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**AMENDED AND RESTATED**

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**FOR**

**THE VILLAGES AT LYNX CREEK**



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**AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
THE VILLAGES AT LYNX CREEK**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS is made this 14<sup>th</sup> day of November, 2008.

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for The Villages at Lynx Creek recorded in the office of the County Recorder of Yavapai County, Arizona, in Book 2139 of Official Records, pages 359-382 (the "Original Declaration"), as heretofore last amended and recorded in Book 4050 of Records, page 169, may be amended pursuant to Article IX thereof, as amended, by an instrument signed by the Owners of not less than one-half of the Lots; and

WHEREAS, the Owners of more than one-half of the Lots signed written instruments consenting to the following Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Villages at Lynx Creek, as evidenced by the Secretary's Certificate attached hereto, and made a part hereof by reference.

NOW, THEREFORE, the Original Declaration and Amended Declaration are hereby further amended and restated as follows:

**ARTICLE I  
DEFINITIONS**

**1.1 "Annual Assessment"** means the assessments levied against each Lot, and the Owner thereof, pursuant to Section 6.2 of this Declaration.

**1.2 "Architectural Committee"** means the architectural committee of the Association created pursuant to Section 5.10 of this Declaration and Bylaws.

**1.3 "Architectural Committee Rules"** means the rules and guidelines adopted by the Architectural Committee pursuant to Section 5.10 of this Declaration and by the Bylaws, as they may from time to time be amended or supplemented.

**1.4 "Areas of Association Responsibility"** means all Common Areas which the Association is obligated to maintain, repair or replace pursuant to Section 7.1 of this Declaration.

**1.5 "Articles"** means the Articles of Incorporation of the Association, as they may from time to time be amended.

**1.6 "Assessment"** means an Annual Assessment or Special Assessment or Lot



**1.7 "Association"** means The Villages at Lynx Creek Owner's Association, Inc., an Arizona nonprofit corporation, and its successors and assigns.

**1.8 "Association Lien"** means the lien created and imposed by Section 6.1 of this Declaration.

**1.9 "Association Property"** means any personal property owned or leased by the Association.

**1.10 "Association Rules"** means the restrictions, limitations, rules and regulations adopted by the Association pursuant to Section 5.3 of this Declaration, as they may from time to time be amended.

**1.11 "Board"** means the Board of Directors of the Association.

**1.12 "Bylaws"** means the Bylaws of the Association, as they may from time to time be amended.

**1.13 "Common Area"** means all real property, together with all Improvements situated thereon, which the Association owns in fee or in which the Association has a leasehold interest. "Common Area" shall not include any real property, improvements or personal property acquired by the Association in lieu of foreclosure or trustee's sale or through attachment, foreclosure, Sheriff's sale, Trustee's sale, tax sale, redemption, or any other judicial, quasi-judicial, bankruptcy or regulatory action.

**1.14 "Common Expenses"** means expenditures made by, or financial liabilities of, the Association together with any allocations to reserves.

**1.15 "Declarant"** refers to The Villages at Lynx Creek Owner's Association.

**1.16 "Declaration"** means this Amended and Restated Declaration of Covenants, Conditions and Restrictions, as it may be amended from time to time.

**1.17 "Effective Date"** refers to the date of recording of this Amended and Restated Declaration with the Yavapai County Recorder.

**1.18 "Exterior Alteration"** means any construction, installation, addition, alteration, repair, change, change of color, landscaping, removal, demolition or other work that alters the exterior appearance of a Lot or the Improvements located thereon; except for small shrubs not taller than three (3) feet, flowers or other plantings.

**1.19 "Governing Documents"** means this Declaration, the Articles, the Bylaws, the Association Rules, the Architectural Committee Rules, Policies and Procedures, and the Lease Approval Requirements and Guidelines.

**1.20 "Housing for Older Persons"** shall have the meaning ascribed to it in Section 3.15 and as provided in the Housing for Older Persons Act of 1995 (Section 807(b)(2)(E) of



Title VIII of the Civil Rights Act of 1968) and any similar state statute.

**1.21 "Improvement"** means any building, fence, wall or other structure or any swimming pool, therapy pool, tennis court, laundry room, clubhouse, road, driveway, parking area or any trees, or other landscaping improvements of every type and kind; except for small shrubs not taller than three (3) feet, flowers or other plantings.

**1.22 "Lease Approval Requirements and Guidelines"** shall mean the lease approval requirements and guidelines adopted by the Board of Directors, as the same may be amended from time to time. Such Lease Approval Requirements and Guidelines shall be available to all Owners upon request.

**1.23 "Lessee"** means the lessee, sub lessee, or tenant or subtenant under a lease, oral or written, of any Lot.

**1.24 "Lot"** means each parcel of real property designated as a lot on the Plat and, where the context indicates or requires, shall include any Residential Unit, building, structure or other Improvements situated on the Lot, except lots 403 and 404 which are considered a single lot designated as lot 404.

**1.25 "Maintenance Standard"** means the standard of maintenance of Improvements established from time to time by the Board or, in the absence of any standard established by the Board, the standard of maintenance of Improvements generally prevailing throughout the Property.

**1.26 "Member"** means any Person who is a Member of the Association.

**1.27 "Owner"** means the record owner, whether one or more Persons of legal, beneficial or equitable title to the fee simple interest of a Lot. Owner shall not include (i) Persons having an interest in a Lot merely as security for the performance of an obligation, or (ii) a Lessee. 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. Owner shall include a purchaser under a contract for the conveyance of real property subject to the provisions of A.R.S. Section 33-741. Owner shall not include purchasers under contracts and receipts, escrow instructions or similar executory contracts that are intended to control the rights and obligations of the parties to such executory contracts pending the closing of a sale or purchase transaction.

**1.28 "Person"** means a natural person, corporation, business trust, estate, trust, living trust, partnership, association, joint venture, government, governmental subdivision or agency, or other legal or commercial entity.

**1.29 "Plat"** means the plat of The Villages at Lynx Creek as recorded in Book 27 of Maps, Pages 58 through 62 and Book 29 of Maps, Pages 97 through 100, records of Yavapai, Arizona, and all amendments, supplements and corrections thereto.

**1.30 "Property"** means the real property described as follows: The Villages at Lynx Creek as shown on the Plats recorded in Book 27 of Maps on Pages 58 through 62, and in Book 29 of Maps and Plats on Pages 97 through 100 including all improvements located thereon,





except Lots C212 through C222 which have been abandoned.

**1.31 "Purchaser"** means any Person who by means of a voluntary transfer becomes the Owner of a Lot.

**1.32 "Quorum for Voting"** means the total number of votes cast by the Association members in person, by written ballot in a mail vote, or the number of Members in attendance at a special or regular meeting of the Board of persons entitled to cast at least 25% of votes in the Association are represented in person or by mail vote.

**1.33 "Recording"** means placing an instrument of public record in the office of the Recorder of Yavapai County, Arizona, and **"Recorded"** means having been so placed of public record.

**1.34 "Resident"** means each individual occupying or residing in any Residential Unit.

**1.35 "Residential Unit"** means any building or portion of a building, or recreational vehicle, park model, mobile home or manufactured home, as said terms are hereinafter defined, situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence.

