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MARESA

COVENANTS, CONDITIONS

&

RESTRICTIONS

VENTANA LAKES

PROPERTY OWNERS ASSOCIATION

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AMENDED AND RESTATED  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, ASSESSMENTS,  
CHARGES, SERVITUDES, LIENS, RESERVATIONS, AND EASEMENTS  
FOR  
VENTANA LAKES PROPERTY OWNERS ASSOCIATION

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS, AND EASEMENTS FOR VENTANA LAKES DEVELOPMENT supersedes the original Covenants, Conditions, and Restrictions by the Adams Group, Inc. September 25, 1986, and includes content from the following six prior amendments that were Recorded in Maricopa County: First Amendment Recording number 86-520562; the Second Amendment Recording number 88-493213; the Third Amendment Recording number 88-611190; the Fourth Amendment Recording number 89-130835; the Fifth Amendment Recording number 90-503032; and the Sixth Amendment Recording number 92-0058562.

**WITNESSETH:**

WHEREAS, it is declared that Ventana Lakes is developed into a community for housing for older persons as defined in the Fair Housing Amendment acts of 1988, as amended from time to time, and the administrative rules promulgated thereunder (collectively, the "Act"), which will restrict the age of occupants within the residential land classifications, and apply age restrictions rules to occupants, invitees and guests; and

WHEREAS, at full development this community will collectively have one or more lakes, parks, recreational areas, open spaces, walkways, paths, drives, and other social, civic and cultural buildings and facilities; and

WHEREAS, a nonprofit corporation has been formed entitled Ventana Lakes Property Owners Association ("Association") for the social, maintenance and recreational purposes of benefiting Ventana Lakes, the Owners and the Residents (as said terms are defined herein below), which nonprofit corporation has the power to:

- (1) acquire, construct, operate, manage and maintain a variety of Common Areas upon Ventana Lakes;
- (2) establish, levy, collect and disburse the Assessments and other charges imposed hereunder; and
- (3) as the agent and representative of the Members of the Association and Residents of Ventana Lakes, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of Ventana Lakes; and

WHEREAS, all of Ventana Lakes, as set forth in Exhibit "A", attached hereto and incorporated herein by reference, is subject to the covenants, conditions, restrictions,

assessments, charges, servitudes, liens, reservations and easements (hereinafter collectively called "Covenants") hereinafter set forth; and,

WHEREAS, the Association, by its Members, hereby wishes to amend the Original Declaration, and to restate the Original Declaration, with all adopted amendments thereto, to govern all property governed by the Original Declaration, into one document entitled, "AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, ASSESSMENTS, CHARGES, SERVITUDES, LIENS, RESERVATIONS, AND EASEMENTS FOR VENTANA LAKES DEVELOPMENT" ("Declaration");

NOW THEREFORE, the Association hereby declares that all of the property in Ventana Lakes shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, executors, administrators, trustees, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof (including, but not limited to, the obligation to pay Assessments).

## ARTICLE I

### DEFINITIONS

The following words, phrases or terms used in this Declaration shall have the following meanings:

1. "Annual Assessment" shall mean the charge levied and assessed each year against each Lot or Owner pursuant to Article VII, Section C, hereof.
2. "Architectural Committee" shall mean the committee of the Association to be created pursuant to Article XI, Section A below.
3. "Articles" shall mean the Articles of Incorporation of the Association as the same may be amended or supplemented in accordance with federal regulations and the Statutes and Regulations of the State of Arizona.
4. "Assessable Property" shall mean any Lot.
5. "Assessment" shall mean an Annual Assessment, a Special Assessment, Gardens Assessment and/or Maintenance Charge.
6. "Assessment Lien" shall mean the lien created and imposed by Article VII, Section A.
7. "Assessment Period" shall mean the term set forth in Article VII, Section I.

8. "Association" shall mean "The Ventana Lakes Property Owners Association", which is an Arizona nonprofit corporation organized to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns.

9. "Association Land" shall mean such part or parts of Ventana Lakes, together with the buildings, structures and improvements thereon, and other real property which the Association may at any time own or have a leasehold interest.

10. "Board" shall mean the Board of Directors of the Association.

11. "Bylaws" shall mean the Bylaws of the Association as the same may from time to time be amended or supplemented in accordance with federal regulations and with the Statutes and Regulations of the State of Arizona.

12. "Codes of Conduct" shall mean rules of conduct, standards of behavior, ethical rules and procedures applicable to VLPOA staff, Board Members, Residents and their guests, volunteers, committee members, club members, VLPOA contractors and vendors, and so forth.

13. "Commercial Parcel" shall mean an area of real property within Ventana Lakes limited by a Tract Declaration as Commercial Property.

14. "Common Area" and "Common Areas" shall mean:

- a. all Association Land;
- b. all land within Ventana Lakes which the Declarant has indicated on a Recorded subdivision plat or Tract Declaration is to be used for landscaping, drainage, and/or flood control for the benefit of Ventana Lakes and/or the general public and is dedicated to the public or the City of Peoria upon the expiration of a fixed period of time, but only until such land is so dedicated;
- c. all lands on the Lakefront Lots, which are owned by the Association for the enjoyment, maintenance and operation of the Lakes;
- d. all other lands within the drainage easement areas as set forth on Recorded plats; and
- e. areas on a Lot within easements granted to and accepted by the Association for the location, construction, maintenance, repair and replacement of a wall, or other uses, which easement may be granted or created on a Recorded subdivision plat or Tract Declaration or by a deed or other conveyance accepted by the Association.

15. "Covenants" shall mean the covenants, conditions, restrictions, Assessments, charges, servitudes, liens, reservations and easements set forth herein.
16. "Declarant" shall mean The Adams Group, Inc., as the original Owner of the property and its successors.
17. "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements, as amended or supplemented.
18. "Deed" shall mean a deed or other instrument conveying the fee simple title in a Lot.
19. "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot designed and intended for use and occupancy as a residence.
20. "Gardens Assessment" means an additional Assessment levied against the area referred to as the Gardens pursuant to Article VII, Section M
21. "Gardens Assessment Area" means the area referred to as the Gardens which includes Lots 1 through 104, inclusive, as Recorded in Book 358, page 38 Maricopa County, Arizona and Lots 11 through 14, inclusive, as Recorded in Book 364, page 33 in records of Maricopa County, Arizona.
22. "Gardens Residential Use" shall mean Lots with clustered residential housing arrangements known as patio homes used for Single-Family occupancy found in "The Gardens".
23. "Lakes" shall mean the Lakes shown on the Master Development Plan for Ventana Lakes including the land underlying such Lakes. All Lakes shall be a part of the Common Area.
24. "Lake Lot" shall mean a Lot which has a portion of its boundary adjacent to a Lake.
25. "Lakefront Common Area" that area surrounding the "Lakes" which is owned by the Association and adjacent to the Lakefront Lots.
26. "Lakefront Lot" shall mean a Lot which has a portion of its boundary adjacent to a Lakefront Common Area.
27. "Land Use Classification" shall mean the classification established pursuant to Article IV, Section A, which designates the type of improvements that may be constructed on a Lot or Association Land and the purposes for which such improvements and surrounding land may be utilized.

28. "Lease" shall mean a written agreement or contract for the rental or use of property by a lessee. A Lease (when so capitalized) shall not, for purposes of this Declaration, include any subleases.

29. "Lot" shall mean any area of real property within Ventana Lakes designated as a Lot on any subdivision Recorded plat and limited by a Tract Declaration to Single-Family Residential Use or Gardens Residential Use.

30. "Maintenance Charges" shall mean any and all costs assessed pursuant to Article X, Section B.

31. "Master Development Plan" shall mean the Ventana Lakes Parcel Plan approved by the City of Peoria.

32. "Member" shall mean any single or joint Owner holding a Recorded title to a Lot pursuant to this Declaration.

33. "Member(ship) in Good Standing" shall mean any person holding Membership in the Association whose Assessments fees and/or late fees are current and who is not otherwise in violation of the Declaration, Bylaws or Ventana Lakes Rules.

34. "Membership" shall mean Members in the Association who have the rights granted to participate in the Association pursuant to Article VI.

