

**AMENDED
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS**

FOR

THE SANCTUARY

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is amended as of the 13th day of August, 2014 by The Sanctuary Homeowners Association.

RECITAL

WHEREAS, Michael Fischenich, SANCTUARY AT LAKE MARY LLC., being the being the Declarant, does hereby amend the original document, Coconino County Recorder document #3411750, recorded the 9th day of November, 2006. This amendment is to restate the original document to add and clarify content.

- A. Declarant is responsible for the ownership and operation of the property under the Declaration of Conditions, Covenants and Restrictions for "The Sanctuary" Homeowners Association.
- B. As of the Amendment Date, the Declarant has the right to amend the Declaration, pursuant to the provisions of Original Conditions, Covenants and Restrictions Section 6, recorded with the Coconino county Records Offices November 9th, 2006, document #3411750.

The Sanctuary

Amendment to the Conditions, Covenants and Restrictions

This Amendment to the Declaration of the Covenants, Conditions and Restrictions for The Sanctuary Homeowners Association is made as of the day of August, 2014 by SANCTUARY AT LAKE MARY LLC., otherwise known as the "Declarant", Michael Fischenich, Managing Member.

SECTION 1 DEFINITIONS

1.21 **"Member" or "Membership"** Shall mean the individual and collective Owner(s) of the Lot(s) within the Project as recorded with the Coconino County Recorder's Office.

1.22 **"Trailers and Motor Vehicles"** Trailers and Motor Vehicles, including a mobile home, a bus, a motor home, a commercial vehicle 1 ton or larger including utility vehicles, trailers of any kind, a mini-bike, a motor-bike, an unlicensed motorcycle, a truck camper, or a permanent tent or similar structure, are not to be kept or maintained anywhere within the Project.

SECTION 2 USE RESTRICTIONS

2.2 Minimum Livable Area. Any Residence shall contain a minimum of 1600 square feet of livable area unless otherwise approved by the Committee. The minimum square footage includes the walls of the Residence, but is exclusive of open porches, breezeways, pergolas, courtyards, or any similar extension or projection. All Residence shall have an attached garage for the sole purpose of vehicle and normal household storage only. All Residences shall be, shall be of new material as may be approved by the Architectural Committee. No buildings shall be moved from any other location onto any lot. No prefabricated building or other structure of any nature whatsoever, permanent or temporary, shall be

move or placed upon, or assembled or otherwise maintained on any Lot, provided, however that a temporary office, trailer office, tool shed, lumber shed and/or office may be used if a temporary use permit is obtained from the City of Flagstaff and it is removed at completion of construction or selling of the Residence for which it was maintained, whichever is later.

2.6 Vehicles. No Vehicle shall be placed, kept, constructed, reconstructed, maintained or repaired on any Lot or street (public or private) without the Lot Owner's receipt of the Association's prior written approval of such Owner's maintenance of the Vehicle and the manner of screening or concealing the same such that the Vehicle is not visible from neighboring property and streets. The restrictions in this Section 2.6 do not apply to automobiles or station wagons and the terms "bus", "van", and truck set forth in Section 1.19 above shall not include 1 ton (or less) capacity pickup trucks used solely for pleasure and passenger purposes (and not commercial purposes) which have no campers of any nature whatsoever. Camper shells are permitted provided they are not used for livable space. The provisions of this Section 2.6 shall not apply to emergency vehicle repairs, or to temporary construction buildings, structures or trailers used exclusively for and during the construction of a Residence or Improvement.