1.35.1 "Recreational Vehicles" ("RVs") means travel trailers, motor homes and 5<sup>th</sup> wheel trailers designed for over-the-road use. Converted school buses, construction trailers, homemade units of any type, truck campers, pickup mounted campers, tent trailers, tents in any form and similar vehicles, whether licensed or not, are not RV's, as defined herein, and are not allowed to be used as a residential unit.

1.35.2 "Park Model" means a manufactured unit up to sixteen (16) feet in width and up to thirty eight (38) feet in length, including a bay unless approved by the Architectural Committee.

1.35.3 'Modular or Mobile Home' ("M/M") shall mean and refer to a mobile or manufactured home as defined by A.R.S. Section 33-1409.15.

**1.36 "Single Family"** means not more than two persons who maintain a common household in a Residential Unit.

**1.37 "Special Assessment"** means any assessment levied and assessed pursuant to Section 6.4 of this Declaration.

## **ARTICLE 2**

### **PROPERTY SUBJECT TO THIS AMENDED DECLARATION**

**2.1 Property Subject to the Declaration.** This Declaration is being recorded to establish a general plan for the use of the Property and to protect and enhance the value and desirability of the Property. All of the Property shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the Property subject to this Declaration, each person or entity, does for himself, herself or itself, their personal



representatives, successors, transferees and and/or assigns, binds themselves to all of the provisions, obligations, limitations, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereto. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the use of the Property and hereby evidences his interest that all the provisions, obligations, limitations, restrictions, covenants, conditions, 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, restrictive and enforceable by the Association and all Owners

### **ARTICLE 3 USE RESTRICTIONS**

**3.1 Architectural Control.** In addition to any requirements imposed by the County of Yavapai and/or the Town of Prescott Valley,

3.1.1 All Improvements constructed on Lots shall be of new construction, and no building or other structures shall be moved from other locations onto any Lot without the prior written approval of the Architectural Committee.

3.1.2 No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee.

3.1.3 No Improvement shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

3.1.4 No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any Lot, or the Improvements located thereon, excepting small shrubs and/or flower plantings, shall be made or done without the prior written approval of the Architectural Committee.

3.1.5 Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of his Lot, or the Improvements located thereon, excepting small shrubs and/or flower plantings, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the addition, alteration, repair, change or other work which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for the approval within three (3) scheduled meetings after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans.

3.1.6 The approval by the Architectural Committee of any construction, installation,



addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition, alteration, repair, change or other work subsequently submitted for approval.

3.1.7 Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

3.1.8 Any change, deletion or addition to the plans and specifications approved by the Architectural Committee must be submitted to and approved in writing by the Architectural Committee. Failure to submit changes, deletions or additions to previously approved plans shall void the original approval.

3.1.9 The Architectural Committee shall have the right to charge a fee for reviewing requests for approval of any construction, installation, alteration, addition, repair, change or other work pursuant to this Section, which fee shall be payable at the time the application for approval is submitted to the Architectural Committee.

3.1.10 The approval required of the Architectural Committee pursuant to this Section shall be in addition to, and not in lieu of, any approvals or permits which may be required under any federal, state or local law, statute, ordinance, rule or regulation.

3.1.11 The Architectural Committee Rules may include approval requirements and criteria that, unless specifically preempted, are more restrictive than those established by any federal, state or local law, statute, ordinance, rule or regulation.

3.1.12 The Architectural Committee may require that an Owner, before commencing construction of any Improvements approved by the Architectural Committee, pay to the Association a deposit in an amount determined by the Architectural Committee to be used by Association to remove any construction debris from a Lot which is permitted to accumulate in violation of Section 3.8 of this Declaration or to repair any damage to the Common Area. The Architectural Committee shall also have the right to determine which portion, if any, of the deposit will be nonrefundable. Any portion of the deposit which is refundable shall be refunded to the Owner by the Association upon the completion of construction of the Improvements, the removal of all construction debris from the Lot, and the repair of any damage to the Common Area occasioned by such construction.

3.1.13 Decisions of the Architectural Committee may be appealed to the Board of Directors upon written notice to the Board not more than twenty (20) days following the final decision of the Architectural Committee. The Board shall render a decision with respect to such appeal within twenty (20) days following the receipt of such notice of appeal. The failure of the Board to render a decision within said twenty (20) day period shall be deemed a decision in favor of the Appellant. In the event the decision of the Architectural Committee is overruled by the Board on any issue or question, the prior decision of the Architectural Committee shall be deemed modified to the extent specified by the Board. The decision of the Board of Directors



shall be deemed final and binding and no further appeal of the issue or question presented in the initial appeal shall be allowed. The Board may establish reasonable rules regarding the procedures for considering appeals and may from time to time amend such rules regulating such procedures.

### **3.2 Recreational Vehicles ("RVs").**

3.2.1 Lots 13 through 54 and Lots 57 through 115 and Lots 250 through 348, inclusive, are restricted to RVs and Park Model units.

3.2.2 Upon placement on any Lot, RV's may be attached to utility hookups or may utilize self contained water, sewer and gas.

3.2.3 Motorized generators may not be operated on the Property without permission from the Association or its duly authorized agent.

3.2.4 Wheels and axles may not be removed from RV's, and no skirting shall be allowed without approval of the Architectural Committee.

3.2.5 Side yard setbacks on all RV Lots shall be not less than three feet. The rear setback shall be not less than seven and one-half feet from the rear Lot line. Front setbacks shall not be less than five feet from the back of the curbs of all abutting streets.

3.2.6 Recreational Vehicles (RVs") coming into the park cannot be more than 15 years old.

### **3.3 Park Model.**

3.3.1 A Park Model may be placed only on Lots designated as RV Lots, subject to the approval of the Architectural Committee as set forth herein.

3.3.2 Lots 13 through 54 and Lots 57 through 115 and Lots 250 through 348, inclusive, are restricted to RVs and Park Model units.

3.3.3 Upon placement on any Lot, Park Models must be attached to all utility hookups including natural gas, if available, as required by the Architectural Rules. "All electric" park models, with no other source of energy, will not be permitted.

3.3.4 Wheels and axles must be removed from Park Models when placed on a Lot, except with the specific written approval of the Architectural Committee.

3.3.5 Park Models must have completed skirting within sixty (60) days of placement on a Lot. They must be skirted with conventional material as approved by the Architectural Committee of a color and design similar to that of the living unit to which it is attached.

3.3.6 No Manufactured or Park Model in excess of two years of age will be placed upon any RV Lot without the prior approval of the Architectural Committee, and may not exceed 16 feet in width, or thirty eight (38) feet in length, including bays and closed in extensions. A Park Model must be made of composite board. No aluminum or vinyl siding will



be allowed on the Park Model or skirting.

3.3.7 Side yard setbacks on all Park Model Lots shall be not less than three feet. The rear setback shall be not less than seven and one-half feet from the rear Lot line. Front setbacks shall not be less than five feet from the back of the curbs of all abutting streets.

3.3.8 Unit Owners are responsible for satisfactory soil compaction to their Lots prior to placement of any unit/units, concrete slabs or driveways,

3.3.9 All Park Models and all ancillary buildings, structures, decks, and other Lot development is subject to approval by the Architectural Committee.

