

**AMENDED, MERGED AND RESTATED DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS (AMRDCCR)  
CANYON LAKES VILLAS, I, II, AND III**

This AMENDED, MERGED AND RESTATED DECLARATION, when approved and recorded, is intended to and does hereby merge, amend, restate in part, and supersede and replace, in their entirety, those instruments previously recorded as follows: Canyon Lakes Villas CC&R's Recorded December 11, 1987, Benton County Washington Auditor's File No. 87-19098 (Vol. 498 Pgs. 695-740+); Canyon Lakes Villas CC&R's Recorded November 13, 1989, Benton County Washington Auditor's File No. 89-16751 (Vol. 524 Pgs. 604-649); and Canyon Lakes Villas -Phase III CC&R's Recorded October 7, 1991, Benton County Washington Auditor's No. 91-18351 ( Vol. 549 Pgs. 3251-3272)

**INTRODUCTION**

THIS AMENDED, MERGED AND RESTATED DECLARATION is made by the undersigned duly elected directors of Canyon Lakes Villas Homeowners' Association, a Washington Nonprofit Corporation formed pursuant to RCW Chapter 24.03 (Articles filed May 12, 1994), and managed by said statute, RCW 64.38, the Association By Laws, the former, and now, these amended, merged and restated covenants, conditions and restrictions. The purpose of the AMRDCCR is to enhance and protect the value, attractiveness and desirability of the Canyon Lakes Villas.

**RECITALS**

This Amended, Merged and Restated Declaration is created to benefit the Community of Canyon Lakes Villas, Phase I, II and III (as defined hereinafter), and to establish covenants, conditions, restrictions and other provisions regarding the use and operation of such community and all of the property contained therein and to provide an organization to carry out and enforce such covenants, conditions, restrictions and other provisions. **These Amended, Merged and Restated Covenants, Conditions and Restrictions for Canyon Lakes Villas I, II, and III, as described above and in Section 1.9 below, including all Exhibits thereto and incorporated therein, are intended to be and are hereby declared to be APPURTENANT TO AND RUN WITH SAID LANDS, binding on all current and subsequent Unit Owners, their heirs, successors, assigns, and transferees.**

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## SECTION 1.

1. **Definitions.** When used herein the following terms shall have the following meaning.

1.1. "Association" shall mean the Canyon Lakes Villas Homeowners Association, a Washington Non Profit Corporation organized pursuant to the provisions of Section 9.

1.2. "Board" shall mean the Board of Directors of the Canyon Lakes Villas Homeowners' Association.

1.3. "Common Area" shall mean any area which is designated as such or as "open space" in this Amended, Merged and Restated Declaration or any applicable Supplemental Declaration or in the plat of any portion of the Property.

1.4. "Community" shall mean the Unit Owner(s)/Member(s).

1.5. "Email" shall mean the proper form of electronic transmission for formal (Notice and voting) purposes. Texting is Not.

1.6. "Private Area" shall mean any area for private residential use which is designated as such in this Amended, Merged and Restated Declaration, any applicable Supplemental Declaration or any plat of the Property or any portion thereof.

1.7. "Private Recreational Area" shall mean any portion of a Common Area which is titled in the Association which holds the same as Trustee for the Unit Owners for recreational purposes as provided hereinafter.

1.8. "Private Way" shall mean any area which is designated Private, except Private Areas as defined in 1.6 above, in this Amended, Merged and Restated Declaration, or any Supplemental Declaration or in any plat of the Property or any portion thereof.

1.9. "Property" shall mean the following described parcels of real property, according to the plats thereof as recorded with the office of the Benton County Auditor:

1.9.1. Canyon Lakes Villas per Plat Alteration of Canyon Lakes Villas, according to the Plat thereof recorded in Volume 14 of Plats, Page 78, records of Benton County, Washington.

1.9.2. Canyon Lakes Villas Phase Two, according to the Plat thereof recorded in Volume 14 of Plats, Page 86, records of Benton County, Washington.

1.9.3. Canyon Lakes Villas Phase Three, according to the Plat thereof recorded in Volume 14 of Plats, Page 107, records of Benton County, Washington.

1.10. "Resident" shall mean any person who is a Unit Owner, together with Members of his or her immediate or multigenerational family, provided that a person shall be a "Resident" only during periods in which he or she is occupying his or her Unit on a permanent basis.

1.11. "Multigenerational Families" shall mean those consisting only of no more than four generations living under the same roof. Multigenerational families shall consist of the owners, the owner's children, the owner's grandchildren, owner's parents or stepparents, and a deceased spouse's parents or stepparents.

1.12. "Rules and Regulations" shall mean the rules, regulations and restrictions promulgated by the Board pursuant to Section 6 of this Amended, Merged and Restated Declaration.

1.13. "Supplemental Declaration" shall mean any instrument intended to create additional rights or responsibilities by subjecting real property to the provisions of this Amended, Merged and Restated Declaration. No Supplemental Declaration shall be valid until it has been approved in writing by the Board.