35. "Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot, whether one or more persons or entities, including purchasers under a Contract (as that term is defined in A.R.S. § 33-741 (2)), but excluding others who hold such title merely as security for the performance of an obligation. In the case of Lots the fee simple title to which is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., legal title shall be deemed to be in the Trustor. An Owner shall include any person who holds record title to a Lot in joint ownership with any other person or holds an undivided fee interest in any Lot.

36. "Recording" shall mean placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and "Recorded" shall mean having been so placed of public record.

37. "Resident" shall mean:

- a. Persons occupying a Dwelling Unit; no Resident shall be under 18 years of age, one Resident must be 55 years of age or older; and
- b. Owners and members of the immediate family of each Owner, Tenant and lessee referred to in subparagraph (1) actually living in the same household with such Owner or such buyer, Tenant, or Lessee subject to such rules as the Association may hereafter specify.

38. "Single Family" shall mean one or more persons who maintain a household in a Dwelling Unit.

39. "Single-Family Residential Use" shall mean a development of Single Family detached housing, each intended for use by a Single Family as herein defined, and subject to restrictions contained in any Tract Declaration Recorded for any such specific development, and, which shall be subject to the restrictions defined in Article IV, Section F.

40. "Special Assessment" shall mean any Assessment levied and assessed pursuant to Article VII, Section F.

41. "Tenant" shall mean persons occupying property located in Ventana Lakes under a rental or letting arrangement, one of whom must be age 55 or older. No Tenant shall be under the age of 18.

42. "Tract Declaration" shall mean a declaration recorded pursuant to Article IV, Section 1 of this Declaration.

43. "Ventana Lakes" shall mean the real property as described in this Declaration.

44. "Ventana Lakes Rules" shall mean the rules for Ventana Lakes Property Owners Association ("VLPOA") adopted by the Board pursuant to Article V, Section C.

45. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring property.

46. "Voting Membership)" and "Non-Voting Membership)" shall mean the classification of voting rights as a Member in the Association. Only one Owner, in good standing, per Lot shall be a Voting Member. All Tenants and lessees shall be Non-Voting Members.

47. "Waterfront Facilities" shall be limited to existing docks and landings designed for access to the Lakes.

## ARTICLE II

### PROPERTY SUBJECT TO VENTANA LAKES DECLARATION

Section A. General Declaration Creating Ventana Lakes. All of the real property within Ventana Lakes is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any Recorded Tract Declarations applicable thereto. Restrictions imposed in this Declaration upon the Owners and Residents concerning the use and maintenance of public

areas shall at all times apply to the Owners and Residents. This Declaration and the Tract Declarations are declared and agreed, and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of Ventana Lakes and every part thereof. All of this Declaration shall run with all Lots and Association Land for all purposes and shall be binding upon and inure to the benefit of the Association, all Owners, Lessees and Residents and their successors in interest.

### ARTICLE III

#### EASEMENTS AND RIGHTS OF ENJOYMENT IN COMMON AREAS

Section A. Easements of Enjoyment. Every Resident shall have a right and easement of enjoyment in and to the Common Areas, subject to any restriction or limitations contained herein or in any instrument conveying to the Association or subjecting to the Declaration such property, and subject further to the reasonable rules of the Association. These rights shall pass with the title to every Lot, subject to the following provisions:

1. the Board of Directors has the right to suspend any Resident from using the recreational facilities and other Common Areas;
2. the Board shall have authority to dedicate or transfer Common Areas to such public agencies, authorities or utilities easements and rights-of-way which are intended to benefit Ventana Lakes and which do not have any substantial adverse affect on the enjoyment of the Common Areas by the Members; and
3. the Board of Directors has the right to regulate the use of the Common Areas through the Ventana Lakes Rules and to prohibit access to those Common Areas, such as landscaped rights-of-way, not intended for use by the Members. The Ventana Lakes Rules shall be intended to enhance the preservation of the Common Areas or the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners and Residents.

Section B. Shared Usage. Any Member may, in accordance with the Ventana Lakes Rules and the limitations therein contained and this Declaration, share his right of use and enjoyment in the Common Areas and facilities solely with the Members of his family, his Tenants, or his guests so long as the guest(s) is at all times accompanied by the Member or has a guest pass. The Board may determine how many guests are a reasonable number that a Member may be permitted to have at the same time using Association facilities.

## ARTICLE IV

### LAND USE CLASSIFICATIONS, PERMITTED USES AND RESTRICTIONS

Section A. Land Use Classifications. A Tract Declaration has been Recorded for Ventana Lakes in the office of the Maricopa County Recorder. All Tract Declarations are subject to applicable zoning laws. A Tract Declaration may designate certain areas of the property as Gardens Assessment Areas pursuant to Article VII, Section M, of this Declaration. The Association shall not allow any new Land Use Classifications or new restrictions which are not generally in conformance with the existing uses and restrictions applicable to Ventana Lakes or with the scheme of development by the Master Development Plan and this Declaration. The Land Use Classifications for Lots and Association Land established by a Tract Declaration shall not be changed except as specifically permitted by this Declaration. Land Use Classifications are as follows:

1. Single-Family Residential Use;
2. Association Use, which may include Common Areas and Lake Area use;
3. Gardens Residential Use, ("the Gardens"), which shall consist of Lots with Dwelling Units intended for Single-Family occupancy which are housing arrangements known as patio homes. Gardens Residential Use includes Lots 1 through 104, inclusive, as Recorded in Book 358, page 38, records of Maricopa County, Arizona and Lots 11 through 14, inclusive, as Recorded in Book 364, page 33, records of Maricopa County, Arizona; and
4. Commercial Use.

### Section B. Responsibility for The Gardens.

1. Maintenance responsibility for The Gardens by the Association:
  - (a) all landscaping and other improvements situated upon the Lots and lying outside the exterior building walls of the Dwelling Units constructed on the Lots;
  - (b) the exterior painting and roof on the Dwelling Units situated on the Lots.

The frequency and extent of the repair, maintenance and replacement of the portions of each Lot to be maintained, repaired and replaced by the Association pursuant to these Tract Declarations shall be the responsibility of the Association. All portions of the Lots to be maintained, repaired and replaced by the Association pursuant to these Tract Declarations are hereby designated as "Gardens Assessment Areas".

2. Maintenance responsibilities for The Gardens by the Owners: Other than those portions of the Lots described in (a) and (b) above, the Owner shall have the responsibility

for the maintenance, repair and replacement of improvements situated upon the Lots including, but not limited to, the walls and other structural components of the Dwelling Units, the doors and windows of Dwelling Units, awnings, air conditioners and heating units, the garage doors, walls or fences serving the Dwelling Units, and the utility service lines situated on or under the Lots, sidewalks, driveways, garage doors, walls or fences.

3. Assessments: The Lots in each Tract are the Lots benefited by the Gardens Assessment Areas. Therefore as provided in Article VII Section M of the Declaration, all costs, expenses and financial liabilities of the Association, together with any allocations in reserve pertaining to the maintenance, repair and replacement of the Gardens Assessment Areas shall be assessed as a Gardens Assessment solely against the Lots at a uniform rate.

4. Easement in favor of the Association: In addition to any other easements granted to the Association in the Declaration, the Association shall have an easement over the Lots in the Tracts for the purpose of performing the Association's obligations with respect to the maintenance, repair and replacement of the Gardens Assessment Areas. No Owner or Resident shall interfere with the Association's performance of its obligations to maintain, repair and replace the Gardens Assessment Areas.

Section C. Covenants, Conditions, Restrictions and Easements. Unless otherwise noted, the following Covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots and the Owners thereof, and all Residents.

1. Architectural Control. No improvements, alterations, repairs, excavation, grading, or other work which in any way alters the appearance of any Lot or Common Area within Ventana Lakes, or the improvements located thereon, from its natural or improved state (existing on the date a Tract Declaration for such property was first Recorded) shall be made or done without prior approval of the Architectural Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered, or made without the prior written approval of the Architectural Committee. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots shall be subject to the prior written approval of the Architectural Committee. No changes or deviations in or from the plans and specifications once approved by the Architectural Committee shall be made without prior written approval of the Architectural Committee. All requests to make changes to a home must be made by the Recorded Owner.

In the event said Architectural Committee fails to approve or disapprove such design, location, or other matter described above within thirty (30) days after the written request and plans and specifications have been submitted to it, approval will not be required and this Section C will be deemed to have been fully in compliance.