### **3.4 Modular or Mobile Home ("M/M").**

3.4.1 All Modular and Mobile Homes shall meet the following criteria: (1) is designed and constructed for year round residential use, and is connected to water, gas and/or electric utilities, has a non-glare composition shingle roof or materials approved by the Architectural Committee; and (2) contains completed plumbing, heating and electrical systems to be connected to a utility hook-up on a Lot; and (3) is transportable in two or more sections, and when erected on a Lot contains more than one thousand square feet of living area, excluding Structural Add-Ons; and (4) was constructed not more than two years before initial placement on a Lot, or received written approval of the Architectural Committee prior to placement, and meets state and federal construction codes as required.

3.4.2 All Lots not cited in Paragraphs 3.2.1 and 3.3.2 above are hereby designated as M/M Home Lots. RV's and Park Models are not allowed to be permanently placed on M/M Lots. Permanent or semi-permanent storage facilities may be erected on an M/M Lot, so long as said facility is in compliance with these documents.

3.4.3 M/M Homes set above ground must have completed skirting within sixty (60) days of placement on a Lot. They must be skirted with conventional skirting as approved by the Architectural Committee of a color and design similar to that of the living unit to which it is attached. Ground set homes are exempt.

3.4.4 Side yards on all M/M Lots shall be not less than three feet. The rear setback shall be not less than ten feet from the rear Lot line. Front yard setbacks shall be not less than ten feet from the back of the curb on all abutting streets.

3.4.5 Unit Owners are responsible for satisfactory soil compaction to their Lots prior to placement of any unit(s), concrete slabs or driveways.

3.4.6 All M/M and all ancillary buildings, structures, decks, and other Lot development is subject to approval by the Architectural Committee.

### **3.5 Restrictions Applicable to Both RV Lots and M/M Lots.**

3.5.1 Items placed or stored under any RV, Park Model or M/M occupying a Lot shall not be visible. Occupants must keep their Lot and the RV, Park Model or M/M in a clean and orderly condition and in a good state of repair. No personal property may remain where it can



be seen by others in the area, except for tables, benches, chairs and grills.

3.5.2 One storage shed not to exceed 120 square feet in size, constructed of wood or composition siding which matches the dwelling unit, is permitted on a Lot. Where lot configuration or size permits, a larger or an additional shed may be allowed; a permitted use for such expansion or addition may be storage of a Golf Cart. Aggregate square footage of shed(s) may not exceed 200 square feet. The Architectural Committee may approve such a request as long as the changes do not increase lot coverage by more than fifty (50%) percent and does not create a detrimental effect on neighboring property. No shed may exceed ten (10) feet in height measured from the gable; a height matching the eaves line of the dwelling unit is recommended. All sheds must be skirted around the bottom to prevent the entry of animals of all species. All sheds must meet Yavapai County and Town of Prescott Valley location requirements as to distance from residence and setbacks.

3.5.3 Permanently enclosed patios, add-on rooms, carports and fences are allowed. Plans must be submitted to the Architectural Committee setting forth the location on the Lot, the length, width and set-backs, and material from which it is to be constructed. This requirement applies to both new construction as well as modifications to existing construction. The Committee may approve, disapprove, or approve with modifications. Trellises are permitted provided that they will not materially affect the adjacent neighbor's view. Any desired deviation from this Restriction must have prior written approval of the Architectural Committee.

3.5.4 The design, color, condition, construction material, and all other physical characteristics of all sheds, Arizona rooms, structural add-ons, or screened in patio areas, whether or not intended for year-round habitation, and other improvements of any kind or nature, must be approved in writing by the Architectural Committee prior to placement on a Lot.

3.5.5 Unless expressly permitted by the Architectural Committee, exterior additions or attachments to the top, rear, front, side or underneath of an RV, Park Model or M/M facility are prohibited except for satellite dishes and sky light covers..

3.5.6 A maximum of two (2) "Passenger Vehicles", visible at any time, defined as an automobile, utility vehicle, pickup truck or a small conversion van may be maintained on a Lot as long as they are housed in a garage, a carport with a concrete or asphalt base, or parked on a concrete or asphalt driveway, and must be currently licensed. An additional RV may be temporarily parked on a Lot or in the abutting street for a maximum of 48 hours in preparation for leaving or returning from a trip or for minor repairs, with prior permission from the Administrative Manager. This period may be extended and permits must always be conspicuously displayed. Parking of any vehicles on the street opposite another vehicle is prohibited. During this permitted period of time, the registered vehicle may not extend beyond the front lot line. Motorcycles, golf carts and bicycles are not defined as "Passenger Vehicles". On RV lots improved with a Park Model and all M/M lots, garages or carports must be constructed to provide for a minimum of one vehicle undercover. No overnight street parking is permitted for passenger vehicles. No guest RV street parking is allowed at any time. Any GUEST passenger vehicle or GUEST RV (non-occupied) requiring overnight parking will be allowed to park on the common area with a permit only. This permit will be issued for a maximum of 48 hours for the designated posted parking area only.

3.5.7 No animals, livestock or poultry of any kind may be raised, bred or kept on any



Lot, except that dogs, cats and other household pets may be kept in the dwelling units in accordance with Rules established by the Board of Directors of the Association. The maximum number of household pets shall not exceed two (2) in number at any time. Animals may not be kept, bred or maintained for a commercial purpose. No animals may be kept on Lots which result in an annoyance or a nuisance to residents in the vicinity. All animals shall be directly under the Owner's control when on the Lot and on a leash when off the Owner's Lot. No Owner or lessee shall permit any animal in his or her control or Ownership to relieve itself on another Owner's Lot. It shall be the responsibility of the Owner or lessee to remove immediately any droppings from pets anywhere on the Owner's property, public sidewalks, parking lots and all common areas. No animal shall be permitted to roam outside the dwelling unit or to be walked on any Golf Course property, including the Driving Range. Animals not on a leash and/or accompanied by an adult shall be confined to the Owner's Lot. No animal deemed to be dangerous either by previous actions or history may be kept on any lot.

3.5.8 Only one (1) RV, Park Model or M/M may be permitted on a single lot.

3.5.9 No Lot Owner shall permit or cause anything to be done, kept or remain in or on his Lot which will increase the cost of insurance on the Association, or which will obstruct or interfere with the rights of other Lot Owners, or annoy them by unreasonable noises, odors or intrusive lighting.

3.5.10 No Owner of a Lot may, as a result of construction of a dwelling, or any authorized improvement made thereon, cause damage to adjoining properties.

3.5.11 No owner or real estate agency sign(s) including "For Sale", "For Lease", "Yard Sale", or other similar signs may be placed on a Lot, posted inside or outside a dwelling unit or in any common area, except in conformance with the Board of Directors sign policy and/or appropriate County or State Law Regulations.