1.14. "Unit" shall mean each residential lot (and improvement thereon) described in any plat. If, in any case, a Unit Owner shall have consolidated a lot or portion thereof with another lot in the manner set forth herein, or owns another unit, then subject to the provisions hereof, the area consolidated or commonly owned (by the same parties in title) shall be considered one Unit for non-fiscal voting purposes, but not aggregated for actual assessment imposition.

1.15. "Unit Owner" or "Member" shall mean the person or persons who hold legal title to any Unit. A contract purchaser shall constitute a Unit Owner.

1.16. "Villas Architectural Review Committee (VARC)" shall mean the committee appointed pursuant to the provisions of Section 8.

## **SECTION 2**

### **2. Subjection of Property to the Provisions of this Amended, Merged and Restated Declaration.**

2.1. All of the Property above described is hereby subjected to the covenants, conditions, restrictions and other provisions of this Amended, Merged and Restated Declaration.

### **SECTION 3**

#### **RESERVED**

### **SECTION 4**

#### **4. Land Classification and Uses within the Property**

4.1. Classifications Presently Contemplated. Land classifications presently contemplated within the Property and other areas to be hereafter subjected to the provisions of this Amended, Merged and Restated Declaration are Private Areas, Common Areas, Private Ways, and Private Recreational Areas. The Association shall hold and retain title to Common Areas, Private Ways and Private Recreational Areas, as Trustee for the Members, subject, however, to the right of Members and others to use such areas as herein provided.

4.2. Private Areas. All numbered lots, as shown on the plats of the real property identified in Section 1.8 or a hereafter platted, shall be classified as Private Areas. All Private Areas within the Property shall be used only for construction of non-multiplex single family residential dwellings. Rules, regulations and restrictions governing the use of Private Areas shall be adopted as set forth in Section 6 of this Amended, Merged and Restated Declaration. There shall be no outbuilding, shack, trailer, shed, tent or temporary outbuilding of any kind kept on a lot. No basement shall be used as an independent residence, and no garage shall be used as a residence, either temporarily or permanently.

4.2.1. Any commercial, retail, manufacturing, rental or business uses or temporary structures are prohibited.

4.3. Common Areas. Subject to the provisions hereof, each Resident is hereby granted a nonexclusive easement to use the Common Areas for such recreational purposes or other purposes and in such manner as may be permitted by the Rules and Regulations. Each Resident may permit his or her guests to use Common Areas for such purposes and in such manner. Common Areas shall not be platted or otherwise divided into parcels for residential use. The Association may develop special recreational or other facilities on portions of the Common Areas for the general use and benefit of all Residents and their guests. The Board may from time to time permit Residents to use designated portions of Common Areas for recreational or other uses of benefit to such Residents only, e.g., maintaining a volleyball or badminton court, provided that such permission shall be revocable at any time. The easement and rights herein granted shall be appurtenant and assignable with the Unit with respect to which it is granted, but shall not otherwise be assignable. The Board may dedicate Common Areas to the public for

park purposes, and may use Common Areas for the purpose of location of utilities or other common services thereon or thereunder. The Board may bar any Unit Owner, Members of his or her family, his or her guests from using Common Areas during periods in which the Unit Owner's assessments or fines are delinquent.

4.4.Private Ways. Each Resident is hereby granted a nonexclusive easement to use all Private Ways for the purposes of walking thereon or traveling thereon by appropriate authorized means. Each Resident may permit his or her guests and invitees to use the Private Ways for such purposes. The easement herein granted shall be appurtenant to and assignable with the Unit with respect to which it is granted, but shall not otherwise be assignable. Use of Private Ways shall be subject to the Community Rules and Regulations and any rules in an applicable recorded Supplemental Declaration, to the extent that the rules contained in a Supplemental Declaration are not in conflict with or not inconsistent with this Amended, Merged and Restated Declaration or the Community Rules and Regulations. The Board, in its discretion, may dedicate Private Ways to the public. The Board also may grant free access on Private Ways to police, fire and other public officials, to employees of utility companies serving the Property and to such other persons to whom the Board believes access should be given for the benefit of Residents. Utilities may be located upon or under Private Ways. Granting the right to use Private Ways is not intended to dedicate Private Ways to the public; but rather, the grant of a right to use a Private Way is intended to preserve the private character of such ways. The Board shall be deemed to have dedicated such ways to the public only if it shall file in the records of Benton County, Washington, an instrument clearly evidencing its intention to dedicate such ways to the public and after approval of fifty-one percent (51%) of the Members.

4.5.Private Recreational Areas. Tract D of the Plat of Canyon Lakes Villas Phase Three, further described in Section 1.9 above, is a Private Recreational Area, developed as a swimming pool and general use Club House. The use of the same is restricted to the Unit Owners/Members, their accompanying guests and invitees. Said use is subject to rules, regulations, terms, fees and conditions as promulgated and approved by the Board in its sole discretion. The maintenance, repair, management and improvement costs and expenses of said Area are to be provided as part of the annual budget and regular or special assessments.