2. Animals. No animals (including birds), other than two of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animals shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for

the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member or Resident, the Board shall determine whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet, or whether such a pet is a nuisance. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein.

3. Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, including storage sheds not visible from neighboring property shall be used at any time for a residence. Temporary buildings or structures used during the construction of a dwelling on any property shall be removed immediately after the completion of construction.

4. Maintenance of Yards, Lawns and Plantings. Owners of a Lot or Commercial Parcel shall maintain landscaping as approved pursuant to Article IV, Section C1. Each Owner shall maintain landscaping neatly trimmed, watered, fertilized, and free of trash, weeds and other unsightly material. Owners are responsible for maintaining landscaping on:

- (a) his Lot;
- (b) planted public right-of-way areas between sidewalks and the street curb, if any;
- (c) any other public right-of-way or Easement Area which abuts the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, or similar area; and
- (d) any backyards with open fencing and visible to the public;
- (e) notwithstanding what may be provided in this Section C4, such Owner shall not be responsible for maintenance of any area in which
  - (i) the Association assumes the responsibility in writing;
  - (ii) the Association has been given such responsibility by a Recorded instrument as provided in Article X, Section A of this Declaration; or
  - (iii) the City of Peoria assumes responsibility.
- (f) The Architectural Committee or the Board may require landscaping by the Owner of the areas described in above Subsections.

5. Nuisances: Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot or Commercial Parcel, and no

odors or loud noises 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 so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property.

Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods. Trash and debris shall not be permitted to accumulate. In addition, any construction equipment and building materials stored or kept on any Lot during construction of improvements may be kept only in areas approved by the Architectural Committee, which may also require screening of the storage areas. The Board or its agent shall have the right to determine the existence of any nuisance.

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

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

8. Antennas. Any Owner wishing to install an antenna or satellite dish that is governed by the Federal Communications Commission shall comply with rules approved by the Board of Directors when performing such installation. No other exterior television, internet, radio antenna or antenna of any sort shall be placed or allowed to be located upon the Properties, nor upon any structure situated upon the real property, without the prior written approval of the Architectural Committee.

9. Mineral Exploration. No Lot 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.

10. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot, except in covered containers of a type, size and style that are furnished by the City of Peoria. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor or indoor incinerators shall be kept or maintained on any Lot.

11. Clothes Drying Facilities. Outside clotheslines or other facilities for drying or airing clothes may be erected, placed or maintained on any Lot, so long as they are not visible from outside of the Lot.

12. Machinery or Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot except

- (a) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, pools, or other improvements;
- (b) that which the Association may require for the operation and maintenance of Ventana Lakes; or
- (c) that which is used in connection with any business permitted under a Tract Declaration.

13. Signs. No signs shall be erected or maintained on any Lot except:

- (a) signs required by legal proceedings;
- (b) nor more than two (2) identification signs for individual residences, each with a face area of one hundred twenty (120) square inches or less;
- (c) one sign for "For Sale" or "For Rent" is permitted and must be removed five days after close of escrow;
- (d) such other signs (including but not limited to construction job identification signs, political or security signs which are in conformance with the requirements of the City of Peoria. One political sign no larger than 24 x 24 inches is permitted 45 days prior to the election and must be removed within 7 days after the election; and
- (e) any other sign must have prior written approval from the Architectural Committee.

14. Restriction on Further Subdivision, Property Restrictions and Rezoning. Once created, no Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board, which approval must be evidenced on the plat or other instrument, easement or other interest. No portion of a Lot but for the entire Lot, together with the improvements thereon, may be rented,

and then only to a Single Family. No further Covenants, conditions, restrictions or easements shall be Recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by the Board. No application for rezoning of any Lot, and no applications for variances or use permits, shall be filed with any governmental authority unless the proposed use of the Lot has been approved by the Board and the proposed use otherwise complies with this Declaration and any applicable Tract Declaration.

15. Utility Easements. There is hereby created a blanket easement upon, across, over and under each Lot and Common Areas for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all underground utility and service lines and systems. This shall include but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc, as such utilities are installed in connection with the initial development of each Lot and Common Areas. Pursuant to this easement, a providing utility or service company licensed to do business in the State of Arizona may install and maintain underground facilities and equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots and Common Areas. Notwithstanding anything to the contrary contained in this Subsection, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on any Lot by Owner unless approved by the Architectural Committee.

16. Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to party walls or party fences between Lots shall be as follows:

- (a) The Owners of contiguous Lots who have a party block wall or party wrought iron fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.
- (b) In the event that any party block wall or party wrought iron fence is damaged or destroyed through the negligence or act of an Owner or any of his Tenants, agents, invitees, guests, or Members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party block wall or party wrought iron fence without cost to the Owner of the adjoining Lot.
- (c) In the event any party block wall or party wrought iron fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his Tenants, agents, guests, invitees, or family, it shall be the obligation of all Owners whose Lots adjoin such party block wall or party wrought iron fence to rebuild and repair such wall or fence at their joint expense, such expense allocated among the Owners in accordance with the frontage of their Lots on the party block wall or party wrought iron fence.

- (d) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party block wall or party wrought iron fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

Anything in the foregoing to the contrary notwithstanding:

- (e) In the case of party wrought iron fences or party block walls between Common Areas and Lots constructed by the Declarant or the Association on Common Areas within a Lot, the Association shall be responsible for all maintenance thereof, subject to the provisions of Article X, Sections B and C, except that each Owner of a Lot shall be responsible for Pro Rata Share for maintenance, repair, painting, and the replacement of the portion of the party fence or wall facing his Lot. The Association shall determine the Pro Rata share for maintenance, repair, painting, and replacement that is attributable to the Owner, and shall treat the same as an Assessment against the Lot, collectible in the same manner as regular Assessments.
- (f) The provisions of this Subsection (16) shall not apply to any party wall which separates the interiors of two Dwelling Units and the rights of the Owners of such Dwelling Units in the Gardens.
- (g) Owners shall maintain bushes and shrubs to prevent their protrusion onto Common Ground and neighboring areas.
- (h) Owners shall remove anything that hinders the Association from performing its duties.

17. Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot 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 hereof shall be deemed to forbid the erection of power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

18. Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot or Common Areas shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way from ground level to a height of eight (8) feet.

19. Trucks, Trailers, Campers, and Boats. No motor vehicle (classed by manufacturer rating exceeding one-ton), mobile home, travel trailer, motor home, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle

may be parked, maintained, constructed, reconstructed or repaired on any Lot on any street in Ventana Lakes so as to be Visible From Neighboring Property, the Common Areas or the streets; provided, however, the provisions of this Section shall not apply to:

- (a) pickup trucks of one-ton or less capacity with camper shells not exceeding 7 feet in height measured from ground level and mini-motor homes not exceeding 7 feet in height and 18 feet in length which are parked as provided in Subsection 21 below and are used on a regular and recurring basis for basic transportation;
- (b) boats permitted to be stored or moored on Lots, or Lake Areas pursuant to Article IV, Section G below; or
- (c) trucks, trailers and campers parked in areas designated for parking in non-residential Land Use Classifications in connection with permitted commercial activities conducted in such non-residential Land Use Classifications.

20. Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot or Street in Ventana Lakes, and no inoperable or unlicensed vehicle may be stored or parked on any such Lot or Street, so as to be Visible From Neighboring Property or to be visible from Common Areas or streets; provided, however, that the provisions of this Section shall not apply to:

- (a) emergency vehicle repairs;
- (b) vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under emergency repair;
- (c) the storage of such vehicles in an area designated for such purposes on a Tract Declaration or on a site plan approved by the Architectural Committee.

21. Parking. Vehicles of all Owners, Lessees and Residents, and of their guests and invitees, are to be kept in garages, carports, residential driveways of the Owner, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles on a Lot; provided, however, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking on Ventana Lakes is otherwise prohibited or the parking of any inoperable or unlicensed vehicle. Notwithstanding the foregoing, this Section shall not prohibit or restrict vehicles whose parking cannot be restricted or prohibited under the law.