**3.6 Leasing of Lots.** No Owner may lease or sublease a Lot to a third party ("third party" is defined as any Person who is not an Owner) for any period of time whatsoever without the prior written consent of the Association. The requirements and guidelines for the approval of leases and subleases shall be set forth in the Lease Approval Requirements and Guidelines. All Owners of lots that are leased or subleased to Third Parties hereby grant to the Association a power of attorney to enforce against the lessee or sub lessee the provisions of this Declaration and the Association Rules or the lease agreement (except those provisions that relate to the payment of rent.) The power of attorney granted hereby authorizes the Association to take any lawful action to enforce this Declaration CC&Rs, the Association Rules and the lease agreement, including, without limitation, bringing actions at law or in equity and to recover from the Owner and/or the lessee or sub lessee against whom any enforcement effort or action is brought the costs of enforcing the terms of this Declaration, the Association Rules and the lease or sublease with respect to violations thereof by the lessee or by such lessee's or sub lessee's visitors, guests, invitees, employees or contractors. The "costs of enforcing" shall include properly levied fines and penalties, penalty late fees and interest, costs of collection (including legal fees incurred in matters where court action is not taken or where an action is taken but is resolved short of court action,) attorneys' fees, court costs, property damage, etc. Lot owners shall be responsible for payment of all utilities and assessments or special assessments.

**3.7 Maintenance of Lawns and Plantings..** Each Owner of a Lot shall keep all



shrubs, trees, hedges, grass and plantings of every kind located on (i) his Lot, (ii) any public right-of-way or easement area which abuts or adjoins the Owners Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike path or similar area, and (iii) any non-street public right-of-way or easement area adjacent to his Lot, neatly trimmed, and shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material; provided, however that such Owner shall not be responsible for maintenance of any area over which (i) the Association assumes the responsibility in writing; (ii) the Association has been given such responsibility by this Declaration; or (iii) Yavapai County or any municipality having jurisdiction over such property assumes responsibility; for so long as the Association, Yavapai County or such municipality assumes or has responsibility.

**3.8 Nuisances.** No rubbish or debris of any kind shall be placed, or permitted to accumulate upon or adjacent to any Lot or other property, and no odors, loud noises or bright lights shall be permitted to arise or emit there from, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other Property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot or other property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants.

**3.9 Diseases and Insects.** No Person shall permit any thing or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious plant diseases or noxious insects.

**3.10 Repair of Building.** No Residential Unit, building or structure on any Lot or other property shall be permitted to fall into disrepair and each such Residential Unit, building and structure shall, at all times, be kept in good condition and repair and adequately painted or otherwise finished. In the event any Residential Unit, building or structure is damaged or destroyed, then, subject to the approvals required by Section 3.1 of this Declaration, such Residential Unit, building or structure shall be immediately repaired, rebuilt or demolished.

**3.11 Mineral Exploration.** No Lot or other 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.

**3.12 Utility Service.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, shall be erected, placed or maintained anywhere in or upon any Lot or other 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 Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

**3.13 Overhead Encroachments.** No tree, shrub, or planting of any kind on any Lot or other property 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 approval of the Architectural Committee. No shrubs or trees are to be planted in rear or side yards which, when mature, will encroach upon a neighboring lot.

**3.14 Residential Use.** All Residential Units shall be used, improved and devoted





exclusively to residential use. No Lot shall be occupied by more than two (2) adults, as provided in Section 3.15. No trade or business may be conducted on any Lot or in or from any Residential Unit, except that an Owner or other Resident of a Residential Unit may conduct a business activity within a Residential Unit 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 Residential Unit, (ii) the business activity conforms to all applicable zoning ordinances of the County of Yavapai and/or the Town of Prescott Valley, (iii) the business activity is consistent with the residential character of the Property and does not constitute a nuisance or a hazardous or offensive use or threaten security or safety of other residents in the Property, as may be determined from time to time in the sole discretion of the Board, and (iv) that no merchandise or items for sale be displayed or visible from outside the residence except during community sponsored patio sales. 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 (i) such activity is engaged in full or part time, (ii) such activity is intended or does generate a profit, or (iii) a license is required for such activity. The leasing of a Residential Unit by the Owner thereof shall not be considered a trade or business within the meaning of this Section.

**3.15 Adult Housing.** Each Lot shall be occupied by at least one natural person who is Fifty-five (55) years of age or older. The Association shall adopt procedures for verification of this requirement and any exceptions thereto and shall make copies of such procedures available upon request. No natural person under the age of forty-five (45) years of age may occupy a Lot in the Property. No nonresident, regardless of age, may spend more than thirty (30) days per year in the Property during any one calendar year. The Board may, at its option, grant a variance from the requirements of this section, provided said variance does not affect the property's status as Housing for Older Persons.

**3.16 Restriction on Further Subdivision, Property Restrictions and Rezoning.** No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner. No further covenants, conditions, restrictions or easements shall be recorded by any Owner, Lessee, or other Person other than the Declarant against any Lot without the provisions thereof having been first approved in writing by the Board of Directors. No application for rezoning, variances or use permits pertaining to any Lot shall be filed with any governmental authority by any Person unless the application has been approved by the Board of Directors and the proposed use otherwise complies with this Declaration.

**3.17 Other Uses, Activities and Facilities.** The Association Rules and or Architectural Rules may contain restrictions, limitations, rules and regulations governing any additional uses, activities, Improvements or facilities on a Lot or within the Property that are (i) Visible From Neighboring Property, any Common Area or street, or (ii) that are deemed by the Association to be a nuisance or to adversely affect the health, safety or welfare of Owners, Lessees and Residents. The following are some, but not all of the uses, activities, Improvements or facilities that may be governed by the Association Rules: animals; construction and maintenance activity; trash containers and collection; clothes drying facilities; signs; flags and flagpoles; basketball, tetherball and volleyball standards; motor vehicles; parking; trucks, trailers, campers and boats; towing of vehicles; garages and driveways; rooftop air conditioners; sport courts; lighting; use of Common Area; amplifiers; window treatments; garage sales, and noise. The foregoing list is not intended to be exhaustive. The Association Rules are intended to be responsive to the changing needs of the Property and the desires of the Association's Members.

**3.18 Change of Use.** Upon (i) adoption of a resolution by the Board stating that in the



Board's opinion the then present use of a designated part of the Area of Association Responsibility is no longer in the best interests of the Owners and (ii) the approval of such resolution by more than fifty percent (50%) of a Quorum of Members at a meeting called for such purpose and who are entitled to use such Area of Association Responsibility under the terms of this Declaration, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the buildings, structures and improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use shall be for the benefit of the Owners and shall be consistent with any zoning regulations restricting or limiting the use of the Area of Association responsibility.

**3.19 Drainage.** No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Property, or any part thereof, or for any Lot as shown on the drainage plans on file with the county or municipality in which the Property is located. All Residential Units, including garages, carports, sheds, covered patios, and/or other roofed structures shall be equipped with rain gutters and downspouts in such a manner that water will be drained to the street, if possible, or, as an alternative, to an established drainage. Water must not be diverted to a neighboring lot.

**3.20 Errant Golf Balls.** Portions of the Property are located adjacent to a golf course. Each Owner hereby assumes for himself/herself and for such Owners agents, tenants, licensees, guests or family members, and agrees to hold the Association harmless against all risk of loss with respect to any and all damage to such Owner and/or such Owner's Residential Unit or Improvements, agents, tenants, licensees, guests or family members caused by or arising out of golf balls hit from the Golf Course. Nothing herein shall be construed to affect the rights or remedies of an Owner against any party other than the Association.