4.6.General Restrictions. Restrictions regarding the use of Common Areas, Private Ways, Private Recreational Areas and any other areas open to Residents, Unit Owners/Members, invitees or the general public shall be set forth in the Community Rules and Regulations. Residents must receive the written permission of the Board prior to erecting any improvement upon or under any Common Area.

## **SECTION 5**

### **5. Consolidation of Lots within Private Areas**

5.1.If a Unit Owner owns all of a Private Area lot restricted to single family residential use (the basic lot), together with one or more such lots whether full or partial, contiguous or not, such ownership and area shall be deemed consolidated. The consolidation provided for in this section shall have the following effects:

5.1.1.The consolidated ownership and area shall constitute one Lot, one Unit, and entitled to one vote for non-fiscal assessment voting purposes under this Amended, Merged and Restated Declaration. There shall be no change in the manner of payment of assessments or liability for regular or special assessments per lot or consolidated portion. For actual assessment imposition purposes consolidation is ignored and Lot/Owner shall have one vote per Lot/Unit.

5.1.2.No residence or other structure may be placed upon the remainder of a lot, a portion of which has been consolidated with another lot but which remainder has not been consolidated with another lot, unless the area of such remainder constitutes at least 95 percent of the original area of the lot.

5.1.3.Areas which have consolidated as provided above or have been formerly consolidated with Benton County Authorities may not in the future be partitioned without the consent of the Board.

## **SECTION 6**

### **6. Community Rules and Regulations**

6.1.RuleMaking Generally. In the exercise of its powers and in the performance of its obligations pursuant to this Amended, Merged and Restated Declaration, or any applicable Supplemental Declaration, the Board may adopt, amend or repeal rules, regulations restrictions and fines to be known as the "Community Rules and Regulations" to provide for the manner of use for Private Areas, Common Areas, Private Ways, Private Recreational Areas, and any other areas which Residents or members of the general public are entitled to use.

6.2.Rule Making for Private Areas. The Board's authority to make and enforce rules, regulations or restrictions and establish and enforce fines regarding Private Areas shall be limited to reasonable rules, regulations or restrictions regarding the following:

6.2.1.Limiting the nature of the use permitted to single family residential or multigenerational residential.

6.2.2.Prohibiting any commercial, retail, manufacturing, rental or business uses or temporary structures.

6.2.3.Establishing standards of maintenance and upkeep of lots, including but not limited to controlling vegetation, rubbish and unsightly or unsanitary conditions.

6.2.4.Preventing and remedying any dangerous or obnoxious conditions, nuisances and other conduct that interferes with the quiet enjoyment of other Residents or of Canyon Lakes Villas (I, II, &III) as a whole, including but not limited to discharge of firearms, open burning, offroad use of vehicles and motorized transport and excessive noises.

6.2.5.Limiting the number, nature and manner of signs.

6.2.6.Regulating and limiting the use of Private Ways, including roads and streets, sidewalks, parking and storage.

6.2.7.Restricting and regulating the possession and use of animals.

6.2.8.Establishing time limits on the completion of improvements upon a lot.

6.3.Administration of Rules. All rules, regulations and restrictions must be applicable on a nondiscriminatory basis. However, provisions uniformly applicable to a class of persons, such as children of particular ages, will not be deemed discriminatory. The Community Rules and Regulations shall be interpreted and applied in a manner consistent with applicable city, county, state and federal law.

6.3.1.A copy of current Community rules and Regulations, as now exist or as may be hereinafter adopted or amended, and any and all exhibits thereto, are hereby incorporated herein by this reference as if fully set forth. A copy shall be kept at the Association's principal office and available to Members upon request to the Board. The Community Rules and Regulations shall have the same force and effect as if set forth herein as part of this Amended, Merged and Restated Declaration.

6.3.2.Repeal by Unit Owners. Any rule, regulation, restriction or fine enacted by the Board may be amended, modified or repealed by a vote of the Fifty-One Percent (51%) of the Members at any meeting of Members of the Association pursuant to the procedures set forth in the bylaws of the Association (the "bylaws") for meetings and Member voting.



## **SECTION 7**

### **7. Assessments**

7.1.Imposition of Regular Assessments. The Board shall have the right to impose a regular annual assessment against each Unit Owner in an amount to be determined by the Board each year. The Board may increase the regular annual assessment by not more than ten percent (10%) annually. Otherwise the regular annual assessment shall be increased only pursuant to the provisions of paragraph 7.4. The regular annual assessments shall be applied uniformly to all Units. On or before November 30 of each year, the Board shall fix the amount of the regular annual assessment to be imposed during the ensuing year. The Unit Owners shall be notified of the proposed regular annual assessment prior to December 31 of the same year.