22. Right of Entry. During reasonable hours and upon reasonable request to the Owner or other occupant of a Lot, any Member of the Architectural Committee, any Member of the Board, or any authorized representative of either of them, shall have the right to

periodically enter upon and inspect any Lot, and the improvements thereon, except for the interior portions of any completed residence, for the purpose of ascertaining whether the provisions of this Declaration have been or are being met. Such persons shall not be deemed guilty of trespass by reason of entry. The intent of right to entry is to provide access in case of emergencies, for final inspection of an approved Architectural Change request, and to assure compliance with the CC&Rs.

23. Health, Safety and Welfare. In the event activities and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners and Residents, the Board may make rules restricting or regulating their presence on Ventana Lakes as part of the Ventana Lakes Rules or may direct the Architectural Committee to make rules governing their presence on Lots as part of the architectural guidelines.

24. Incidental Uses. The Board may approve uses of property within a Land Use Classification to meet needs and interest of all Owners. By way of example and not of limitation, the uses which the Board may permit are various clubs, and activities, and recreational facilities intended primarily for usage and benefit by all Residents or Owners; and a business office for the Association.

25. Garage Conversion. Conversions of garages to living areas is prohibited.

Section D. Age of Residents: Services and Facilities. Subject to all government ordinances, as they may be amended from time to time, at least one person age fifty-five (55) or over must be an occupant of each Dwelling Unit, whenever any person occupies said Dwelling Unit. Persons under the age of fifty-five (55) and greater than or equal to the age of eighteen (18) may occupy and reside in a Dwelling Unit as long as at least one of the occupants is age fifty-five (55) or over. No person under the age of eighteen (18) may be an occupant of any Dwelling Unit, other than temporarily residing or visiting for periods not to exceed thirty (30) days in total in any calendar year.

If, however, ownership of a Dwelling Unit is transferred upon the death of an Owner occupant age fifty-five (55) or over, the requirement of one occupant of said Dwelling Unit being age fifty-five (55) or over is waived as to occupancy by the heirs or surviving spouse as long as no permanent occupant is under the age of eighteen (18) and further so long as at least eighty percent (80%) of all of the occupied Dwelling Units in Ventana Lakes are occupied by one person age fifty-five (55) or over (Fair Housing Act). Twenty (20) percent of Dwelling Units are reserved for underage 55 year old surviving spouses or other heirs. Heirs or surviving spouses are required to notify the management office and present documentation of the transfer of ownership.

It shall be the responsibility of the Board to enforce the restrictions of this Section D, which shall include taking periodic surveys to determine whether eighty percent (80%) of the Dwelling Units in Ventana Lakes are occupied by at least one person who is age fifty-five (55) or over. The Board shall have the power to adopt, amend, repeal, and act on such rules as it deems reasonable and appropriate to establish policies or procedures for the enforcement of this Section D in accordance with the requirements of the Federal Fair Housing Act. Subject to the

terms of this Declaration and the Articles of Incorporation and By-Laws of the Association, the Board shall have authority to make improvements upon the Common Areas necessary to provide facilities or services specifically designed to meet the requirements of the afore mentioned Act. Section E. Covenants, Conditions, Restrictions and Easements to Lots Within Single-Family Residential Land Use Classification. The following Covenants, conditions, restrictions and reservations of easements and rights shall apply only to Lots and the Owners and, Residents thereof lying within a Single Family Land Use Classification:

1. General. All property within such Land Use Classification shall be used, improved, and devoted exclusively to Single Family residential use. No trade or business may be conducted on any Lot, except that an Owner or other Resident of a Lot may conduct a business activity upon the Lot so long as:

- (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside of the Lot;
- (b) the business activity conforms to all applicable zoning ordinances or requirements for the Property;
- (c) the business activity does not involve persons coming onto the Lot or the door-to-door solicitation of Owners or other Residents in the Property with the exception of Residents campaigning for Ventana Lakes Board positions; and
- (d) the business activity is consistent with the residential character of the Property and does not constitute nuisance or a hazardous or offensive use or threaten security or safety of other Residents in the Property, as may be determined by the Board.

Furthermore, no advertising or directional signs may be placed upon the Lot or any portion of the Common Areas regarding the business activity. However, real estate agents may place "Open House" signs on Common Areas during the hours the open house is in effect. Additionally, no on-street parking may occur relating to the business activity; any parking related to the business activity shall be limited to the one outdoor space allocated to the Owner.

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:

- 1. such activity is engaged in full or part time;
- 2. such activity is intended or does generate a profit; or

3. a license is required for such activity; if licenses or permits are required, they shall be obtained by the Owner and a copy submitted to the Association management office.

The leasing of a Lot by the Owner thereof shall not be considered a trade or business within the meaning of this section. All buildings or structures erected upon the Properties shall be of new construction and no building or structure shall be moved from other locations onto the Properties. No structures of a temporary character, trailer, recreational vehicle, tent, shack, garage, barn or other out building shall be used on any portion of the Properties at any time as a residence, either temporarily or permanently. No structure whatever, other than one private, Single Family residence, together with a private garage for not more than three (3) vehicles shall be erected, placed or permitted to remain on any Lot.

2. Timesharing and Other Fractional Interest Plans. No Lot or Dwelling constructed thereon may be used and/or occupied by any Person pursuant to any time sharing plan, fractional ownership interest plan, fractional private residence club plan, Membership residential privilege plan, or any similar type of plan (such prohibited plans shall be collectively referred to herein as a "Timesharing Plan"). For purposes of the Section, "Timesharing Plan" means the joint or common ownership, use and/or occupancy of a Lot or Dwelling Unit constructed thereon by three or more Unrelated Persons or their lessees, sub-lessees, assignees, or permittees on an ongoing basis over time pursuant to a timesharing plan, fractional ownership interest plan, Membership plan, or similar arrangement, regardless of whether such arrangements constitutes a timesharing plan or timesharing interests under Arizona law or under the laws of any particular state.

Any type of joint use or occupancy plan that allows the use of and/or occupancy of the Lot on an ongoing basis over time by three (3) or more Unrelated Persons during any 365 day period, whether or not the Lot is only owned by one Person, and whether or not currency or other form of compensation, trade, or barter is provided in exchange for the use of the Lot, is prohibited. For the purposes of this Section, "Unrelated Persons" means purchasers or holders of such rights of use or occupancy, whether by owning a fee title interest, or by holding some other right or interest, or some other right of occupancy, whether or not any interest in the Lot is connected to said right, directly or indirectly, individually or through a corporation, partnership, limited liability company, trust or other entity, who are not related by blood, adoption or marriage. In calculating three (3) or more Unrelated Persons, a husband and wife and children (including children of either spouse), or a family trust or any other entity comprised exclusively of the same people, shall collectively constitute only one Unrelated Person.

3. Owner Leasing Property. The entire Dwelling Unit on a Lot may be let to a Single Family Tenant from time to time by the Owner. Any agreement for the Lease of a Unit must be in writing and must be expressly subject to this Declaration, the Articles of Incorporation, the Bylaws, and any other documents governing the Association. The Lease must contain a provision that any violation of the Declaration, the Articles of Incorporation, the Bylaws, or any other documents governing the Association shall be a default under the Lease and is grounds for eviction. If the Owner fails to evict the Tenant, the Association may impose

reasonable monetary penalties against the Owner as determined by the Board, and may exercise any other remedies available under the Declaration and Arizona law.

All Leases shall be required in writing and shall be for a term of three (3) months or more. The Association, through its Board of Directors, may allow exceptions to the three (3) months requirement in specific situations based on individual circumstances. Owners shall submit a "rental registration form" to the Association for each Tenant and each new Lease, in a form prepared for the Association by the Board of Directors. If an Owner fails to provide the required form to the Association in a timely manner as determined by the Board, the Association may impose reasonable monetary penalties as determined by the Board and any other remedies available under the Declaration and Arizona law.

Any violation of these documents shall be a default under the Lease. The Owner shall remain liable for compliance with the Declaration, Articles of Incorporation, Bylaws and any other documents governing the Association, and shall be responsible for any violation thereof by his Tenant or his Tenant's family and guests. All notices shall be sent to the Owner. Each Owner shall provide a copy of the Declaration, Articles of Incorporation, Bylaws, and any other documents governing the Association to each Tenant of his Unit.

The Association may establish a fee to be charged to Owners who rent their Lots for the purpose of covering the Association's administrative fees and/or fees charged by the Association's managing agent (if one exists) with the respect to monitoring compliance with rental restrictions.