**3.21 Temporary Occupancy and Temporary Buildings.** No incomplete building, tent, shack, garage, or temporary buildings or structures of any kind, shall be used at any time for a residence. Temporary buildings or other structures used during any construction process, approved by the Architectural Committee, shall be removed immediately after the completion of construction, and in no event shall any such building or other structure be maintained or kept on any property for a period in excess of one month without the prior written approval of the Architectural Committee.

**3.22 Walls and Fences.** All fences and materials used to construct fences are subject to Architectural Committee approval. Unless there is a demonstrated need for a higher fence, the maximum height allowed for fences shall be three (3) feet. Fences along the side and rear lot lines may be constructed from the side Lot line to the residence to provide a total closure. Fences must be built six (6) inches inside the Lot line unless the permission of the Owner(s) of the neighboring Lot(s) has been given in writing, in which case, the fence may be built on the Lot line. Such permission will be noted in the respective Owner's file. All front yard fencing must be set back three (3) feet from inside the concrete curbing.

**3.23 Variances.** The Board may, at its option and in extenuating circumstances, grant variances from the restrictions, limitation, rules and regulations set forth in this Article 3, the Association Rules or the Architectural Rules if the Board determines in its discretion that (i) a restriction, limitation, rule or regulation would create an unreasonable hardship or burden on an Owner, Lessee or Resident or a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete and (ii) that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees and Residents of the Project and is consistent with the high quality of life intended for residents of the Project.

## ARTICLE 4



## EASEMENTS

### 4.1 Owners' Easements of Enjoyment.

4.1.1 Every Member, and any person residing with such Member, shall have a right and easement of enjoyment in and to the Common Area which right shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to dedicate, convey, transfer or encumber the Common Area as provided in Section 5.11 of this Declaration.

(ii) The right of the Association to regulate the use of the Common Area through the Association Rules and to prohibit access to such portions of the Common Area, such as landscaped areas, not intended for use by the Owners, Lessees or Residents.

(iii) The right of the Association to suspend the right of an Owner and such Owner's family, tenants and guests to use the Common Area if such owner is more than fifteen (15) days delinquent in the payment of Assessments or other amounts due to the Association or if the Owner has violated any other provisions of the Project Documents and has failed to cure such violation within fifteen (15) days after the Association notifies the Owner of the violation.

4.1.2 If a Lot is leased or rented by the Owner thereof, the Lessee and not more than one other person residing with such Lessee shall have the right to use the Common Area during the term of the lease, and the Owner of such Lot shall have no right to use the Common Area until the termination or expiration of such lease.

**4.2 Utility Easement.** There is hereby created an easement upon, across, over and under the Common Area and the Lots for reasonable ingress, egress, installation, replacing, repairing or maintaining of all utilities, including, but not limited to, gas, water, sewer, telephone, cable television and electricity. By virtue of this Easement, it shall be expressly permissible for the providing utility company to erect and maintain the necessary equipment on the Common Area or Lots but no sewers, electrical lines, waterlines, or other utility or service lines may be installed or located on the Common Area or Lots except as initially designed, approved and constructed or as approved by the Board.

**4.3 Easement in Favor of Association.** The Lots are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

4.3.1 For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

4.3.2 For inspection, maintenance, repair and replacement of the Areas of Association Responsibility accessible only from such Lots;

4.3.3 For correction of emergency conditions in one or more Lots;

4.3.4 For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers, and duties under the Governing Documents.

4.3.5 For inspection of the Lots (i) in order to verify that the provisions of the Governing Documents are being complied with by the Owners, their guests, tenants, invitees



and the other occupants of the Lot, or (ii) to satisfy the disclosure requirements, if any, of applicable law.

## **ARTICLE 5**

### **THE ASSOCIATION, ORGANIZATION, MEMBERSHIP AND VOTING RIGHTS**

**5.1 Formation of Association.** The Association is a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. In the event of any conflict or inconsistency between this Declaration and the Articles, Bylaws, Association Rules, Architectural Committee, Rules, or Lease Approval Requirements and Guidelines, this Declaration shall control.

**5.2 Board of Directors and Officers.** The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws.

**5.3 The Association Rules.** The Association may, by a majority vote of the Board of Directors, and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations pertaining to (i) all aspects of the Association's rights, activities and duties, (ii) the management, operation and use of the Areas of Association Responsibility, (iii) the Common Areas including, but not limited to, any recreational facilities situated upon the Common Areas, or (iv) any other subject within the jurisdiction of the Association. In the event of any conflict or inconsistency between the provisions of this Declaration and the Association Rules, the provisions of this Declaration shall prevail.

**5.4 Personal Liability.** No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other person or entity, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitation set forth in this Section shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

**5.5 Implied Rights.** The Association may exercise any right or privilege given to the Association expressly by the Governing Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the Association by the Governing Documents or reasonably necessary to effectuate any such right or privilege.

**5.6 Identity of Members.** 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.

**5.7 Voting Procedures.** No change in the ownership of a Lot shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Lot must be cast as a unit, and



fractional votes shall not be allowed. In the event that a Lot is owned by more than one person or entity and such 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 Member casts a vote 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 unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Lot, none of the votes shall be counted and all of the votes shall be deemed void.

**5.8 Voting by Mail.** When any matter is to be submitted by the Board to a vote of the members, such vote shall be conducted by mail as provided in the Bylaws or as determined by the Board.

**5.9 Transfer of Membership.** The rights and obligations of any Member may not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of an Owner's Lot, and then only to the transferee of ownership to the Lot. A transfer of ownership to a Lot may be affected by deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership appurtenant to said Lot to the new Owner thereof. Each Purchaser of a Lot shall be subject to all of the terms, conditions and obligations set forth in this Declaration upon becoming the Owner of a Lot.

**5.10 Architectural Committee.** The Association shall have an Architectural Committee to perform the functions of the Architectural Committee as set forth in this Declaration. The Architectural Committee shall be a Committee of the Board. The members of the Architectural Committee shall consist of such number of regular members and alternate members as may be provided for in the Bylaws. The members of the Architectural Committee shall be appointed by the Board. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions (the "Architectural Committee Rules.") The decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration except that such decision may be appealed by an Owner to the Board, whose decision shall be final. The Architectural Committee may establish a reasonable processing fee to defer the costs of the Association in considering any request for approval submitted to the Architectural Committee, which fee shall be paid at the time the request for approval is submitted.

**5.11 Conveyance or Encumbrance of Common Area.** The Common Area shall not be mortgaged, transferred, dedicated or encumbered without a two-thirds (2/3rds) majority of a quorum vote.

**5.12 Suspension of Voting Rights.** If an Owner otherwise entitled to vote is delinquent in the payment of periodic or special assessments, fines, penalties, interest, late charges, transfer fees, refinance fees, costs of collection, lien fees, attorneys' fees or other moneys owed to the Association, or is not in compliance with the terms of the Association's Governing Documents, the Bylaws, or the Rules and Regulations of the Association, the Board of Directors may, in its sole discretion, certify that such Owner is not in good standing and such Owner's right to vote shall be suspended until the delinquency, breach or violation is paid in full, cured or corrected.