7.2.Payment of Regular Annual Assessments. All regular annual assessments shall be paid no later than April 1 each year. After April 1, the regular annual assessment, together with a late charge equal to twenty-five percent (25%) of the regular annual assessment, shall bear interest at the rate of twelve percent (12%) per annum. After April 1, any unpaid regular annual assessments shall automatically constitute a lien upon the Unit for which the assessment is to be paid, and a written confirmation of lien may be duly recorded. An additional assessment of twenty-five dollars (\$25.00) shall be imposed against any such Unit, along with the recording costs and any legal fees associated with the recording of such lien.

### **7.3.RESERVED**

7.4.Increase in Maximum Amount of Regular Annual Assessment with Consent of Unit Owners. In the event the Board shall deem the assessment fund to be inadequate for the purposes for which it is to be maintained, taking into account the need for reasonable reserves for special purposes, the regular annual assessment may be increased over the amounts provided for in paragraph 7.1; provided, that such increase in the regular annual assessment is approved by a vote of fifty-one percent (51%) of the Members at any meeting of Members of the Association pursuant to the procedures set forth in the by-laws for meetings and Member voting.

7.5.Special Purpose Assessments. In the event the Board deems it to be to the advantage of the Residents to impose a special purpose assessment to provide funds for a particular recreational facility, enforcement of rules or regulations including fines, or landscaping improvements to the Common Areas, it may impose such a special assessment, provided that the amount of the assessment and the terms upon which it will be imposed have been approved by a vote of fifty-one percent (51%) of the Members at any meeting of Members of the Association pursuant to the procedures set forth in the by-laws for meetings and Member voting. All special

assessments shall be applied uniformly to all Units. In the event that such an assessment is imposed, the Board shall add the monies derived therefrom to the assessment fund, but shall keep the same in a special account and shall use the same only for the purposes set forth in the instrument by which the Unit Owners consented to the special assessment.

7.6. Use of Assessment Funds. The Board shall keep the monies which it may collect from assessments, together with all other monies which it is required to add to the assessment funds pursuant to the provisions hereof or of any applicable Supplemental Declaration, in a separate fund to be called the "assessment fund" and shall use the monies in the assessment fund only for the purposes set forth below. The Canyon Lakes Property Owners Association (CLPOA) may also have a duty and responsibility to provide for items below, (EXCLUSIVE of the Private Recreational Facility Section 4.5 above) from its assessments, to which the Canyon Lakes Villas (I, II&III) Unit Owners/Members currently participate. In the event of a withdrawal, divorce, separation, or secession of the Canyon Lakes Villas (I, II&III) from the Greater Canyon Lakes Community and CPLOA, or the refusal of the CPLOA to provide for same, the Canyon Lakes Villas assessment fund shall be used only for the following purposes:

7.6.1. Payment of the costs of maintaining and developing (i) Common Areas, (ii) Private Ways (including streetlights, entrances, mailboxes, paper receptacles and signs) and (iii) special recreational and other facilities on Common Areas which are available for use by all Residents.

7.6.2. Payment of taxes and assessments levied against Common Areas, Private Ways and the improvements thereon.

7.6.3. Payment of the costs of providing patrol services, fire prevention and control services and garbage and trash disposal, if provided by the Association.

7.6.4. Payment of the costs of insurance, including insurance protecting the Board, the Villas Architectural Review Committee, the Association and any of its officers, directors, employees or agents against liability arising out of their function and activities in the administration of the provisions of this Amended, Merged and Restated Declaration or any Supplemental Declaration.

7.6.5. Payment of the costs of enforcing the provisions contained in this Amended, Merged and Restated Declaration, any Supplemental Declaration, the Community Rules and Regulations and the Villas Architectural Review Committee Rules.

7.6.6. Payment of the reasonable expenses and fees of the Villas Architectural Review Committee.

7.6.7. Payment of other services which the Board deems to be of general benefit to Unit Owners/Members.

7.6.8. Payment of the costs incurred in collecting assessments. Payment of the expenses incurred in organizing or reorganizing the Association and of maintaining the same as a corporation.

7.6.9. Payment of any expense reasonably incurred by the Board in carrying out any function for which it has been given responsibility hereunder, including but not limited to court costs and attorney fees.

7.7. Annual Accounting. RESERVED

7.8. Joint and Several Liability. If a Unit Owner comprises more than one person, each shall be jointly and severally liable for any assessment, charge, fee, fine or cost.

7.9. Default in Payment of Assessments, Fines, Charges, and Liens. Each assessment, fine or charge levied or imposed pursuant to this Amended, Merged and Restated Declaration or any applicable Supplemental Declaration, together with interest thereon, shall be a separate, distinct and personal debt and obligation of the Unit Owner(s) against whom the assessment, lien or charge is levied or imposed. If the Unit Owner fails to pay any such assessment fine or charge or any installment thereof when due, the Unit Owner shall be in default and the assessment, fine or charge not paid, together with interest, costs and attorney fees as elsewhere provided for herein, shall automatically become a lien upon the Unit or Units owned by the person from whom the assessment or charge is due. As set forth in Section 7.2 above, the Association may confirm the lien by filing in the records of Benton County, Washington a notice of lien setting forth a description of the Unit or Units against which the lien is imposed. Such lien shall be subordinate to any lien of any mortgage upon any Unit which is accepted in good faith and for value and which was recorded prior to the filing of the notice of lien. The Association may commence a proceeding to foreclose the lien in the same form of action as is then provided for the foreclosure of a mortgage on real property by Washington law. The Association may also foreclose the lien in a non-judicial proceeding pursuant to the deed of trust foreclosure law as is then provided in Washington law. The Association may also enforce or foreclose the lien in any other manner permitted by Washington law for the enforcement or foreclosure of liens against real property or the sale of property subject to such lien. Upon the sale of a Unit pursuant to this provision, the purchaser thereof shall be entitled to a deed to the Unit and to

