona or the United States relating to nonprofit corporations or homeowners associations.

6.13.3 All reserves shall be deemed a contribution to the capital account of the Association by the Members. The responsibility of the Board shall be only to provide for an amount of reserves as the Board deems reasonable; neither the Board nor any member thereof shall have any liability to any Owner, to the Association, or to any other Person if the reserves prove to be inadequate.

## ARTICLE 7 PERMITTED USES AND RESTRICTIONS

Section 7.1. Scope. Except as otherwise specified, the provisions of this Article shall apply to all of the Property.

Section 7.2. Residential Use. All Lots shall be used, improved, and devoted exclusively to Single Family Residential Use. No trade or business may be conducted on any Lot, except that an Owner or resident may conduct a business activity within a residence so long as: (i) the existence

or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the residence; (ii) the business activity conforms to all applicable zoning ordinances or requirements for the Covered Property; and (iii) the business activity does not involve persons coming on to the Lot or the door-to-door solicitation of Owners or other residents in the Covered Property; (iv) the business activity does not violate any provision of this Declaration, the Architectural Review Committee Rules and Guidelines, or the Association Rules; and (v) the business activity is consistent with the residential character of the Covered Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Covered Property, as may be determined from time to time in the sole discretion of the Board. The terms “business” and “trade” as used in this Section shall be construed to have ordinary, generally accepted 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 of other form of consideration, regardless of whether (i) such activity is engaged in full or part time; (ij) such activity is intended to or does generate a profit; or (iii) a license is required for such activity. The leasing of an entire residence by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

Section 7.3 Animals. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any property and then only if they are kept, bred, or raised thereon solely as domestic pets and not for commercial purposes. The feeding of wild or feral animals (including, but not limited to, Javelinas, coyotes, bobcats, snakes, pigeons and feral cats) shall be considered maintaining them and is prohibited whether in the Common Area or Lot. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighboring Property. It shall be the responsibility of each Owner to immediately remove and properly dispose of any droppings from their household pets .

Section 7.4. Antennas. No radio, television or other antennas or devices of any kind or nature, or device for the reception or transmission of television, radio, microwave or other similar signals, shall be placed or maintained upon any Lot except in compliance with the Association Rules and the Architectural Review Committee Rules and Guidelines and except those devices covered by 47 C.F.R. § 1.400 (Over -the-Air Reception Devices Rule), as amended, repealed, or re -codified, will be permitted. Any such device and accompanying wiring shall comply with the applicable antenna installation rules of the Association, shall be placed, to the extent reasonably possible, to not be visible from Common Area and other Lots, and must be painted to match the color of the structure on which it is installed, so long as the painting does not interfere with acceptable quality signal and does not void the manufacturer’s warranty.

Section 7.5. Roof Mounted Equipment. No roof mounted equipment of any kind including, but not limited to, solar collectors, evaporative coolers, air conditioners, and ventilating systems shall be permitted without the written approval of the Architectural Review Committee.

Section 7.6. Utility Service. Except as approved in writing by the Architectural Review Committee, no lines, including electric, telephone, internet or other media, shall be erected, placed or maintained anywhere in or upon any property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings

or other structures approved by the Architectural Review Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incidental to the construction of buildings or structures approved by the Architectural Review Committee.

Section 7.7. Improvements and Alterations. No Improvements, alterations, repairs, excavations, landscaping or other work, including exterior paint, which in any way alters the exterior appearance of any property or the Improvements located thereon, from its natural or improved state shall be made or done without the prior written approval of the Architectural Review Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, landscaping, residence, or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Review Committee. No change or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Review Committee.

Section 7.8. Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time, on any portion of the Property, for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such property shall be removed immediately after the completion of construction.

Section 7.9. Trailers and other Vehicles. No motor vehicle classed by manufacturer rating as exceeding 3/4-ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or on any street so as to be Visible From Neighboring Property without the prior approval of the Architectural Review Committee; provided, however, that the provisions of this Section shall not apply to pickup trucks of 3/4-ton or less capacity with camper shells not exceeding seven (7) feet in height measured from ground level and mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are used on a regular and recurring basis for basic transportation.