## ARTICLE 6 COVENANT FOR ASSESSMENTS, FEES, CHARGES, FINES AND PENALTIES AND CREATION OF LIEN THEREFOR

**6.1 Creation of Association Lien and Personal Obligation for Assessments, Fees, Charges, Fine and Penalties.** The Declarant, and each Owner, is deemed to covenant and agree, to pay Assessments, fees, charges, fines and penalties to the Association in accordance with this Declaration. All Assessments, fees, charges, fines and penalties shall be established and collected as provided in this Declaration. The Assessments, fees, charges, fines and penalties, together with interest, late charges and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment, fee, charge, fine or penalty is levied or made. Recording of this Declaration constitutes record notice and perfection of the lien established hereby. Each Assessment, fee, charge, fine and penalty, together with interest and all costs, including but not limited to reasonable attorneys' fees, incurred by the Association in enforcing the Governing Documents and collecting or attempting to collect delinquent Assessments, fees, charges, fines or penalties, whether or not suit is filed, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment, fee, charge, fine or penalty became due. The personal obligation for delinquent Assessments, fees, charges, fines or penalties shall not pass to the successors in title of the Owner unless expressly assumed by them.

### **6.2 Annual Assessments.**

6.2.1 In order to provide for the operation and management of the Association and to provide funds for the Association to pay all common Expenses and to perform its duties and obligations under the Governing Documents, the Board, for each Assessment Period, shall assess against each Lot an Annual Assessment for Operations which shall not be more than ten percent (10%) greater than the immediately preceding fiscal year's Annual Assessment without the approval of a majority of a quorum of the Members of the Association.

6.2.2 The Board shall create a separate Annual Assessment against all Lots to provide funds for a General Reserve Account in an amount necessary to maintain, repair, and replace the Common Association Assets as required by their conditions, and as estimated in a study prepared for that purpose which shall be reviewed annually.

6.2.3 The Board may create a separate Annual Assessment against only those Lots which receive electricity from the Association owned electric system which will be a separate Electric Reserve Account, and in the annual amounts considered by the Board as necessary to maintain, repair and replace that system.

6.2.4 The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each Assessment Period, but the failure to give such notice shall not affect the validity of the Annual Assessments established by the Board nor relieve any Owner from its obligation to pay the Annual Assessments. If the Board determines during any Assessment Period that the funds budgeted for that Assessment Period are, or will, become inadequate to meet the anticipated Common Operating expenses for any reason it may,



subject to the ten percent (10%) limit set forth in Section 6.2.1 above, increase the annual Assessment for the Assessment Period and the revised Annual Assessment shall commence on the date designated by the Board.

**6.3 Rate of Assessment.** The amount of the Annual Assessment for each Lot shall be the amount obtained by dividing the anticipated Common Operation Expenses of the Association for the Assessment Period for which the Annual assessment is being levied by the total number of Lots.

**6.4 Special Assessments.** The Association may levy against each Lot, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, provided that any Special Assessment shall have the affirmative votes of two-thirds (2/3rds) of the votes cast by Members voting in person, by mail, or at a meeting duly called for such purpose. In the event the Assessment exceeds the cost of the purpose of the Special Assessment by ten percent (10%), the excess will be returned to the current Owners by credit or check.

**6.5 Assessment Period.** The period for which the Annual Operations Assessment is to be levied (the "Assessment Period") shall be the calendar year, subject to 6.2.4 above.

**6.6 Lot Specific Assessments.** Lot Specific Assessments shall be levied by the Board of Directors against Lots with respect to which particular costs have been incurred by the Association. In the event the Association undertakes to provide work, materials or services on or about a Lot which are necessary to cure or remedy a breach or violation of the Governing Documents that the Owner has refused to cure or remedy, such Owner, by refusing to undertake or complete the required cure or remedy, shall be deemed to have agreed in writing that all of the costs and expenses incurred in connection therewith shall be Lot Specific Assessments.

**6.7 Purposes For Which Association's Funds May Be Used.** The Association shall apply all funds and property collected and received by it (including the Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of the Property and the Owners and Residents by devoting said funds and property, among other things, to the acquisition, construction, alteration, maintenance, provision and operation, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, programs, studies and systems, within or without the Project, which may be necessary, desirable or beneficial to the general common interests of the Project, the Owners and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: Social interaction among Members and residents, maintenance of landscaping on Common Areas and public right-of-ways and drainage areas within the Property, recreation, liability insurance, property and bonding insurance, communications, education, health, utilities, public services, safety, indemnification of officers and directors of the Association and any other purposes permitted by applicable statutes.

**6.8 Rules Regarding Billing and Collection Procedures.** Annual Operations Assessments shall be collected on a monthly basis or such other basis as may be selected by the Board. Special and Reserve 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 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; successor Owners of Lots shall be given credit for prepayment on a prorated basis, made by prior Owners.

**6.9 Transfers and Other Fees.** Each Purchaser of a Lot shall pay to the Association, immediately upon becoming the Owner of the Lot, Transfer, Disclosure and Asset Preservation Fees in such amounts as are established from time to time by the Board. Any Owner of a Lot who refinances his or her lot and requires a status statement from the Association in connection therewith shall pay to the Association a refinance fee in such amount as is established from time to time by the Board. Fees charged pursuant hereto shall be secured by the Association Lien established pursuant to Section 6.1.

**6.10 Fines and Penalties.** In addition to any other rights or remedies which the Association may have under this Declaration or at law or in equity as a result of the violation of this Declaration or the Property Documents, the Association shall have the right, subject to applicable law, to levy reasonable fines or penalties against an Owner for any violation of this Declaration or the Project Documents by the Owner, any other Residents of the Owner's Lot or any of the Owner's contractors or agents. The amount of the fine or penalty for each violation and the procedures for notice and appeal shall be established by the Board. Fines and penalties levied pursuant hereto shall be payable by the Owner within fifteen (15) days after notice of the fine and an opportunity to be heard is given to the Owner by the Association. Any fine levied or penalty imposed by the Association shall be secured by the Association Lien established pursuant to Section 6.1.

**6.11 Notice of Violation, Appeal and Payment of Fines and Penalties.**

6.11.1 The Board, or any person designated by the Board, may serve a "Notice of Violation" against an Owner for a violation of any provision of the Governing Documents by the Owner, his family, tenants or guests. A Notice of Violation shall contain (i) a description of the violation, (ii) the appropriate time and place at which the violation was observed, (iii) the amount of the fine to be paid by the Owner for such violation, (iv) the name of the person issuing the Notice of Violation, and (v) a statement advising the Owner of the Owner's right to request a hearing pursuant to Section 6.11.4 of this Declaration.

6.11.2 A Notice of Violation shall be deemed to have been served if delivered personally to the Owner named in the Notice of Violation or sent to the Owner by registered or certified United States mail, return receipt requested postage prepaid. A Notice of Violation served by mail shall be deemed to have been received by the Owner to whom the notice was addressed on the earlier of the date the notice is actually received or three (3) days after the notice is deposited in the United States mail. A Notice of Violation given by mail shall be addressed to the Owner at the address of the Owner as shown on the records of the Association. If a Lot is owned by more than one person or entity, a Notice of Violation to one of the joint Owners shall constitute notice to all of the joint Owners.