immediate possession thereof, and said purchaser may apply to a court of competent jurisdiction for a writ of restitution or other relief for the purpose of acquiring such possession. The proceeds of any such sale shall be applied as provided by applicable law. In the absence of any such law, the proceeds shall first be applied to discharge the costs of the sale, including but not limited to court costs, other litigation costs, costs and attorney fees incurred by the Association, all other expenses of the proceedings, interest, late charges, unpaid assessments and other amounts due to the Association, and the balance of the sale proceeds shall be paid to the Unit Owner. The Association shall have the power to bid for the Unit at any sale and to acquire and hold, lease, mortgage or convey the Unit. Notwithstanding any foreclosure or the lien or sale of the Unit, any assessment, fine and other amounts due after application of any sale proceeds shall continue to exist as personal obligations of the defaulting Unit Owner or Unit Owners to the Association.

## **SECTION 8**

### **8. Villas Architectural Review Committee (VARC)**

8.1.Function of Villas Architectural Review Committee. The Villas Architectural Review Committee (VARC or the "Committee") shall exercise the functions for which it is given responsibility in this Amended, Merged and Restated Declaration. The Committee will be responsible for the approval of plans and specifications for the development of Private Areas and for the promulgation and enforcement of its related rules and regulations. All such rules and regulations of the Committee shall be deemed to constitute part of the Community Rules and Regulations; provided, that such rules and regulations are first approved by the Board.

8.2.Members. The Committee shall consist of at least three Members who shall be appointed by the Board to three (3) year terms. The Board shall determine the total number of Members to be appointed to the Committee. Members of the Committee may be removed and replaced at any time by the Board. The Board shall keep on file at its principal office a list of the names and addresses of the Members of the Committee.

8.3.Action. Except as otherwise provided herein, any two (2) Members of the Committee shall have the power to act on behalf of the Committee without the necessity of a meeting and without the necessity of consulting the remaining Member of the Committee; provided, however, that if the Committee has more than three Members, then any number of Committee Members constituting a two-thirds (2/3) majority of the membership of the Committee shall have the power to act on behalf of the Committee without the necessity of a meeting and without the necessity of consulting the remaining Member(s) of the Committee. The

Committee may render its decisions only by written instrument setting forth the action taken by the Members consenting thereto.

8.4.Failure to Act. If at any time the Committee shall for any reason fail to function, the Board shall have complete authority to serve as a pro tem Villas Architectural Review Committee.

8.5.Duties and Rules. No person shall construct or reconstruct any improvement on any Unit, which effects, alters, or refinishes the exterior of any improvement on any Unit, or makes any change to the exterior of any Unit, whether by excavation, fill, alteration of existing drainage, the planting, cutting or removal of vegetation, or trees, or the installation of a utility, outside antenna, or other outside wire on a Unit unless such person has first obtained the approval of the Committee. The Committee shall consider and act upon all matters properly submitted to it pursuant to this Amended, Merged and Restated Declaration or any applicable Supplemental Declaration. In furtherance of these functions of the Committee, the Board may from time to time adopt, amend, and repeal rules and regulations to be known as the "Villas Architectural Review Committee Rules" establishing the Committee's operating procedures and interpreting, detailing and implementing the provisions of the instruments to which it is charged with responsibility. The Board may establish a reasonable fee to be paid to cover the costs incurred by the Villas Architectural Review Committee in considering and acting upon matters submitted to it. Such fees shall be paid into the Villas Architectural Review Committee fund. A current copy of the Villas Architectural Review Committee Rules shall be kept on file at the principal office of the Association at all times. Such rules and regulations have the same force and effect as if fully set forth herein as part of this Amended, Merged and Restated Declaration, and are hereby incorporated by this reference. Internal projects, improvements, or remodeling which do not effect the exterior are **NOT** subject to this section.

8.6.Non-Waiver. Consent by the Committee to any matter proposed to it or within its jurisdiction shall not be deemed to constitute a precedent or waiver impairing its right to withhold approval as to any similar matter thereafter proposed or submitted to it for consent.