Section 7.10. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed on any such property. The Board shall be the sole judge as to whether or not undue nuisance is occurring and upon notice from the Board to the Lot Owner, any such nuisances identified by the Board shall be corrected.

Section 7.11. Trash Containers and Collection. The Association may regulate trash containers as stipulated in Association Rules or Architectural Review Committee Rules and Guidelines.

Section 7.12. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed, or maintained on any property so as to be Visible From Neighboring Property.

Section 7.13. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any property except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a residence, appurtenant structures, or other Improvements, and except that which the Association may require for the operation and maintenance of the Property.

Section 7.14. Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots by any owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board.

Section 7.15. Signs. No sign of any kind shall be displayed to the public view or from any Lot or any Common Areas without the approval of the Board, except: (a) signs permitted by the Rules; (b) signs required by legal proceedings; (c) signs required by law to be allowed on the Lot; and (d) signs required for traffic control and regulation of Common Areas.

Section 7.16. Planting and Landscaping. No planting or landscaping shall be done, and no fences, hedges, or walls shall be erected or maintained on any Lot without the prior written approval of the Architectural Review Committee or in compliance with the Architectural Review Committee Rules and Guidelines.

Section 7.17 Use of Lots. An Owner shall be responsible for assuring compliance by any Occupants of his Lot including, but not limited to, any tenant or other Person who the Owner allows to use his Lot with all of the provisions of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, all as amended and supplemented from time to time, and shall be jointly and severally responsible for any violations of this Declaration, the Articles, Bylaws, Association Rules or Design Guidelines by the tenant or other Person. Each Owner shall be responsible for providing copies of these Governing Documents and all amendments to the Occupants of such Owner's Lot.

Section 7.18. Mineral Exploration. No property shall be used in any manner to explore for, or to remove any water, oil, or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

Section 7.19. Diseases and Insects. No Owner shall permit anything or condition to exist upon any property which shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 7.20. Trash and Debris. Each Owner of a Lot, when installing or constructing Improvements on the Lot, shall provide a place for the daily collection and storage of trash and debris and will remove such trash and debris on a reasonable schedule. No Owner of a Lot will allow any nuisance to occur on his Lot or adjacent to his Lot other than the reasonable result of construction activity. The Board shall be the sole judge as to whether or not undue nuisance is

occurring and upon notice from the Board to the Lot Owner, any such nuisances identified by the Board shall be corrected.

Section 7.21. Maintenance of Lawns and Plantings. Each Owner of a Lot shall keep all shrubs, trees, hedges, grass and plantings of every kind located on his Lot neatly trimmed, and shall keep all such areas properly cultivated and maintained and free of trash, weeds and other unsightly material.

Section 7.22. Repair of Building. No building or structure on any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required within this Declaration, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

Section 7.23. Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Architectural Review Committee or in compliance with the Architectural Review Committee Rules and Guidelines.

Section 7.24. Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot or street in Whisper Mountain, and no inoperable vehicle, including but not limited to vehicles with flat tires may be stored or parked on any such Lot or street so as to be Visible From Neighboring Property or to be visible from Common Areas or streets; provided, however, that the provisions of this section shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved in writing by the Architectural Review Committee.

Section 7.25. Parking. Vehicles of all Owners and residents and of their guests and invitees, are to be kept in garages, carports, residential driveways of the Owner, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot; provided, however, this section shall not be construed to permit the parking in the above described areas of any vehicle whose parking in Whisper Mountain is otherwise prohibited or the parking of any inoperable vehicle. Notwithstanding the foregoing, the Board may regulate parking through Association Rules adopted pursuant to Section 2.3 herein, including but not limited to prohibition of on-street parking.