2.8 Landscaping. All front yard landscaping and, all landscaping upon those portions of any Lot which are visible from any other Lot, Street, or common Area shall only be installed by the Owner of the Lot in accordance with a landscaping plan which includes a minimum of three (3) trees of 15 gallons or larger and which conforms to the then current restrictions of the City of Flagstaff and has been submitted to and duly approved by the Committee. Said landscaping plan shall be submitted along the plans and specification for the construction of the Residence unless otherwise agreed upon in writing. All such landscaping (pursuant to the approved plan) must be installed by the Owner of the Lot within one hundred-eighty (180) days following the final inspection of the Residence and issuance of a certificate of occupancy by the City of Flagstaff. Each Owner shall at all times keep all trees, shrubs, ground cover and plantings of every kind on the Lot neatly trimmed and at all times keep such Lot free from trash, weeds and other unsightly material. The yards and grounds in connection with all improved Lots shall be

cultivated and planted to an extent sufficient to maintain an appearance not out of keeping with those typically improved Lots in the Sanctuary. During prolonged absence, each Owner will arrange for the care of his/her Lot in accordance with the foregoing provision of this Section 2.8, the Association may give written notice thereof to the Owner and, if such Owner fails to clean up or maintain his/her Lot within thirty (30) days from the date such written notice is given, the Association may have that Owner's Lot cleaned up or maintained, with the expenses incurred by the Association in so doing to be levied against that Owner as an Extraordinary Assessment under Section 5.4 hereof, with the Association to have all attendant remedies including, but not limited to, Assessment Lien referred to in Sections 5.1 and 5.9 hereof.

2.12 Roofing Materials. Roofing materials shall consist of metal tile, asphalt or concrete derivative shingle, or other material as approved in writing by the Committee. Metal roof accents and flashings, vents, gutters, downspouts, wires or pipes must be matched to the roof or wall color and texture. No white, light color or highly reflective roofing, either because of color or material resulting in the possibility of glare into other residences in The Sanctuary will be permitted. (I have not to add term "to be used for multiuse purpose." In my notes, but I'm not sure where you wish me to place it.)

2.13 Animals. No animals, livestock, fowl, poultry or birds such as pigeons and chickens shall be kept on any portion of the property. No Lot shall have an accumulation of more than a total of four (4) domestic animals such as dogs and cats that may be kept as house pets. No structure or equipment for the care, confinement, feeding or housing of a permitted house pet(s) shall be maintained so as to be visible from neighboring property. Upon written request of any Owner, the Board shall determine, in its sole and absolute discretion, whether for the purposes of this Section an animal shall be regarded as a house pet and whether the animal(s) is (are) a nuisance. Noisy and aggressive pets, such as barking dogs, animals that an Owner has received a City of Flagstaff pet ordinance citation or which are considered bothersome to a majority of the Owners whose

Lots adjoin the Lot where the pets are kept, must be removed at the direction of the Board.

2.25 Advertising. No advertising signs, billboards or other unsightly objects shall be erected, placed or permitted to remain on any lot except for one "For Sale" or political election sign, with the size not to exceed twenty-four (24) inches by thirty (30) inches. All political signs shall be removed within 24 hour immediately following the election for which the advertisement is originally designed.

2.31 Business and Related Uses. No Lot shall ever be used, allowed or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, industrial, mercantile, retail, storage, vending, automotive repair, childcare center, assisted living facility, hospital, nursing facility, or other place for the care of treatment of the physically or mentally sick or disabled and/or any other similar uses or purposes. The foregoing restriction shall not prevent an Owner from conducting his or her personal affairs within the home and shall not be deemed to prevent an Owner from using his/her home for business purposes which (i) utilize a minimal portion, no more than 25% of the home and/or garage; (ii) do not result in shipping or receiving, except via USPS, UPS, FedEx or similar carriers, to or from the home; and (iii) do not otherwise violate City zoning laws regarding residential uses.

2.32 Out Buildings. Any Lot within the Project shall be allowed to have one (1) additional out building, storage or tool shed to be constructed in the same manner as the original residence to include matching exterior color and shall be no larger than a total of four hundred (400) square feet. At no time shall said out building, storage or tool shed be used for living or commercial use.