All required permits and licenses shall be obtained by the Owner and submitted to the Association Management Office.

4. Tenants. By becoming a Tenant, each Tenant agrees to be bound by the Declaration, Articles of Incorporation, Bylaws and any other documents governing the Association, and recognizes that any violation of the above documents, the Association may provide notice to the Owner of the Tenant's violations, and require that the Owner correct the problem in a timely manner and/or evict the Tenant for the violations.

The Board reserves the right to charge recreational fees to a Lessee or renter.

Section F. Covenants, Conditions, Restrictions and Easements Applicable to Lake Areas Land Use Classification.

1. General. Lake Areas may include portions of Lots and Common Areas, and shall be designated as such in a Recorded plat of dedication, in a Tract Declaration. Lake Areas shall consist of the following:

- (a) Water Access Areas, which shall be Common Areas where permitted users of the Lakes may have access to the Lakes for boating and other permitted recreational uses;

- (b) The Lakefront Common Areas as shown on or created by a Recorded plat of dedication, Subdivision Plat, Deed, Tract Declaration, or subparagraph 9 and 10 of Article IV, Section F for access to and the use, maintenance and operation of the Lake; and
- (c) The Lakes owned by the Association.

2. Lake Rules. The Ventana Lakes Rules shall contain Specific rules regulating the use and operation of the Lake Areas, which rules shall be in addition to the provisions of this Section F. Such rules shall include, but shall not be limited to, rules covering the following items:

- (a) the landscaping and construction offences, retaining walls, docks, ramadas, etc., on Lakefront Lots, Lake Lots;
- (b) the storage of boats and other watercraft;
- (c) the launching, recovery, mooring, storage, maintenance, and operation of boats and other watercraft;
- (d) the painting, repairing, and overhauling of all or any part of a boat or other watercraft or any equipment in, on, or used in connection therewith;
- (e) fishing and other aquatic activity;
- (f) storage of equipment and personal property of every kind and character; and
- (g) the discharge, collection or disposal of sanitary sewage, garbage, and other waste substances.

Residents shall abide by the Lake Rules and shall be responsible for all acts of their family, guests, and invitees. The Board shall have the right to make, supplement, amend, change or revoke the Lake Rules without advance notice to Owners.

3. Swimming. There shall be no swimming in the Lakes except in case of an emergency.

4. Right-of-Way. The Association reserves the right to enter upon and use the portion of any Lake Lot for any lawful purpose in connection with the use, operation and maintenance of the applicable Lake which does not unreasonably interfere with the Owner's use of the Lot.

5. Waterfront Facilities. No Owner of any Lake Lot, or Lakefront Lot shall locate, construct, alter, maintain, erect, install, place or operate any Waterfront Facility without

the prior written consent of the Architectural Committee. The Lakeside or bottom of all Lakes must not be punctured. All existing fences and docks extending over water must be cantilevered. Trees must be planted six (6) feet from the shoreline, privacy wall and property line so that at full growth, the root system will not reach the lake shoreline. Each Owner of any Lake Lot shall, at his sole cost and expense, keep and maintain all Waterfront Facilities located thereon in good and clean appearance and in good and safe condition and repair, including the periodic repair, painting, and refurbishing thereof, and shall be responsible for any damage caused to the Lake, including any lake liner. Without the prior written consent of the Board, no such Waterfront Facilities shall be used except by the Owner to which the Waterfront Facilities are appurtenant and said Owner's family, guests, or visitors. Each conveyance or transfer of a Lake Lot shall include all right, title, interest, and estate of the Owner in the Waterfront Facilities thereon or adjacent thereto.

- (a) Waterfront Facilities are located either in Common Areas or in easements surrounding the Lakes which exist for the Association to properly maintain the Lakes. Each Owner who has an existing Waterfront Facility understands that the Association may require said Waterfront Facility to be removed so that the Association can properly perform its maintenance and repair obligations of the Lakes and the land bordering the Lakes. If said Waterfront Facility needs to be removed, the Association shall inform the Owner of its required removal and shall provide the Owner with thirty (30) days to remove the same unless emergency circumstances require faster removal. If the Owner fails to remove the Waterfront Facility within the allocated time, the Association may remove the Waterfront Facility and charge the Owner for the cost of such removal and any storage costs. Said costs, if unpaid by the Owner within fifteen (15) days of being invoiced for the same, shall be collected according to A.R.S. § 33-1807.
- (b) Each Owner of a Waterfront Facility understands that such Waterfront Facility must be kept in good repair. If said Waterfront Facility falls into a state of disrepair, the Association may require that said Waterfront Facility be removed. If the Association determines that said Waterfront Facility needs to be removed because of its condition, the Association may provide the Owner with notice that the Owner must remove the same. If the Owner fails to remove the Waterfront Facility within thirty (30) days from being provided notice of this requirement, the Association may remove the Waterfront Facility and dispose of the same, and charge the Owner for the cost thereof. Said costs, if unpaid by the Owner within fifteen (15) days of being invoiced for the same, shall be collected according to A.R.S. §33-1807.
- (c) The construction of a new Waterfront Facility is prohibited. If any Waterfront Facility has fallen into a state of disrepair, the

Architectural Committee may approve the repair or restoration of the existing Facility.

- (d) Property Owners of docks shall be required to provide evidence of carrying a minimum of \$1,000,000 universal coverage for personal injury and property damage. This proof of insurance coverage shall name VLPOA as certificate holder and a copy of the certificate shall be on file in the Management Office.

6. Boats and Watercraft. Unless otherwise approved in writing by the Board, only the following types of boats and watercraft shall be allowed in any Lake: power boats operated by the Association for maintenance, safety, or other community purposes; windsurfers, canoes, row boats, and paddle boats. Except for powerboats authorized by the Association, no gasoline or other combustible powered boats or electrically powered boats shall be permitted on any Lakes Area. The size of all boats and watercraft shall be subject to restriction by the Board.

7. Lakes Committee. One or more persons may be named by the Association to constitute the patrol for the Lakes, which person(s) shall have authority to restrict the usage of any Lake Areas or any portion thereof by any persons, including an Owner, Lessee or Resident, or their family, guests, or invitees, and of any boat or watercraft due to negligence in the operation of any boat or watercraft, violation of any safety regulation, or violation of any of the Lakes Rules. Any person whose use of the Lake Area is restricted by the Lakes Committee may request review of such restriction by the Board, the decision of which shall be binding. The Board may also restrict the usage of the Lake Area by any person on account of any such negligence or violation, as well as for reasons elsewhere set forth in this Declaration.

8. Use of Lake Areas. All uses of the Lake Areas shall be restricted to non commercial, recreational purposes. No houseboat may be used or stored in the Lake Areas and no boat or watercraft shall be used as a residence or shall be lived in while in the Lake Areas. Nothing shall be done or kept in the Lake Areas or on the Lakes which would be a violation of any provision of this Declaration, any Tract Declaration, or the Ventana Lakes Rules.

9. Waterfront Access Areas. The Board shall have the sole authority to regulate the maintenance, repair, and use of the Waterfront Access Areas, and the storage of boats and watercraft thereon.

10. Lake Easement. There is hereby created an easement in favor of the Association and all Owners and Residents, the area of which includes all portions of any Lakefront Common Area, which is covered in whole or in part by portions of any of the Lakes, the Lakes and any appurtenant canals, ditches, or other areas created in conjunction with the Lakes. The Lake Easement also includes an area four feet wide on either side, over, and under any pipe or other device used to transport water from any well site or canal to or from any of the Lakes or from any one Lake to the other or away from any of the above areas to any drainage site. The easement is created for two purposes as follows:

- (a) to allow access on, over, or under any Lot, by the Association to perform maintenance and cleaning on the Lake, Lake shore, or Lake water distribution system;
- (b) to allow access over any portion of the surface of the Lakes by any Member of the Association for boating or other water activity when otherwise allowed by these restrictions, Board Rules or legal Board actions; and
- (c) to allow access to Laketront Common Area for the use and enjoyment of all Members of the Association.