Section 7.26. Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Architectural Review Committee, any member of the Board, or any authorized representative of any of them shall have the right and license to enter upon and inspect any Lot, and the Improvements thereon, except for the interior portions of any completed residence for the purpose of ascertaining whether or not the provisions of this Declaration, the Architectural Review Committee Rules and Guidelines, or the Association Rules have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.



Section 7.27. Towing of Vehicles. The Board shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle which is parked, kept, maintained, constructed, reconstructed or repaired on Common Area, including private streets within the Project, in violation of this Declaration towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment is owned by an Owner, any amounts payable to the Association shall be secured by the Assessment Lien, and the Association may enforce collection of suit amounts in the same manner provided for in this Declaration for the collection of Assessments.

Section 7.28. Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners or residents, the Board may make rules restricting or regulating their presence on Whisper Mountain as part of the Association Rules or may direct the Architectural Review Committee to make rules governing their presence on Lots as part of the Architectural Review Committee Rules and Guidelines.

Section 7.29. Violation of Law. No Owner or Occupant shall permit anything to be done or kept in his Lot or in or upon any Common Areas which would be in violation of any applicable law, ordinance or regulation.

#### Section 7.30 Short Term Rental Prohibition / Rental Registration

Short-term rentals of the Lots are hereby prohibited. No owner of a lot shall rent or lease any portion of a Lot for a period less than thirty (30) consecutive days. Any lease of a Lot shall be for the entire Lot. Each owner of a Lot that is being rented or leased shall complete and submit a rental registration for each tenancy on a form provided by the Association, which shall include such information that the Association is allowed to request under statute. The Association may also require a rental registration fee in the maximum amount allowed under statute, and may levy a penalty against an Owner who fails to provide the rental registration in the maximum amount allowed by statute. It shall be the responsibility of the owner(s) to provide the tenants with current copies of the declaration of covenants, conditions and restrictions, by-laws, Association Rules and amendments thereto. The board of directors may permit a Lot owner to lease his/her lot for a reasonable period of time whenever, in its opinion, such action may be necessary or desirable to alleviate a hardship resulting from death, extended illness, transfer or other similar cause.

Any Owner who is engaging in short-term rentals (e.g. rentals of less than 30 days) of their Lot at the time this Second Amended and Restated Declaration is adopted shall be permitted to continue engaging in short-term rentals of the Lot until such Owner no longer owns the Lot. Any subsequent Owners of the Lot shall be subject to the provisions of this Section 7.30.

## ARTICLE 8 EASEMENTS

Section 8.1. Utility Easement. There is hereby created a blanket easement upon, across, over, and under the common Area for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to water, sewers, gas, telephones, electricity, and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility to erect and maintain the necessary facilities and equipment on the Common Area. This easement shall in no way affect any other recorded easements on the Common Area.

Section 8.2. Easement for Encroachments. In the event a wall, landscaping, or other approved Improvement on a Lot or the Common Area encroaches upon another Lot or the Common Area, and such encroachment is inadvertent and has no significant adverse impact on the adjacent property, an easement for such encroachment is hereby given and the right to determine whether such encroachment causes a significant adverse impact shall be determined by the Architectural Review Committee upon request by either of the parties. When such determination is made by the Architectural Review Committee that determination is binding on all parties.

Section 8.3. Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Owners, and their family, guests, tenants, and invitees for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes as the same from time to time may exist upon the Common Area; and for vehicular traffic over, through and across such portions of the Common Area as from time to time may be paved and intended for such purposes; and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.

Section 8.4. Association's Easement For Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Area and the Lots for the purpose of repairing, maintaining and replacing the Common Area and those portions of the Lots which the Association is obligated to maintain under Article 10 of this Declaration.

Section 8.5. Use and Drainage Easements Among Owners. Wherever drainage, as estimated by the Board, flows from one (1) Lot under or through one (1) or more other Lots, said drainage flow shall not be impeded, diverted, or otherwise changed. These easements shall include, but are not limited to, receiving the runoff from roofs and drainage under and through garden walls.