2.33 Common Area Purpose and Use. The Association shall be responsible for the maintenance of all Common Areas. Notwithstanding any provision in this Declaration, the Articles or Bylaws, the Board of Directors shall have the authority to decide the purpose and use of all Common Areas of the Association.

SECTION 3 ASSOCIATION

3.2 Membership and Voting Right. Every Owner of a Lot shall be a member of the Association. Such membership shall be appurtenant to and may not be separated from ownership of any Lot. There shall be two classes of membership:

Class A. Class A members shall be all Owners with the exception of the Declarant so long as the Declarant is a Class B member, and Class A Members shall be entitled to one (1) vote for each Lot Owned. When more than one (1) person or party holds an interest in any Lot, all such persons or parties shall be Members. The vote for any such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B. The Class B Member shall be the Declarant and the Declarant shall be entitled to four (4) votes for each Lot owned. The Class B membership shall cease when the Declarant no longer owns more than 25% or 4 Lots or at such an earlier date as the Declarant in its sole discretion shall determine.

Each Member shall have such other rights, duties and obligations as set forth in the Articles and Bylaws of the Association as they may be amended from time to time. The membership of each Owner shall be appurtenant to the Lot. The affairs of the Association shall be conducted by a Board of not less than three (3) nor more than five (5) Directors, who shall not receive any compensation from the Association for such duties with the assistance of such officers designated in the Articles and Bylaws. The term of office for each Director shall be 3 years without term limits and shall be staggered. So long as there is a Class B membership:

- a) The Board of Directors shall be appointed by the Declarant;
- b) The officers shall be appointed by the Board of Directors; and
- c) Persons other than owners may serve as officers and directors,

When the Class B membership ceases to exist, the officers and directors shall be elected or appointed as provided for in the Articles and Bylaws.

Notwithstanding any provision in this Declaration, the Articles or Bylaws, after termination of the period of Declarant control, votes allocated to a unit may not be cast pursuant to a proxy. The Association shall provide for votes to be cast in person and by absentee ballot and, in addition, the association may provide for voting by some other form of delivery, including the use of e-mail and fax delivery.

SECTION 4 ARCHITECTURAL COMMITTEE

4.1 Creation of the Architectural Committee. An Architectural Committee is hereby established and shall perform the functions set forth in this Declaration, Articles and Bylaws. The Committee shall be composed of at least three (3) members. None of such members shall be required to be an architect or to meet any other particular qualifications for membership or appointment. A member need not be, but may be, a member of the Board of Directors or an officer of the Association. The following persons are hereby designated as the initial members of the Architectural Committee:

Michael Fischenich
Paula Fischenich
Keith Crowther

Thirty (30) days following the sale of the seventieth (17th) Lot by the Declarant or at such an earlier date as the Declarant in its sole discretion shall determine, the Board of Directors or any other Class A Members shall be appointed as the Architectural Committee as so determined by the majority vote of the Members of the Association at a duly called meeting for this purpose. After the term of Declarant control has terminated, the Architectural Committee shall not have

more than one (1) member of the Board of Directors assigned to the committee at any given time.

SECTION 5 FUNDS AND ASSESSMENTS

5.1 Creation of the Lien and Personal Obligation of Assessments. Each Owner, other than the Declarant, is deemed to covenant and agree to promptly pay to the

Association all sums contemplated under this Declaration, including, without limitation, Annual Assessments, Extraordinary Assessments, Special Assessments and such other Assessments and expenses of the Association as may be incurred, fixed, established or collectable from time to time as provided for within this Declaration or within the Articles or Bylaws of the Association. The Assessments, together with interest, costs, late fees and reasonable attorneys' fees, shall be a charge on the land and a continuing lien ("Assessment Lien") upon the Lot or Lots against which each such Assessment is made and shall also be the personal obligation of the person or party who was the Owner of such Lot or Lots at the time when the Assessment fell due. No Lot shall be sold, transferred or conveyed by any Owner without all Assessments having been paid in full, whether or not an Assessment Lien has been filed or recorded.