6.11.3 The Owner shall pay the fine set forth in the Notice of Violation to the Association within ten (10) days after the Notice of Violation is served on the Owner unless prior to that time the Owner requests a hearing on the violation pursuant to Section 6.11.4 of





6.11.4 Any Owner served with a Notice of Violation may request a hearing on the violation. The request for a hearing must be addressed to the Secretary of the Association and must be actually received by the Association within ten (10) days after the service of the Notice of Violation. Upon receipt of a request for a hearing pursuant to this Section, the President or any other officer of the Association shall schedule a hearing on the violation before the Board or before a hearing officer or a committee approved by the Board and shall notify the Owner requesting the hearing of the date, time and place of the hearing. The notice of the hearing shall also advise the Owner of his right to produce statements, evidence and witnesses on his behalf and to be represented at the hearing by an attorney. If the hearing on the violation is before the Board, then the minutes of the meeting of the Board at which the hearing is held shall reflect the fact that the hearing on the violation was held and the action taken by the Board on the violation. If the hearing is held before a hearing officer or a committee appointed by the Board, then the hearing officer of the committee conducting the hearing shall, within ten (10) days after the conclusion of the hearing, make a written recommendation to the Board on what action the Board should take in the violation. Upon receipt of the recommendation from the hearing officer or the committee, the Board shall act upon the recommendation. Any fine which is affirmed by the Board following a hearing pursuant to this Section shall be paid by the offending Owner within fifteen (15) days after a notice of the action of the Board is served upon the Owner. Service of the notice from the Board shall be made in the same manner as service of a Notice of Violation pursuant to Section 6.11.2 of this Declaration.

6.11.5 Any fines or penalty levied pursuant hereto shall be secured by the Association Lien established pursuant to Section 6.1.

**6.12 Costs of Enforcement.** Any costs incurred by the Association in enforcing this Declaration or the other Governing Documents shall be the obligation of the Owner of the Lot against which enforcement is sought. Such costs shall include, but not be limited to, reasonable attorneys' fees, whether or not suit is filed. The obligation to pay the costs of enforcement shall be secured by the Association Lien established pursuant to Section 6.1.

**6.13 Effect of Nonpayment of Assessments, Fees, Charges, Fines and Penalties; Remedies of the Association**

6.13.1 Any Assessment, fee, charge, fine or penalty, or any installment of an Assessment, fee, charge, fine or penalty not paid within fifteen (15) days after the Assessment, fee, charge, fine or penalty, or the installment thereof, first became due shall bear interest from the due date at the rate of interest established from time to time by the Board. In addition, the Board of Directors may establish a late fee and interest to be charged to any Owner who has not paid any Assessment, fee, charge, fine or penalty, or any installment thereof, within fifteen (15) days after such payment was due.

6.13.2 As set forth in Section 6.1, the Association shall have a lien on each Lot for all Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees levied against or charged to a Lot or the Owner thereof. 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 late charges, interest, costs of collection, lien recording fees, lien release fees, reasonable attorneys' fees and the costs of preparing the Notice of Lien.

6.13.3 Subject to applicable statutes, the Lien created by Section 6.1 shall have priority over all liens or claims except for (i) tax liens for real property taxes, and (ii) assessments in favor of any municipal or other governmental body.

6.13.4 The Board may suspend, for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent, the obligated Owner's right to vote on any matter at regular or special meetings of the Association.

6.13.5 The Board may suspend for the entire period during which any Assessments, fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees remain delinquent, the obligated Owner's right, if any, to the use of the recreational facilities that are part of the Common Area.

6.13.6 The Board may, without notice or demand, enforce the lien established pursuant to Section 6.1.

6.13.7 The Board may, without notice or demand, institute an action at law for a money judgment to recover the amount of the delinquent Assessment together with all fees, charges, fines and penalties, together with interest and late charges, costs of collecting and reasonable attorneys' fees.

**6.14 No Offsets.** All Assessments shall be payable in the amount specified by the Assessment and no offsets against such amount shall be permitted for any reason including, without limitation, a claim that the Association is not properly exercising its duties of maintenance of all or any portion of the Common Area or other Area of Association Responsibility, or that the Association is not enforcing the Project Documents.

**6.15 Surplus Funds.** The Association shall not be obligated to spend in any year all the Assessments and other sums received by it in such year, and may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year, and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

## **ARTICLE 7 MAINTENANCE**

### **7.1 Areas of Association Responsibility and Public Right of Way.**

7.1.1 The Association, or its duly delegated representative, shall manage, maintain, repair and replace the Areas of Association Responsibility, and all Improvements located thereon, except the Association shall not maintain areas which any governmental entity is maintaining or is obligated to maintain.



7.1.2 The Board shall be the sole judge as to the appropriate maintenance of all Areas of Association Responsibility and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

**7.2 Lots.** Each Owner of a Lot shall be responsible for maintaining, repairing or replacing on the Lot all buildings, Residential Units, landscaping or other Improvements situated thereon, except for any portion of the Lot which is an Area of Association Responsibility. All buildings, Residential Units, landscaping and other Improvements shall at all times be kept in good condition and repair. All grass, hedges, shrubs, vines and plants of any type on a Lot shall be irrigated, mowed, trimmed and cut at regular intervals so as to be maintained in a neat and attractive manner. Trees, shrubs, vines, plants and grass which die shall be promptly removed and replaced with living foliage of like kind, unless of a prohibited species or kind, or for a different foliage is approved in writing by the Architectural Committee. No yard equipment, wood piles or storage area may be maintained so as to be visible from neighboring property or streets.

**7.3 Assessment of Certain Costs of Maintenance and Repair.** In the event that the need for maintenance or repair of an Area of Association Responsibility is caused through the willful or negligent act of any Member, his family, tenants, guests or invitees, the cost of such maintenance or repairs shall be added to and become a part of the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Association Lien. Any charges or fees to be paid by the Owner of a Lot pursuant to this Section in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Association Lien.

**7.4 Improper Maintenance and Use of Lots.** 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 the Project 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 this Declaration; or in the event the Owner of any Lot is failing to perform any of its obligations under the Governing Documents, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the cost thereof 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 Association Lien.

**7.5 Common Walls.** The rights and duties of Owners of Lots with respect to common walls shall be as follows:

7.5.1 The Owners of contiguous Lots who have a common wall shall both equally have the right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner;



7.5.2 In the event that any common wall is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to rebuild and repair the common wall without cost to the other Owner or Owners;

7.5.3 In the event any such common wall is damaged or destroyed by some cause other than the act of one 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;

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

7.5.5 The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title;

7.5.6 In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a common wall shall first obtain the written consent of the adjoining Owners;

7.5.7 In the event any common wall encroaches upon a Lot or the Common Area, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Owners of the Lots which share such common wall.

## **ARTICLE 8 INSURANCE**

**8.1 Scope of Coverage.** The Association shall maintain, to the extent reasonably available, the following insurance coverage:

8.1.1 Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Area of Association Responsibility and all other portions of the Property which the Association is obligated to maintain under this Declaration, and shall also include hired automobile and non-owned automobile coverage with cost liability endorsements to cover liabilities of the Owners as a group to an Owner.

8.1.2 Property insurance on all Area of Association Responsibility insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Area of Association Responsibility, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;



8.1.3 Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

8.1.4 Directors, officers, and employees liability and bonding insurance in an amount to be determined by the Board;

8.1.5 Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners.