## ARTICLE 9 PROPERTY RIGHTS

Section 9.1. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area. Said easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

- (a) the right of the Association to adopt reasonable rules and regulations governing the use of the Common Area and all facilities located thereon;

(b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members; provided, however, that no such dedication or transfer shall be effective unless evidenced by an instrument signed by at least two-thirds (2/3) of each class of Members, except that the Board may make a dedication for transfer without consent of the Members, providing such transfer is of minimal value and causes no adverse impact to the members.

Section 9.2. Delegation of Use. Any Owner may delegate, subject to this Declaration and the Association Rules, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, his guests or invitees, provided such delegation is for a reasonable number of persons and at reasonable times, and in accordance with the Association Rules.

Section 9.3. Limitations. An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Area.

## ARTICLE 10 MAINTENANCE

Section 10.1. Maintenance of Common Area by the Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Area which will include the responsibility for maintaining the Common Areas to be identified as Tracts or Easements including landscaping and drainage facilities in accordance with the approved Final Plat for the Project. The City of Mesa is not responsible for and will not accept maintenance of any private drives, private facilities, landscape areas, etc. within the Project and within the right-of-way along Crimson Road. The Association may, without any approval of the Owners being required, do any of the following:

(a) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area);

(b) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(c) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

(d) Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the appearance thereof, in accordance with the general purposes specified in this Declaration;

(e) Paint, repair, and maintain walls and fences bordering Common Areas and those areas defined as the responsibility of the Association.

Section 10.2. Exterior Maintenance By Association. In addition to the maintenance, repair and replacement of the Common Area and the Improvements located thereon, the Association shall maintain, repair and replace the landscaping and other Improvements on any area within, or immediately adjacent to, Whisper Mountain, providing the Board agrees that such maintenance shall be in the best interest of all the Members and agrees to such maintenance in writing.

Section 10.3. Maintenance By Owners. Each Owner shall be solely responsible for that portion of the maintenance, repair and replacement of his Lot and Improvements which are not maintained by the Association as described in Sections 10.1 and 10.2 and otherwise responsible as set forth in Article 11 herein.

Section 10.4. Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association, in connection therewith. No Owner shall in any way interfere with the maintenance responsibilities of the Association, including, but not limited to, landscaping, street maintenance, and wall maintenance. Any expenses incurred by the Association by reason of any such act of an Owner, his grantees or assignees, shall be paid by said Owner, upon demand, to the Association to the extent that the Owner is liable therefor under Arizona law, and such amounts shall be a lien on any Lots owned by said Owner and the Association may enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

Section 10.5. Nonperformance by Owners. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of Whisper Mountain which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates the Project Documents, or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents with respect to the maintenance, repair or replacement of the Improvements located on such Lot, the Board may, by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give written notice thereof to the Owner by mail to the mailing address of the Lot and make demand that corrective action be taken within fourteen (14) calendar days of the day of the notice. If at the expiration of the said fourteen (14) day period the requisite corrective action has not been

taken, the Board shall be authorized and empowered to cause such action to be taken, including but not limited to the hiring of an attorney to take action on behalf of the Board whether by informal pre-suit action or by formal legal proceedings. The costs of any action taken by the Board as set forth herein, including but not limited to administrative, incidental and taxable costs, attorney's fees, corrective action fees/charges and collection fees shall be added to and become a part of the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

## ARTICLE 11 PARTY WALLS

Section 11.1. Rights and Duties of Adjoining Owners. The rights and duties of Owners of Lots with respect to party walls shall be governed by the following provisions:

(a) Each wall or fence which is placed on the dividing line between separate Lots shall constitute a party wall. With respect to any such wall, each of the adjoining Owners shall assume the burden and be entitled to the benefit of the restrictive covenants contained in this Declaration, and to the extent not inconsistent with this Declaration, the general rules of law regarding party walls shall be applied;

(b) The cost of reasonable repair and maintenance of a party wall shall be shared by the adjoining Owners of such wall in proportion to the use thereof, without prejudice, however, to the right of any Owner to call for a larger contribution from the adjoining Owner under any rule of law regarding liability for negligent or willful acts or omissions;