5.3 Annual Assessments-Maximum Amounts

- a) Until the first meeting of the Association to determine the maximum Annual Assessment, the initial Annual Assessment for each Lot shall be conveyed by the Declarant to an Owner shall be \$400 whether such Lot is improved, developed or undeveloped. Such Annual Assessments shall be in addition to the other Assessments set by the Board of Directors.
- b) From and after January 1 of the year immediately following the first meeting of the Association to determine the maximum Annual Assessment, the Annual Assessment may be increased by Board of Directors at their sole discretion each year not more

than twenty percent (20%) or the maximum allowable increase provided for by Arizona Revised Statutes, whichever is greater, above the maximum Annual Assessment set for the previous year. Said maximum Annual Assessment may be increased above twenty percent (20%) by a two-thirds (2/3) vote of all the Class A and Class B Members, their proxies or absentee, at a meeting duly called for that purpose.

- c) The Annual Assessments provided for herein shall commence as to all Lots not owned by the Declarant on the first day of the month following the conveyance of the first Lot by the Declarant to an Owner. The maximum Annual Assessment shall be adjusted according to the number of months remaining in the calendar year and the Association shall, upon demand and for a reasonable charge, furnish a certificate signed by an officer of the Association stating that whether the assessments on a specified Lot have been paid. The Developer shall not be subject to any Annual Assessments until title to at least nine (9) have been conveyed by the Declarant to a third party.

5.9 Delinquency. Any Assessment provided for in this Declaration which is unpaid when due shall be delinquent. If any such Assessment is not paid within thirty (30) days after the delinquency date, a late charge of fifteen dollars (\$15.00) or 10% of the unpaid Assessment or The maximum limit allowed by Arizona Revised Statutes whichever is greater, shall be levied and in addition to the late charge, the Assessment shall bear interest from the date of delinquency until paid at a rate of eighteen percent (18%) per annum. The Association may, at its discretion, bring an action at law against an Owner personally obligated to pay the same and/or foreclosure the Assessment Lien against the owner's Lot or Lots in accordance with the then prevailing law of the State of Arizona relating to the judicial or non-judicial foreclosure of mortgage or deed of trust liens (however the Board of Directors shall decide) upon real property. If an action is commenced, there shall be added to the amount of such Assessment the late charge, interest,

expenses incurred in connection with collection of the debt secured by the Assessment Lien, the costs of preparing and filing the Complaint and such judgment shall include said late charge, interest, collection costs, reasonable attorney's fees and the cost of action. Each Owner vests in the Association, or its agents, the right and power to bring all actions at law or equity against such Owner for collection of such delinquent Assessments.

5.11 Nonrefundable Reserve Fund Deposit. To insure that the Association shall have adequate funds to meet its expenses, each initial Purchaser of a Lot from the Declarant shall pay to the Association, immediately upon becoming a Lot Owner, the sum \$1000. All additional Purchaser of a Lot after the initial sale shall pay the Association the sum of \$500. Such amounts shall be a nonrefundable deposit to the Association Reserve Fund and shall not be considered as an advance payment of any Assessment levied by the Association pursuant to this Declaration.

5.12 Books and Records.

All financial books, papers and other records of the Association shall be made reasonably available for examination by any member or any person designated by the member in writing as the member's representative. The Association shall have ten business days to fulfill a request for examination and shall not charge a member or any person designated by the member in writing for making material available for review.

Books and records kept by or on behalf of the Association and the board may be withheld from disclosure to the extent that the portion withheld relates to any of the following:

- (a) Privileged communication between an attorney for the association and the association.
- (b) Pending litigation.
- (c) Meeting minutes or other records of an executive session of a board meeting that is not required to be open to all members pursuant to A.R.S. section 33-1804.
- (d) Personal, health or financial records of an individual member of the Association, including records of the Association directly related to the personal, health or financial information about an individual member of the association.