8.7.Estoppel Certificate. Within thirty (30) days after written demand therefor by a Unit Owner, the Committee shall execute and deliver to the Unit Owner requesting the same an estoppel certificate certifying with respect to the Unit of such Unit Owner that, if true, as of the date of the certificate, either

8.7.1. all improvements and other work within such Unit comply with the provisions of this Amended, Merged and Restated Declaration and any applicable Supplemental Declaration and with all restrictions, rules and regulations adopted in or pursuant thereto, or

8.7.2. that such improvements and work do not so comply for reasons specified in the certificate. Any purchaser or mortgagee of a Unit may rely on such certificate with respect to the matters set forth therein, such matters being conclusive against the Board and all Unit Owners.

8.8.Liabilities. Neither the Committee nor any Member thereof shall be liable to any Unit Owner or the Board, or to any other party, as a result of any certificate furnished pursuant to Section 8.7 above, for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a Member thereof, provided only that the Member has acted in good faith. In the event that any person alleges that the Committee or any Member thereof is liable for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Committee or a Member thereof, the Association shall indemnify and hold harmless any such Committee Member, including but not limited to the payment of associated court costs, attorney fees and other legal fees, provided that such Committee Member has acted in good faith.

## **SECTION 9**

### **9. The Association**

9.1.Organization of the Association. The Association shall be organized as provided herein to represent all Unit Owners. The Association has been incorporated under the Non-Profit Corporations Act of the State of Washington, RCW 24.03, as now enacted or hereafter amended. The Association shall have articles of incorporation (the "articles") and by-laws as provided in RCW 24.03.and 64.38

9.2.Duties of the Association. The Association shall be charged with the duties and invested with the powers prescribed by law and set forth in the articles, by laws and this Amended, Merged and Restated Declaration. Neither the articles nor by-laws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Amended, Merged and Restated Declaration.

9.3.Membership. Each Unit Owner, by virtue of being a Unit Owner and for so long as such ownership is maintained, shall be a Member of the Association, and no Unit Owner shall have more than one membership in the Association, except as hereinafter set forth with respect to voting. Memberships in the Association shall not be assignable, except to the successor in interest of the Unit Owner, and all memberships in the Association shall be appurtenant to the Unit owned by such Unit Owner. The memberships in the Association shall not be transferred, pledged or alienated in any way except upon the transfer of title to a Unit and then only to the

transferee of title to the Unit. Any attempt to make a prohibited membership transfer shall be void and will not be reflected on the books of the Association.

9.4.Voting. All voting power shall be exercised by the Members of the Association in accordance with the duly adopted by-laws of the Association. Each Unit Owner shall have one vote for each Unit owned unless otherwise stipulated in 5.1.1.

9.5.Board and Officers. The affairs of the Association shall be conducted by a Board and such officers as the directors may elect or appoint, in accordance with the articles of incorporation or the by-laws, which may be amended from time to time as provided therein.

9.6.Powers of the Board. The powers of the Association shall be exercised by and through the Board. In addition to such other powers as shall be given to or imposed upon the Board by this Amended, Merged and Restated Declaration or by any applicable Supplemental Declaration, the Board shall have the power to carry out the following:

9.6.1.Maintenance of all Common Areas, Private Ways, Private Recreational Areas and the improvements thereon.

9.6.2.Construction of such improvements on or under the Common Areas, Private Ways and Private Recreational Areas as it deems will be of benefit to the Residents and their guests in accordance with any rules and regulations.

9.6.3.Enforcement of all covenants, conditions, restrictions and other provisions contained in this Amended, Merged and Restated Declaration or in any Supplemental Declaration, as now enacted or hereafter amended.

9.6.4.Promulgation of the Community Rules and Regulations, including the Villas Architectural Rules and Regulations and Committee Rules and Regulations, and the enforcement of the same and the decisions of the Villas Architectural Review Committee.

9.6.5.Payment of all ad valorem taxes and assessments on any of the Common Areas, Private Ways and Private Recreational Areas within the Property.

9.6.6.Provision of such services to Unit Owners/Members as it shall deem to be of benefit.

9.6.7.Procuring and maintaining insurance on all improvements constructed on the Common Areas, Private Ways and Private Recreational Areas.

9.6.8.Collection of assessments and penalties.

9.6.9. Fixing of fees for use of recreational and service facilities within the Common Areas and for the collection thereof. All such fees shall be paid into the assessment fund.

9.6.10. Borrowing of money on behalf of the Association and in connection therewith, the granting of mortgages, deeds of trust or other security interests with respect to land owned by it and improvements thereon, said borrowing only with consent of fifty-one percent (51%) of Unit Owners/Members entitled to vote.

9.6.11. Granting of easements along Private Ways of the Property owned by the Association to owners, occupants and invitees of owners, whether or not subject to this Amended, Merged and Restated Declaration.

9.6.12. Entering into maintenance agreements providing for contribution to the cost of maintenance of the entrances to the Property and Private Ways and related improvements which are subject to easements granted by the Board.

9.6.13. The Board shall have such further powers as permitted or allowed in RCW 24.03 and 64.38, as now enacted or hereafter amended.