Section G. Variances. The Chairperson of the Architectural Committee shall convey all information regarding variances to the VLPOA manager on a weekly basis. The Board or the Architectural Committee may, at its option and in extenuating circumstances, grant variances from the restrictions set forth in Article IV of this Declaration or in any Tract Declaration if the Board determines

- 1. either
  - (a) that a restriction would create an unreasonable hardship or burden on an Owner or Lessee; or
  - (b) that a change of circumstances since the recordation of this Declaration has rendered such restriction obsolete; and
- 2. that the activity permitted under the variance will not have any substantial adverse effect on the Owners, Lessees, and Residents of Ventana Lakes and is consistent with the high quality of life intended for Residents of Ventana Lakes.

## ARTICLE V

### ORGANIZATION OF SSOOCIATION

Section A. Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles of Incorporation, Bylaws, and this Declaration. Neither the Articles of Incorporation nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration. In the event of any amendment, change, or interpretation, this Declaration shall control.

Section B. 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 of Incorporation and the Bylaws as the same may be amended from time to time. The Board may appoint various committees. They may also hire a manager and other staff who

shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association.

Section C. The Ventana Lakes Rules. The Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules to be known as the Ventana Lakes Rules. The Ventana Lakes Rules may restrict and govern the use of the Common Area facilities by any Member, Resident, or any other person; provided, however, that the Ventana Lakes Rules shall not discriminate among Members and shall not be inconsistent with this Declaration, the Articles of Incorporation, or Bylaws. Upon adoption, the Ventana Lakes Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section D. Personal Liability. No Member of the Board or of any committee of the Association, no officer of the Association, and no manager, management company and its employees, or other employee of the Association shall be personally liable to any Member, or to any other person, 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, the management company employees, any representative or employee of the Association, or any committee, committee member or officer of the Association; provided, however, the limitations set forth in this Section D shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

The Association shall indemnify every officer and director of the Association against any and all expenses. This will include attorney's fees reasonably incurred by or imposed upon any officer or director of the Association in connection with any action, suit, or other proceeding. This will include settlement of any suit or proceeding, if approved by the then Board of Directors to which he or she may be party by reason of being or having been an officer or director of the Association. Exceptions include their own willful misfeasance, malfeasance, misconduct or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association. Officers or directors may also be Members of the Association and therefore subject to Assessment to fund a liability of the Association. The Association shall indemnify and forever hold each such officer and director free and harmless against any such and all liability to others on account of any contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer or director, or former officer or director of the Association may be entitled.

## ARTICLE VI

### MEMBERSHIPS AND OTING

Section A. Owners of Lots. Every Owner of a Lot which is subject to Assessment shall be a Member of the Association. One Voting Membership for each Lot owned by an Owner(s) shall be allowed.

Each such Voting Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable. There shall be only one Voting Membership for each Lot, which Voting Memberships shall be shared (but not increased) by any joint Owners of, or Owners of undivided interests in, a Lot.

Section B. Voting. The Association shall have one class of Voting Membership. Each Lot shall be entitled to one Voting Membership, assuming the Member is in Good Standing.

Section C. Right to Vote. The vote for each such Voting Membership must be cast as a unit and fractional votes shall not be allowed. In the event that a Voting Membership is owned by more than one person or entity and such Owners are unable to agree between/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 Voting Member casts a vote representing a certain Voting Membership, 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 Voting Membership unless objection thereto is made at the time the vote is cast for a particular Voting Membership, none of the said votes shall be counted and all said votes shall be deemed void. Cumulative voting is not permitted.

Section D. Voting Rights Abatement. An Association Member may not vote:

1. until Lot ownership is Recorded by the Association prior to the mailing of ballots;
2. unless all fee Assessments are current; and
3. unless he is the Owner.

Reference made in this Declaration to a percentage of voting rights shall be calculated by computing only the percentage of those votes which are not suspended at the time of the vote. Example: If a 60 percent vote of all Voting Members is required for approval and there exists at the time of the vote 1,701 Members of whom 100 have suspended voting rights, the 60 percent calculation would be made by multiplying 60 percent times the number of eligible votes (viz 1,601). Therefore, 961 votes would constitute 60 percent approval.

Section E. Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration, in the Articles of Incorporation, and Bylaws, as the same may be amended from time to time.

Section F. Transfer of Membership. The rights and obligations of a Voting Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot. A transfer of ownership to a Lot may be effected by Deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record Contract, 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 . The Association management office must be notified of all transfers of ownership with documentary evidence provided. Any attempt to make a prohibited transfer shall be void.

## ARTICLE VII

### COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section A. Creation of a Lien. Pursuant to A.R.S. §33-1807, the Association can foreclose on an assessment lien for unpaid assessments. The lien for the unpaid Assessments is automatic. For all other charges, including monetary penalties, interest, and other charges, the Association will not have an automatic lien under the planned community statutes for those charges. The Association must first file suit against the Owner for those charges, obtain a judicial judgment, and record that judgment with the appropriate county recorder. After Recording the judgment, the Association will have a lien that will become effective upon sale of the house. Presumably, those judgments will be paid from the proceeds of a close of escrow upon resale.

Section B. Personal Obligation of Assessment and Maintenance Charges. Each Owner by acceptance of a Deed for a Lot within Ventana Lakes is deemed to covenant and agree, to pay to the Association the following Assessments and charges:

1. Annual Assessments established by this Article VII;
2. Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article VII; and
3. Maintenance Charges established by Article X, Sections B and C, all such Assessments to be established and collected as hereinafter provided.

The Annual and Special Assessments against each Lot shall be based on the number of Voting Memberships. Each such Annual and Special Assessment and Maintenance Charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment fell due.

Section C. Annual Assessments. In order to provide for the uses and purposes specified in Article IX hereof, including the establishment of replacement and maintenance reserves, the Board in each year, shall assess against each Lot an Annual Assessment. The Board may set the Annual Assessment in any amount not in excess of the Maximum Annual Assessment. The amount of the Annual Assessment shall be in the discretion of the Board, but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified in Article IX.

The Gardens Assessment under Article VII, Section M, of this Declaration is an addition to the VLPOA Annual Assessment.

Section D. Uniform Rate of Assessment. The amount of any Annual or Special Assessment against each Lot shall be fixed at a uniform rate per Voting Membership.

Section E. Maximum Annual Assessment. The Annual Assessment to be established by the Board may not be increased by more than ten (10) percent over the prior year's Annual Assessment without the approval of two-thirds (2/3) of the Voting Membership in Good Standing voting at an annual or special meeting called for this purpose (Refer to Article VII, Sections G and H below).

Section F. Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, a Special Assessment applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Land, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such Assessment shall have the approval of two-thirds (2/3) of the votes cast by the Voting Membership in Good Standing. (Refer to Article VII, Sections G and H below). Members may vote by absentee ballots or in person at a meeting duly called for such purpose. The provisions of this Section are not intended to preclude or limit the Assessment, collection or use of Annual Assessments for the aforesaid purposes. All Owners are subject to the Special Assessments levied.

Section G. Notice for Any Action Authorized Under Sections E and F. Written notice of any meeting called for the purpose of taking any action authorized under Section E or F of this Article shall be sent to all Voting Members no less than thirty (30) days nor more than sixty (60) days in advance of the meeting.

Section H. Quorum Needed for Any Action Authorized Under Sections E and F. A quorum which is 40 percent of the total Voting Membership in Good Standing voting in- person or by absentee ballot is required to transact business at meetings called for this purpose. If the required quorum is not present, another meeting with the identical agenda may be called within thirty (30) days of the original meeting.

Section I. Establishment of Annual Assessment Period. The period for which the Annual Assessment is to be levied (the "Assessment Period") shall be the calendar year. The Board from time to time may change the Assessment Period by Recording with the County Recorder of Maricopa County, Arizona, an instrument specifying the new Assessment Period.

Section J. Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of such Assessments (including, without limitation, due dates and payment schedules), provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration.

An Assessment Lien therefore shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days' written notice prior to such foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due in the amount owed. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an Assessment Period.

The Association can foreclose on the delinquent Assessment Lien as set forth in Arizona statutes.