(c) In the event any such party wall is damaged or destroyed by some cause other than the act of one (1) of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time) then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense;

(d) Notwithstanding any other provision of this Article, an Owner who, by his negligent or willful act, causes any party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements;

(e) The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owners and their successors in title;

(f) In addition to meeting the other requirements of this Declaration and of any other city code or similar regulations or ordinances, any Owner proposing to modify, make additions to build or rebuild a party wall in any manner which requires construction, extension or other alteration, shall first obtain the written consent of the adjoining Owner and the Architectural Committee;

(g) In the event of a dispute between Owners with respect to the repair or the rebuilding of a party wall or with respect to 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 Architectural Committee whose decision shall be final; and

(h) The provisions of this Article shall be binding upon the heirs and assigns of any Owners, but no person shall be liable for any act or omission respecting the party wall except such as took place while he was an Owner.

## ARTICLE 12 INSURANCE

Section 12.1. Scope of Coverage. The Association shall maintain adequate insurance for Common Area liability to extend to those areas the Association may agree to maintain pursuant to Article 10 herein, officers and directors liability, committees appointed by the Board, property, fidelity and any other coverage deemed necessary by the Board.

Section 12.2. Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

Section 12.3. Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (b) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the owners on the basis of an equal share for each Lot.

Section 12.4. Owner's Responsibility. It is the responsibility of each Owner of a Lot to maintain insurance on his Lot and Improvements thereon.

## ARTICLE 13 GENERAL PROVISIONS

Section 13.1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 13.2. Severability. Invalidation of anyone (1) of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.

Section 13.3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

Section 13.4. Amendment by Owners. This Declaration may be amended, at any time, by the affirmative vote, ballot or written consent, or any combination thereof of Owners representing not less than two-thirds (2/3rds) of the Lots. In all events, the amendment when adopted shall bear the signature of the President and shall be attested by the Secretary, who shall verify that the amendment was properly adopted, and shall be acknowledged by them as officers of the Association. Amendments once properly adopted shall be effective upon recording in the Maricopa County Recorder's office. Notwithstanding anything herein to the contrary, the term "two-thirds of all of the Lots" shall mean Members holding at least two-thirds (or 66.67%) of the votes entitled to be cast with respect to a given matter.

Section 13.5. Amendment by Board. Notwithstanding anything to the contrary in this Declaration, the Board shall have the right, but not the obligation, to amend this Declaration, without obtaining the approval or consent of any other Owner or mortgagee, in order to conform the Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or other government or government approved agencies when such modification is required to qualify for the use of the services, insurance, or other guarantees provided by such agencies.

Section 13.6. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Association or any Owner.

Section 13.7. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

Section 13.8. Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

Section 13.9. 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 or electronic delivery as permitted by statute. If by mail it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid, to the Owner's respective Lot or to the last address shown on the records of the Association.

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

Section 13.10. Binding Effect. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his 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 by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. The Association, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

Section 13.11. Gender. The Singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 13.12. Topic Headings. The marginal or topical headings of the Sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Sections or this Declaration.

Section 13.13. Survival of Liability. The termination of Membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such Membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any way connected with such Membership and the covenants and obligations incidental thereto.

Section 13.14. Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, Association Rules or Architectural Review Committee Rules, the provisions of this Declaration shall prevail.

Section 13.15. Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in, or imposed by, this Declaration, shall be joint and several.

Section 13.16. Attorneys' Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration, or to collect any Assessments or other



amounts due from an Owner, or to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents, the offending Owner or other person or entity shall pay to the Association, upon demand, all attorney fees and court costs incurred by the Association, whether or not suit is filed, which fees and costs shall be secured by the Assessment Lien.