9.7. Limitation of Liability. The Board shall not be liable for failure to carry out any power enumerated in Section 9.2 or 9.6 herein or elsewhere in this Amended, Merged and Restated Declaration or in any applicable Supplemental Declaration in cases in which there are not sufficient monies in the assessment fund to enable it to carry out its power. The Board shall have sole power to plan for which authorized purposes monies in the assessment fund shall be spent and in what priority, including the power to determine how much shall be held in reserve. Neither the Board, nor the Association, nor any director shall be liable to any Unit Owner on account of any action or failure to act of the Board, provided only that actions are in good faith. In the event that any Unit Owner or other person alleges that the Association, the Board or any director, officer, employee or agent of the Association is liable for any damage, loss or prejudice suffered or claimed on account of any action or failure to act of the Association, the Board, or any director, officer, employee or agent of thereof, the Association shall indemnify and hold harmless any such director, officer, employee or agent, including but not limited to the payment of associated court costs, attorney fees and other legal fees, provided that such director, officer, employee or agent has acted in good faith.

9.8. Annual Meeting of Association Members. The Association shall hold an annual meeting as set forth in the by-laws of the Association.



## **SECTION 10**

### **10. Reserved**

## **SECTION 11**

### **11. Enforcement**

11.1.General Provisions. The Board, the Association and any Unit Owner shall have the concurrent right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Amended, Merged and Restated Declaration or any applicable Supplemental Declaration. Failure by any such person to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

11.2.Violation of This Amended, Merged and Restated Declaration or Supplemental Declaration by Non-Qualifying Improvement. In the event any Unit Owner constructs or permits to be constructed on his or her Unit an improvement contrary to the provisions of this Amended, Merged and Restated Declaration or any applicable Supplemental Declaration or in the event that a Unit Owner maintains or permits any improvement, condition or thing on his or her Unit contrary to the provisions of this Amended, Merged and Restated Declaration or any Supplemental Declaration, the Board, through its designated representative, may no sooner than thirty (30) days after delivery to such Unit Owner of written notice of the violation enter upon the offending Unit and remove the cause of such violation, or alter, repair or change the item which is in violation of such Declaration in such manner as to make it conform thereto. The Board may charge such Unit Owner for the entire cost of the work done by it pursuant to this provision. Such amounts shall become payable upon delivery by the Board to the Unit Owner of notice of the amount due, and shall be paid into the assessment fund to the extent that the costs being reimbursed were paid out of the assessment fund.

11.3.Entry Invitation. A representative of the Board or any Member of the Villas Architectural Review Committee authorized by the Board may request an appointment with an owner of a unit for the purpose of inspection to determine if that unit is in compliance with the provisions of Sections 6.2.1 or 6.2.2 of this AMRDCCR, any rule regulation pursuant thereto, or any applicable Supplemental Declaration and/or the VARC Organization, Overview and Guidelines (VARCOOG), primarily pre and post project inspection.

11.3.1. The Board or VARC representative's request shall clearly state the inspection purpose, with specificity, and the applicable compliance provisions, rules or regulations. The entry invitation shall not be unreasonably withheld or denied and will take place at a date and time agreed to by the Unit Owner and/or occupant and the representative.

11.3.2. No such consensual entry shall be deemed to constitute a trespass or otherwise create any right of action by the Unit Owner or occupant of such unit..

11.4. Interest. Any amount not paid to the Board when due in accordance with the provisions of this Amended, Merged and Restated Declaration or of any Supplemental Declaration shall bear interest from such date until paid at the rate of twelve percent (12%) per annum.

11.5. Expenses and Attorney Fees. In the event of any suit or action, including arbitration, to enforce any provision contained in this Amended, Merged and Restated Declaration or in an applicable Supplemental Declaration, to collect any money due thereunder or to foreclose any lien, the prevailing party in such suit or action shall be entitled to recover all costs and expenses incurred in connection with such suit or action, including a foreclosure title report, and such amount as the court may determine to be reasonable as attorney fees therein, including attorney fees incurred in connection with any appeal from a decision of the trial court or an intermediate appellate court.

11.6. Non-Exclusiveness and Accumulation of Remedies. Election by the Board or the Association to pursue any remedy provided for herein or in any applicable Supplemental Declaration with respect to any violation of any provision of this Amended, Merged and Restated Declaration or of any Supplemental Declaration shall not prevent concurrent or subsequent exercise of another remedy permitted herein or in any applicable Supplemental Declaration, or which is permitted by law. The remedies provided in this Amended, Merged and Restated Declaration and in any applicable Supplemental Declaration are not intended to be exclusive but shall be in addition to all other remedies, including without limitation, actions for damages or suits for injunctions or for specific performance available under applicable law.

