

## **PARKING WITHIN THE PARK PLACE VILLAGE CONDOMINIUM ASSOCIATION**

Brown|Olcott, PLLC represents the Park Place Village Condominium Association (“Association”). The Association’s Board of Directors (“Board”) has requested that this law firm provide an explanation of the parking restrictions within the community. Please find clarification of several parking issues below.

### **Parking Restrictions**

The Association’s Declaration of Covenants, Conditions, and Restrictions (“CC&Rs”) restrict parking within the community. Owners and residents have limited parking options. All Owners and residents must park their vehicles in the garages of the Units. Owners and residents are not permitted to park in any visitor parking area or on the streets within the community at any time. Only visitors and guests are permitted to park in the visitor parking area or on the designated visitor spaces on the streets within the community. The Board is responsible for enforcing the parking restrictions contained in the CC&Rs.

When each Owner purchased his or her Unit within the Association, he or she was on notice of the parking restrictions contained in the CC&Rs. Federoff v. Pioneer Title and Trust Company of Arizona, 803 P.2d 658 (Ariz. 1990) (recording CC&Rs provides notice to all purchasers of the restrictions). When each Owner purchased his or her Unit within the Association, he or she agreed to comply with the parking restrictions contained in the CC&Rs. The community documents are a contract between the association and the members. Heritage Heights Homeowners Association v. Esser, 115 Ariz. 330 (Ariz. App. 1977) (by accepting deed, purchaser agreed to be bound by the contract).

## **Community Rules**

The Association's Community Rules provide that the Association may cite or fine any Owner or resident that violates the parking restrictions. The Community Rules provide that, upon any additional violations, the Association may immobilize the vehicle of the Owner or resident in violation.

The CC&Rs define a resident as a person residing in a Unit for thirty (30) days or more within a twelve (12) month period. This definition is vague and ambiguous. On September 23, 2008, the Board of Directors passed a resolution to clarify the definition of 'resident' for the purposes of enforcing the parking provisions in the CC&Rs. The rule provides that a resident is:

a person residing in a Unit by merely being present overnight in the Unit for thirty (30) days regardless of any other factor, including by not limited to whether the person has a lease at another property, receives mail at another address, keeps personal belongings at another address, uses a different address for public records or any other element of the meaning of residency and regardless of whether the thirty (30) days is consecutive or not.

The Board acted within its authority when it adopted these rules governing parking within the community. Article 6, Section 6.3 of the CC&Rs specifically grants the Board the authority to adopt rules and regulations for the use of the common elements, and the behavior of the Owners, residents, and guests thereon.

## **Amendment of Declaration**

Several Owners and residents have requested that the Board initiate an amendment to the CC&Rs to allow Owners and residents to utilize the visitor parking spaces. Please be advised that the Association's Plat of record requires at least thirteen (13) visitor parking spaces on the streets within the community. The Plat designates fifteen

(15) visitor parking spaces on the streets within the community. The Plat also designates thirty-two (32) visitor stall parking spaces within the community. To allow Owners and residents to utilize the visitor parking spaces the CC&Rs must be amended.

Article III, Section 3.1 of the Association's Bylaws provides that the affairs of the Association shall be managed by the Board of the Directors. The Board may elect to initiate a proposed amendment to the CC&Rs and Plat in its sole discretion. Article 13, Section 13.5 of the CC&Rs provides that the CC&Rs or the Plat may be amended by the vote of sixty-seven percent (67%) of the unit Owners. Should the Board determine that an amendment would be in the best interest of the community, the Board would work with legal counsel to draft the proposed amendment. Pursuant to A.R.S. §10-3708, the amendment must be accompanied by a ballot and solicitation for votes. There are significant legal fees to the Association associated with preparing these documents. There are also administrative costs associated with mailing these documents to the membership, as well as collecting and counting ballots. The Board may elect to expend the costs associated with the amendment in its sole discretion.

### **Selective Enforcement**

Several Owners and residents have requested that, in lieu of an amendment, the Board cease its enforcement of the parking restrictions against Owners and residents that own more vehicles than fit in the garage. Please be advised that the Board is required to enforce the parking restrictions. The Board is required to ensure that no Owner or resident parks in the visitor parking areas. Johnson v. The Pointe Community Association, Inc., (Court of Appeals, July 31, 2003) (association liable to owner for not enforcing CC&Rs

against neighbor's violations). The Board cannot require some owners and residents to use the garages while allowing other owners and residents to park their vehicles in the visitor spaces. The Board is not permitted to selectively enforce the CC&Rs. Barnett and Klein Corp. v. President of Palm Beach-A Condominium, Inc., 426 So. 2d 1074 (Fla. 4<sup>th</sup> Dist. Ct. App. 1983)(selective enforcement means creating two categories of owners and treating them differently although the two categories were similarly situated).

### **Conclusion**

The Association's parking restrictions are valid and enforceable. The Association is required to enforce the parking restrictions. The Association may not selectively enforce the parking restrictions. The Association will continue to fine and immobilize the vehicles of Owners or residents that do not comply. No Owner or resident may park in the visitor spaces.

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"PB&J"