Section 13.17. Indemnification/Acknowledgement. The Owners, as defined herein, acknowledge that: (1) the property subject to this Declaration contains Common Areas; (2) the Common Areas are intended solely for aesthetic purposes and limited recreational use; (3) the Common Areas possess certain inherent dangers from which the Owners must take precautions to protect themselves, their families, invitees, guests and others; (4) no safety personnel will patrol the Common Areas and the Owners assume the risk and responsibility of protecting themselves, their families, invitees, guests or others; and (5) the Owners will indemnify, defend and hold harmless the Association and its successors and assigns from and against any claims, liabilities, injuries, damages, expenses and costs, including interest and attorneys' fees, incurred by or claimed against the Association and its successors and assigns under any laws arising in any way from or in connection with the Common Areas.

Section 13.18. Disclaimer of Implied Covenants. Nothing contained in this Declaration and nothing which may be represented to a Purchaser by real estate brokers or salesmen shall be deemed to create any implied covenants, servitudes or restrictions with respect to the use of any property subject to this Declaration.

Section 13.19 Responsibility for Others. Owners hereby acknowledge and agree that they are fully responsible for the actions and inactions of the Owner's family, Occupants, guests, licensees, invitees, vendors, tenants, and pets. If an Owner's family, Occupant, guest, licensee, invitee, vendor, tenant, or pet commits a violation of the Declaration, the Articles, Bylaws, Association Rules or Design Guidelines, the Owner will be responsible in the same manner as if the Owner had committed such violation

## ARTICLE 14 DISCLOSURES

Section 14.1. Private Facilities/Private Access Way Disclosure. Notice is hereby given that Tract N is dedicated as private facilities for the exclusive use of Jensen Drilling Company and their assigns, to be owned and maintained by Jensen Drilling Company. ERECTED ON TRACT N IS A COMMUNICATIONS TOWER for the purpose of receiving and transmitting cell phone signals. Notice is further given that Tract M is dedicated as a private access way for the exclusive use of Jensen Drilling Company and their assigns, to be owned and maintained by Jensen Drilling Company. Jensen Drilling Company and their assigns, appointees, agents and designated contractors shall have a private access easement over Tracts A and B in order to service and maintain the private facilities and private access way. The City of Mesa shall have an access easement over Tracts B and M.

Section 14.2. Hillside View Disclosure. Tract L of the Project contains a hillside accessible to the Owners and their family, guests, tenants, and invitees for hiking and climbing. Notice is hereby given that persons using this hiking and climbing amenity will have a view from the hill/hillside to the Lots within the Project. Access to the hillside is not provided or permitted to the public.

Section 14.3. Slope/Non-disturbance Area Disclosure. There exists within the Project an open space easement affecting Lots 43 through 60 inclusive. Said easement contains a slope of 15% or greater. No development, Improvement of any kind, or disturbance to the open space easement area will be permitted.

Section 14.4. Conservation of Tract L. Tract L of Whisper Mountain according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 705 of Maps, Page 14 containing 46.92 acres will be conserved and free from any form of development in perpetuity. This Covenant, Condition and Restriction shall run with the property in the event it is sold or in other words the new owner(s) agree to uphold Section 14.4 in perpetuity.

IN WITNESS WHEREOF, the Association has executed this Second Amended and Restated Declaration of Covenants, Conditions and Restrictions for Whisper Mountain effective as of date set forth above.

WHISPER MOUNTAIN HOMEOWNERS ASSOCIATION,  
an Arizona non-profit corporation

Signature: 

Printed Name: Greg Wingert, President  
(President or Secretary)

STATE OF ARIZONA       )  
                                      ) ss.  
County of Maricopa       )



On this 21 day of February, 2020 before me personally appeared Greg Wingert-President 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.

  
Notary Public

Notary Seal:

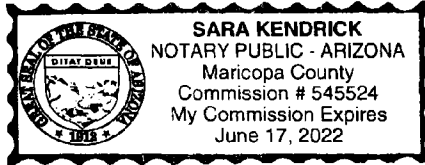


EXHIBIT A

Legal Description of Subdivision

Lots 1-60, inclusive, and Tracts A through N, inclusive, of WHISPER MOUNTAIN, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 705 of Maps, Page 14.