**8.2 Certificates of Insurance.** An insurer that has issued an insurance policy under this Article shall issue a certificate 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 canceled 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.

**8.3 Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to Section 8.1 of this Declaration shall be included in the budget of the Association and shall be paid by the Association.

**8.4 Payment of Insurance Proceeds.** With respect to any loss to any Area of Association Responsibility covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association, and the insurance proceeds shall be payable to the Association and not to any mortgagee or beneficiary under a deed of trust. The proceeds shall be disbursed for the repair or restoration of the damage to the Area of Association Responsibility subject to the provisions of Section 8.5 of this Declaration.

**8.5 Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Area of Association Responsibility which is damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) a majority of two-thirds (2/3's) of a quorum of Owners shall vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If all of the Area of Association Responsibility are not repaired or replaced, insurance proceeds attributable to the damaged Area of Association Responsibility 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 either (i) be retained by the Association as an additional capital reserve, or (ii) be used for payment of the operating expenses of the Association if such action is approved by a majority of a quorum vote of Members of the Association.

## ARTICLE 9 GENERAL PROVISIONS

**9.1 Enforcement.** The Association or any Owner shall have the right to enforce Governing Documents and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, deed, declaration or other instrument which (i) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (ii) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. The failure of the



Association or an Owner to take enforcement action with respect to a violation of the Governing Documents shall not constitute or be deemed a waiver of the right of the Association or any Owner to enforce the Governing Documents in the future. In the event of any litigation or arbitration by or against the Association, the prevailing party in such litigation or arbitration shall be entitled to recover from the non prevailing party all attorneys' fees, costs and expert witness fees incurred by the prevailing party.

**9.2 Method of Termination.** This Declaration shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. After which time, this Declaration shall be automatically extended for successive periods of ten (10) years each. This Declaration may be terminated at any time if such termination is approved by the affirmative vote or written consent, or any combination thereof, of the Owners representing two-thirds (2/3rds) or more of the votes in the Association. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Yavapai County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon this Declaration shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

### **9.3 Amendments.**

9.3.1 Except for amendments made pursuant to Subsection 9.3.2 of this Declaration, the Declaration may only be amended by a majority vote of a quorum of members.

9.3.2 The Board may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Plat 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 any federal, state or local governmental agency whose approval of the Property, the Plat or the Governing Documents is required by law or requested by the Board.

9.3.3 Any amendment approved pursuant to Subsection 9.3.1 of this Declaration or by the Board pursuant to Subsection 9.3.2 of this Declaration shall be signed by the President or Vice President of the Association and shall be recorded with the county Recorder of Yavapai County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section.

**9.4 Interpretation.** Except for judicial construction, the Association 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 this Declaration. In the event of any conflict between this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, this Declaration shall control. In the event of any conflict between the Articles and the Bylaws, the Articles shall control. In the event of any conflict between the Bylaws and the Association Rules or the Architectural Committee Rules, the Bylaws shall control.



**9.5 Severability.** Any determination by any court of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

**9.6 Rules against Perpetuities.** If any interest purported to be created by this Declaration is challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (i) those which would be used in determining the validity of the challenged interest, plus (ii) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

**9.7 Change of Circumstances.** Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

**9.8 Rules and Regulations.** In addition to the right to adopt rules and regulation on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

**9.9 Laws, Ordinances and Regulations.**

9.9.1 The covenants, conditions and restrictions set forth in this Declaration and the provisions requiring Owners and other persons to obtain the approval of the Board or the Architectural Committee with respect to certain actions are independent of the obligation of the Owners and other persons to comply with all applicable laws, ordinance and regulation, and compliance with this Declaration shall not relieve an Owner or any other person from the obligation to also comply with all applicable laws, ordinances and regulations.

9.9.2 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.

**9.10 References to this Declaration in Deeds.** Deeds to and instruments affecting any Lot or any part of the Property may contain the covenants, conditions and restrictions herein set forth by reference to this Declaration; but regardless of whether any such reference is made in any Deed or instrument, each and all of the provisions of this Declaration shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, successors and assignees.

**9.11 Gender and Number.** Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.



**9.12 Captions and Titles.** All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent of context thereof.

**9.13 Notices.** If notice of any action or proposed action by the Board or any committee of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied by mailing such notice to each Owner of record at his last known address as shown on the records of the Association, or if notice of such action or meeting is published once in any newspaper in general circulation within Yavapai County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

**9.14 Condemnations of Common Area.** If all or any part of the Common Area is taken or condemned, or conveyed by the Association in lieu of or under threat of such condemnation with the approval of a quorum vote by Members of the Association, by or to any authority having the power of condemnation or eminent domain, the award or other compensation paid as a result of such taking or conveyance shall be paid to the Association. If the taking involves a portion of the Common Area upon which Improvements have been constructed, then the Association shall construct replacement Improvements on the remaining Common Area to the extent land is available for such construction, unless within sixty (60) days after such taking a majority of a quorum vote of the Members of the Association instructs the Board not to build replacement improvements. If such replacement improvements are to be constructed, then the Association shall be entitled to use the award or other compensation made for such taking solely for the purpose of such construction. If the taking does not involve any Improvements of the Common Area or if the majority of a quorum vote decide not to construct any replacement improvements or if there are any net funds remaining after such construction is completed, then such awarded net funds remaining shall be retained by the Association as additional Operating Funds or Capital Reserves.





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IN WITNESS WHEREOF, The Villages at Lynx Creek Owner's Association, Inc., an Arizona nonprofit corporation, has executed this Amendment as of the day and year first above written.

**THE VILLAGES AT LYNX CREEK OWNER'S ASSOCIATION, INC.,** an Arizona nonprofit corporation.

By: *David Cortez*  
**David Cortez**  
Its President

State of Arizona     )  
                                  ) ss.  
County of Yavapai    )

**SUBSCRIBED, SWORN TO AND ACKNOWLEDGED** before me this 20<sup>th</sup> day of November, 2008, by **DAVID CORTEZ**, the President of The Villages at Lynx Creek Owner's Association, Inc., an Arizona nonprofit corporation, for and on behalf of the Corporation.

**My Commission Expires:**

March 5, 2010

*K.A. Kirkland*

**Notary Public:**



*SEAL*



### SECRETARY'S CERTIFICATE

I, ANN WALKER, being the duly elected Secretary of The Villages at Lynx Creek Owner's Association, Inc., hereby certify that the Owners of more than one-half of the Lots signed an instrument consenting to the foregoing Amended and Restated Declaration of Covenants, Conditions and Restrictions for The Villages at Lynx Creek.

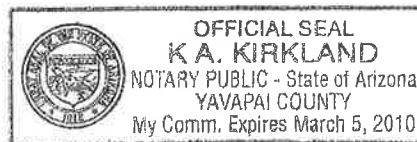
  
ANN WALKER, Secretary

State of Arizona     )  
                                  ) ss:  
County of Yavapai    )

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me this 20<sup>th</sup> day of November, 2008, by ANN WALKER, the Secretary of The Villages at Lynx Creek Owner's Association, Inc., an Arizona nonprofit corporation.



Notary Public



My Commission Expires:

March 5, 2010

SEAL