(e) Personal, health or financial records of an individual employee of the association or an individual employee of a contractor for the Association, including records of the Association directly related to the personal, health or financial information about an individual employee of the Association or an individual employee of a contractor for the Association.

(f) Records relating to the job compensation of, performance of, health records of or specific complaints against an individual employee of the Association or an individual employee of a contractor of the Association who works under the direction of the Association.

The Association shall not be required to disclose financial records, books, papers and other records of the Association if disclosure would violate any state or federal law.

SECTION 6 GENERAL PROVISIONS

6.1 Enforcement

6.1.1 These covenants, conditions, reservations, easements, charges and restrictions may be enforced by the Declarant and/or the Association and/or any owner of any Lot and any violation thereof may be restrained or enforced by any court of competent jurisdiction and/or damages may be awarded against any such violator. Nothing herein shall be construed as meaning that damages are an adequate remedy where equitable relief is sought. In the event any such person or party employs an attorney or attorneys to enforce the compliance with or specific performance of the terms and conditions of this Declaration and prevails in such an action, the owner or owners against whom the action is brought shall pay all attorney's fees and costs incurred in connection with such action.

6.1.2 The Association may impose sanctions for violations of this Declaration, the Bylaws or Association Rules, including reasonable monetary fines and suspension of the right to vote and to use any recreational facilities within the Common Areas. If the law requires an opportunity to have the matter heard

by the Board before the fine or penalty, then the Association shall offer an Owner hearing the remedies set forth in this Declaration shall cumulative of any remedies available at law or in equity.

6.1.3 The Association shall not be obligated to take action to enforce any covenants, restriction or rule that the Board reasonably determines is or is likely to be construed as inconsistent with applicable law or in any case is which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement actions. Any such determination shall not be construed as a waiver of the right to enforce such provision under other circumstances or estop the Association from enforcing any other covenant, restriction or rule.

6.8 Implied Rights: Board Authority. The Association may exercise any right of privilege given to it expressly by this Declaration or the Bylaws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the Bylaws and the Articles or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership. The Board of Directors decision shall be final and binding on the membership except where prohibited by the laws of the State of Arizona.

6.9 Amendment to Declaration. Amendments to this Declaration shall be made by an instrument in writing which sets forth the entire amendment. Except as otherwise specifically provided for in this Declaration, any proposed amendment must be approved by two-thirds ($2/3^{\text{rd}}$) percent or no less than fourteen (14) members at a Special meeting of the entire Association called for such a purpose. Amendments shall be presented to the membership in writing provide voting as required by Arizona Revised Statutes. In all events, the amendment when adopted shall bear the signature of the President who shall state that the amendment was properly adopted and shall be promptly recorded with the Coconino County Recorder office. Amendments shall not be in effect until the instrument has been properly passed and duly recorded.

6.10 Term. The limits of this Declaration, including Amendments, shall run for a term of ten (10) years commencing on the date final transition from Declarant to the Membership. The term limits shall automatically renew on the same date every consecutive ten (10) years thereafter.

Except as set forth above, the Declaration as previously executed and recorded, remains in full force and effect.

EXECUTED as of the Amendment Date:

SANCTUARY AT LAKE MARY LLC., an
Arizona Limited Liability Company


By: [Signature]
Michael Fischenich, Its Managing Member

STATE OF ARIZONA)
) ss
County of Coconino)

The foregoing instrument was sworn to and subscribed before me, the undersigned Notary Public, this 18 day of August, 2014, by Michael Fischenich, who executed this instrument as the Managing Member of and on behalf the Sanctuary at Lake Mary LLC, an Arizona Limited Liability Company, being authorized to do so as Manager of the company for the purposes therein contained.

[Signature]
Notary Public

My Commission Expires: 8-11-2017

 **JOHN R. KUBAN**
Notary Public - State of Arizona
COCONINO COUNTY
My Commission Expires
August 11, 2017