Section K. Collection Costs and Late Assessments Fees. Any installment thereof not paid when due shall be deemed delinquent and shall bear interest from thirty (30) days after the due date until paid at a rate equal to the greater of:

1. ten (10) percent per annum; or
2. the then prevailing interest rate on loans insured by the Federal Housing Association; or
3. the then prevailing interest rate on loans guaranteed by the Veterans Administration; and
4. late monthly charges in the amount of ten percent (10%) of the unpaid Assessment or fifteen dollars (\$15.00), whichever is greater, and the Member shall be liable for all costs, including (without limitation) attorneys' fees, which may be incurred by the Association in collecting the same. All costs incurred by the Association in pursuing collection of unpaid Assessments, including, but not limited to, attorneys' fees, shall be collectible in the same manner as Assessments and secured by the Assessment Lien, as well as being the personal liability of the Owner of the Lot. The applicable interest rate on delinquent Assessments shall be determined on an annual basis. The Board may also record a Notice of Delinquent Assessment against any Lot as to which an Assessment is delinquent which constitutes notice of the lien set forth in Article VII, Section A, above, thus giving the Association the rights of judicial foreclosure under the laws of the State of Arizona, pursuant to A.R.S. §33-1807. In addition, the Board may establish a fixed fee to reimburse the Association for the Association's cost in Recording such Notice, processing the delinquency and Recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

Section L. Evidence of Payment of Assessments. Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter shall issue to such Member or other person a written statement stating:

1. that all Assessments (including interest, costs and attorneys' fees, if any, as provided in Section K above) have been paid with respect to any specified Lot as of the date of such certificate; or

2. late fees will automatically be assessed on the last billing day of the month;

3. if all Assessments have not been paid, the amount of such Assessments (including interest, costs and attorneys' fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such statements, which charge must be paid at the time the request for such statement is made. Any such statement, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any purchaser of, or lender on, the Lot in question.

Section M. The Gardens Assessments. All costs, expenses and financial liabilities of the Association, together with any allocations or reserves pertaining to the maintenance, repair and replacement of the Gardens shall be shown in a separate budget adopted by the Board. No Gardens Assessment shall be used in computing the Annual Assessments to be levied pursuant to Article VII, Section C, of this Declaration. If the Board determines during any Assessment Period that Gardens Assessments are, or will become inadequate to meet all Gardens Expenses for any reason, including, but without limitation, nonpayment of Gardens Assessments by Members, the Board may increase the Gardens Assessment for that Period and the revised Garden Assessment shall commence on the date designated by the Board.

Section N. Document and Transfer Fees. In addition to the General Assessment and the Gardens Assessment if applicable, at the close of escrow on resale of a home in Ventana Lakes, a document and a transfer fee shall be collected. The document fee shall be used to cover the cost of the Association's governing documents given to new homeowners. The transfer fee shall be used to contribute to funding the Reserve Fund to pay for maintenance, replacements, and capital improvements to the Common Areas of the Association.

## ARTICLE VIII

### ENFORCEMENT OF PAYMENT OF ANNUAL AND SPECIAL ASSESSMENT AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN

Section A. Association as Enforcing Body. The Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce them on behalf of the Association by any appropriate action, whether in law or in equity at their own expense.

Section B. Association's Remedies to Enforce Payment of Annual and Special Assessments and Maintenance Charges. If any Voting Member has failed to pay the Annual or Special Assessments or installments when due, or to pay Maintenance Charges assessed pursuant to Article X, Sections B and C, the Association may enforce the payment of the Annual or Special Assessments, Maintenance Charges and/or the Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies

hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

1. Bring an action at law and recover judgment against the Member personally obligated to pay;
2. Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency).

Section C. Subordination of Assessment Lien to First Mortgage or Deed of Trust: Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage or first Deed of trust, or other first financing encumbrance held by a lender, or its successors and assigns, who has loaned funds and taken a Lot as security for such loan, including but not limited to, loans to purchase, develop, construct, finance or refinance any Lot. Said Assessment Liens shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or Deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or Deed of trust sale shall take the Lot free of the Assessment Lien for all Annual and Special Assessments and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's Deed or Deed in lieu of foreclosure in accordance with A.R.S. § 33-1807.

Section D. Costs to Be Borne by Member in Connection With Enforcement of Payment of Annual and Special Assessments and Maintenance Charges. In any action taken pursuant to Section B of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of, the Annual and Special Assessments and Maintenance Charges together with interest and the Association's collection costs and attorney's fees, including those costs and fees specified in Article VII, Section K in accordance with A.R.S. §33-1803A.

## ARTICLE IX

### USE OF FUNDS: BORROWER POWER

Section A. Purposes for Which Association's Funds May Be Used. The Association shall apply all funds and property collected and received by it (including the Annual and Special 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 Ventana Lakes and the Members 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 Ventana Lakes, which the Board may deem necessary, desirable or beneficial to the general common interests of Ventana Lakes, the Members and the Residents.

The Association shall not expend funds directly or indirectly to support, endorse, or contribute to any political candidate. The Association may expend funds to aid, promote and provide for such common benefits: social interaction among Members and Residents, maintenance of landscaping on Common Areas and public right of way and drainage areas within Ventana Lakes, recreation (including operation and maintenance of the Lakes) liability and directors/officers insurance, taxes, communications, ownership and operation of vehicle storage areas, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association. The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

Section B. Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate in the Board's discretion.

The Association's Board of Directors may not borrow more than \$50,000 without a majority vote of at least 50 percent of the total Voting Membership in Good Standing in the Association.

Section C. Association Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, fees or otherwise), and may carry forward as surplus any balances remaining. 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 may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section D. Insurance. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas or such other insurance as the Board deems appropriate including without limitation director/officer insurance.

## ARTICLE X

### MAINTENANCE

Section A. Common Areas and Public Right of Way. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, including, but not limited to, the landscaping, walkways, paths, parking areas, drives, recreational facilities and the roofs, interiors and exteriors of the buildings and structures located upon said Common

Areas. The Association shall also maintain any landscaping and other improvements not on Lots, which are within the exterior boundaries of Ventana Lakes, which are within areas shown on a subdivision plat or other plat of dedication for Ventana Lakes or covered by a Tract Declaration, and which are intended for the general benefit of the Owners, Lessees and Residents of Ventana Lakes, except the Association shall not maintain areas which the City of Peoria or other governmental entity is maintaining, or which are to be maintained by the Owners of a Lot pursuant to Article IV, Section C 4, of this Declaration, unless the Association elects to maintain such areas and as to which the Association has not made such an election to maintain.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property so that the Ventana Lakes reflects a high pride of ownership. In this connection the Board may, subject to any applicable provisions on Special Assessments for capital improvements:

1. Reconstruct, repair, replace or refinish any improvement or portion thereof upon Association Land;
2. Construct, reconstruct, repair, replace or refinish any improvement or surface upon any portion of the Common Area used as a walk, driveway, parking area, or Lake area. No permanent improvements shall be made by the Association on land that is not deeded to the Association;
3. Replace injured and diseased trees and other vegetation in any Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
4. Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;
5. Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Common Areas 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.

In the event any subdivision plat, Tract Declaration, Deed restriction or this Declaration, permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall have the discretion to determine whether or not it would be in the best interest of the Owners and Residents of Ventana Lakes for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may contract with others for the performance of the maintenance and other obligations of the Association under this Article X and, in order to

promote uniformity and harmony of appearance, the Board may also contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

Section B. Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. In the event that the need for maintenance or repair of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Member, his family, guests, or invitees, the Association shall cause the maintenance and repair thereof and, the cost of such maintenance or repairs shall be billed to the Owner and become a part of the Assessment to which such Member and the Member's Lot is subject. The Association has the right to lien the property, charge Owners the cost of legal action and collect attorney's fees and interest. Any charges or fee to be paid by the Owner of a Lot pursuant to Section A of this Article X in connection with a contract entered into by the Board with an Owner for the performance of an Owner's maintenance responsibilities is in accordance with A.R.S. §33-1807.

Section C. Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to:

1. present a public or private nuisance; or
2. substantially detract from the appearance or quality of the surrounding Lots or other areas of Ventana Lakes which are substantially affected thereby or related thereto; or
3. being used in a manner which violates this Declaration or any Tract Declaration applicable thereto; or
4. represent a danger to Common Areas, including but not limited to Lakes, buildings, or other recreational facilities; or
5. the Owner or Lessee failing to perform any of his obligations under this Declaration, any Tract Declaration, or the architectural rules of the Architectural Committee, the Board may give notice to the offending Owner that unless corrective action is taken and the offense corrected within thirty (30) days of the initial receipt of the notice. The Board may cause such action to be taken at said Owner's cost. If at the expiration of said 30-day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to pursue legal action. The 30-day notice shall be deemed received by the Owner upon receipt of a certified mail form by the management office.

## ARTICLE XI

### ARCHITECTURAL COMMITTEE

Section A. Establishment. The Board shall establish an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration and shall adopt the procedural rules for the performance of such duties by the Architectural Committee, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration or any Tract Declaration. The Architectural Committee shall consist of such number of regular members and alternate members as the Board may designate and such members shall be appointed by the Board. The appointees need not be architects, but should be Resident Owners and do not need to possess any special qualifications of any type except such as the Board may require. The Architectural Committee shall hold regular meetings, a quorum for such meeting shall consist of a majority of the regular members, and the concurrence of a majority of the regular members shall be necessary for any decision of the Architectural Committee. Alternate members, approved by the Board, may participate at any meeting at which there is not a quorum of regular members present if the presence of the alternates provide a quorum. If their presence provides a quorum, the Architectural Committee is authorized to act and the alternates shall have all of the authority of a regular member while so participating. The Architectural Committee shall promulgate architectural rules and standards to be used in rendering its decisions subject to approval of the Board.

Subject to the provisions of Section B of this Article, the decision of the Architectural Committee regarding written requests to make changes to the Lot shall be in three categories: approved; approved with stipulation, or denied. Owners shall have a right to appeal any denied decision first with the Architectural Committee and then to the Board if an agreement can not be reached.

Section B. Appeal. Any Owner disagreeing with a decision of the Architectural Committee may appeal the decision to the Committee in accordance with procedures to be established by the Committee and published in the Ventana Lakes Rules. If the Committee, after appeal, again denies the request, the Owner may request a meeting with the Board. The Board shall have the option to deny a request for a meeting. The decision of the Board is final.

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

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

## ARTICLE XII

### RIGHTS AND POWERS OF ASSOCIATION

Section A. Association's Rights and Powers as Set Forth in Articles of Incorporation and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles of Incorporation and Bylaws, including the right to enter into contracts with others for the performance of the duties and obligations of the Association. Such rights and powers may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles of Incorporation and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. A copy of the Articles of Incorporation and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

Section B. Association's Rights of Enforcement of Provisions of This and Other Instruments. The Association shall have the standing and right, but not the obligation to enforce the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and the Ventana Lakes Rules, and the provisions of any other Recorded document pertaining to any Lot or Lots. If the Association takes such enforcement action, it must be in accordance with the prevailing law. Failure by the Association to enforce any restriction or covenant contained herein shall in no way be deemed a waiver of the right to do to thereafter.

In addition to being secured by a lien, said costs, including but not limited to, reasonable attorneys' fees, court costs, out of pocket expenses, costs of investigation, and other expenses related to the enforcement, shall also be the personal obligation of the Owner or Owners against whom such action is taken (or against whose occupants the action is taken). The Association shall be entitled to recover, in addition to any other remedy, its costs including but not limited to, reasonable attorneys' fees, court costs, out of pocket expenses, costs of investigation, and other expenses related to the enforcement, whether or not suit is filed, said amounts being not only the personal obligation of the Owner or Owners against whom such action is taken (or against whose occupants the action is taken), but also secured by a lien against the Lot(s) owned by the Owner or Owner(s) against whom the action is taken (or against whose occupants the action is taken).

Section C. Association's Right to Record Notice of Violation. The Association shall have the right to record a written Notice of Violation by any Owner or occupant of any restriction or provision in this Declaration or the Ventana Lakes Rules. The Notice of Violation shall be executed and acknowledged by an officer of the Association and shall contain substantially the following information: (a) the name of the Owner or occupant; (b) the legal description of the Lot against which the Notice of Violation is being recorded; (c) a brief description of the nature of the violation; (d) a statement that the Notice of Violation is being recorded by the Association pursuant to this Declaration; (e) a statement of the specific steps which must be taken by the Owner or occupant to cure the violation. Recordation of a Notice of Violation shall serve as a notice to the Owner or occupant, and to any subsequent purchaser of the Lot, that there is such a violation. If, after the recordation of the Notice of Violation, it is

determined by the Association that the violation referred to in the Notice of Violation does not exist or that the violation referred to in the Notice of Violation has been cured, the Association shall record a Notice of Compliance which shall state the legal description of the Lot against which the Notice of Violation was recorded, the recording data of the Notice of Violation, and shall state that the violation referred to in the Notice of Violation has been cured, or if such be the case, that did not exist. Notwithstanding the foregoing, failure by the Association to record a Notice of Violation shall not constitute a waiver of any existing violation or evidence that no violation exists.

Section D. Change of Use of Association Land and Procedure Therefore. Based on the Board's opinion that the present use of a designated part of the Association Land or of the Association's interest in other Common Areas is no longer in the best interests or safety of the Owners and Residents, 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,

1. shall be for the benefit of the Owners and Residents, and the Board must have the approval of the majority of 50 percent of the total Voting Members in Good Standing if the cost of such change exceeds \$50,000.

2. shall be consistent with any Deed restrictions (or zoning regulations) restricting or limiting the use of the Association Land.

Section E. Education, Recreation and Social Programs. The Board shall be responsible for providing educational, recreational and social programs as it deems appropriate.

## ARTICLE XIII

### TERMINATION: AMENDMENTS

Section A. Term: Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect and touch and concern and run with the land for a term of thirty (30) years from the date this Declaration is Recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods often (10) years each, unless there is written approval to terminate this Declaration by Voting Members holding at least ninety percent (90%) of the total Voting Memberships in the Association. If the necessary written approvals and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Maricopa 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 these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles of Incorporation.

Section B. Amendments. This Declaration may be amended by Recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted, and shall certify that the Association has obtained the written approval of the amendments by at least 60 percent of the total Voting Membership in Good Standing in the Association. Notwithstanding the foregoing, the Board may, without a vote of the Members, amend this Declaration for the sole purpose of complying with changes in the law.

Section C. Right of Amendment If Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, the Association reserves the right to amend all or any part of this Declaration to such extent and with such language as may be requested by the Federal Housing Administration ("FHA") and to further amend to the extent requested by any other federal, state, or local governmental agency which requests such an amendment, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof.

Section D. Changes in Arizona Statutes or Federal Laws. This Declaration shall fall under compliance with all State and federal laws. Any new planned community statutes or laws will automatically be incorporated into the Declaration without necessitating a vote or approval of the Voting Membership in Good Standing.

## ARTICLE XIV

### ANNEXATION OF LAND

Section A. Annexation Pursuant to General Plan. Additional property may be annexed to Ventana Lakes and become subject to this Declaration and subject to the jurisdiction of the Association, provided said annexation has been approved by the majority of the Board and in writing by a majority vote of at least 50 percent of the total Voting Membership in Good Standing in the Association. The recordation of said Supplementary Declaration shall constitute and effectuate the annexation of said property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter said property shall be part of the Ventana Lakes and all of the Owners of Lots in said property shall automatically be Members of the Association.

Section B. Supplementary Declarations. The annexations authorized under the foregoing section shall be made by Recording in the office of the County Recorder of Maricopa County, Arizona, a Supplementary Declaration of Covenants, Conditions and Restrictions, or similar instrument, with respect to the property which shall extend the plan of this Declaration to such property.

Such Supplementary Declarations contemplated above may contain such complementary additions and modifications of the Covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed

property and as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Supplementary Declaration, revoke, modify or add to the Covenants established by this Declaration.

## ARTICLE XV

### MISCELLANEOUS

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

Section B. 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.

Section C. 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.

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

Section E. References to the Covenants in Deeds. Deeds to and instruments affecting any Lot or any part of Ventana Lakes may contain the Covenants 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 Covenants shall be binding upon the grantee, Owner or other person claiming through any instrument and his heirs, executors, administrators, successors and assigns.

Section F. 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.

Section G. 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 or context thereof.

Section H. Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the City of Peoria or Ventana Lakes. 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.

IN WITNESS WHEREOF, the President of the Association hereby certifies that the amendments contained within this Amended and Restated Declaration of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations, and Easements for Ventana Lakes Development have been approved by the Voting Members in accordance with the amendment requirements set forth in the Original Declaration.

  
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President, Ventana Lakes Property Owners Association

Date: 4/23/2009