## **SECTION 12**

### **12. Party Walls**

- 12.1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the real property and placed on the dividing line between the Lots shall constitute a party wall, and , to the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.
- 12.2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Unit Owners who make use of the wall in proportion to such use.
- 12.3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Unit owner who has used the wall may restore it and seek contribution from other Unit owners using the wall, taking into account the rule of law concerning negligence or willful acts or omissions.
- 12.4. Weatherproofing. Notwithstanding any other provision of this Section, a Unit Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against the elements.
- 12.5. Alteration. In addition to meeting any other requirements of this Declaration, any building code or similar regulations or ordinances, any Unit Owner proposing to modify, make additions to or rebuild his Unit in any manner which requires the extension or other alteration of any party wall, shall first obtain written consent of the Board via the VARC.
- 12.6. Right to Contribution Runs with Land. The right of any party wall Unit Owner to contribution from other party wall Unit Owners under this Section is intended to and does run appurtenant to the land (party wall Lots) and all heirs, successors, and transferees take subject hereto.
- 12.7. Mediation and Arbitration. In the event of an ongoing dispute concerning a party wall, the parties shall first try mediation. If mediation is unsuccessful, then any party may proceed to binding arbitration pursuant to RCW 7.04A as now exists or as hereafter amended, and the procedures shall be the same as provided in the dispute resolution section of Exhibit C of the Rules and Regulations of the Community of Canyon Lakes Villas, heretofore incorporated by reference.

## SECTION 13

### 13. Miscellaneous Provisions

13.1. Amendment and Repeal. Any provision of this Amended, Merged and Restated Declaration or any Supplemental Declaration may be amended or repealed by the Board, provided that the amendment has been approved by the Board following consent by the vote of fifty-one percent (51%) of the Members of the Association and voting in accordance with Section 9.4 and the by-laws.

13.2. Notwithstanding the above, no amendment hereto shall diminish or increase the votes required in respect of any matter for which the number of votes of Unit Owners is specifically set out herein unless, such amendment has received the affirmative vote of two-thirds (2/3) of Owners entitled to vote.

13.3. Any amendment or repeal of a provision of this Amended, Merged and Restated Declaration or additional provisions shall become effective only upon the filing thereof in the records of Benton County, Washington, of a certificate of an officer of the Association setting forth in full the amendment, additional provision or repeal approved as provided in this Section, and certifying that said amendment, additional provision or repeal has been approved in the manner required therefor herein.

13.4. Joint Owners. In any case in which two or more persons share the ownership of any Unit, regardless of the form of ownership, the responsibility and liability of such persons to comply with the provisions of this Amended, Merged and Restated Declaration and of any applicable Supplemental Declaration shall be a joint and several responsibility and liability. The act or consent of any one or more of such persons shall constitute the act of consent of the entire ownership interests; however, in the event that such persons disagree among themselves as to the manner in which any vote or right of consent held by them shall be exercised with respect to a pending matter, any such person may deliver written notice of such disagreement to the Board, and the vote or right of consent involved shall then be disregarded completely in determining the number or proportion of votes or consents given with respect to such matter.

13.5. Mortgage Protection. Notwithstanding any other provision of this Amended, Merged and Restated Declaration, no amendment of this Amended, Merged and Restated Declaration or any Supplemental Declaration shall operate to defeat and render invalid the rights to the beneficiary under any first deed of trust or mortgage upon a Unit made in good faith and for value, and recorded prior to the recordation of such amendment, provided that, after foreclosure of any

such first deed of trust, such Unit shall remain subject to this Amended, Merged and Restated Declaration, as amended. Notwithstanding any and all provisions of this Amended, Merged and Restated Declaration to the contrary, in order to induce the Federal Home Loan Mortgage Corporation (FHLMC), the Government National Mortgage Association (GNMA) and the Federal National Mortgage Association (FNMA) to participate in the financing of the sale of Units within the Property, to the extent the statutory requirements or regulations of FHLMC, FNMA, GNMA, VA and FHA conflict with any provisions of this Amended, Merged and Restated Declaration or any Supplemental Declaration, such statutory requirements or regulations shall control. The Board shall enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of the VA, the FHA, the FHLMC, the FNMA or the GNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first mortgage encumbering Units with dwelling units thereon. Each Unit Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential mortgage borrowers and potential sellers of their residential Units, if such agencies approve the Property as a qualifying subdivision under their respective policies, rules and regulations, as adopted from time to time. Mortgage holders are hereby authorized to furnish information to the Board concerning the status of any mortgage encumbering a Unit.

13.6. Construction, Severability, Number, Captions. This Amended, Merged and Restated Declaration shall be construed as an entire document to accomplish the purposes stated in the Recitals set forth above. Nevertheless, each provision of this Amended, Merged and Restated Declaration shall be deemed independent and severable, and the invalidity or partial invalidity of any provision shall not affect the validity or enforceability of the remaining part of that or any other provision. As used herein, the singular shall include the plural, and the plural the singular. The masculine and neuter shall each include the masculine, feminine and neuter as the context requires. All captions used herein are intended solely for convenience of reference and shall in no way limit any of the provisions hereof.

13.7. Notices. Any notice permitted or required by this Amended, Merged and Restated Declaration or by any applicable Supplemental Declaration, may be delivered personally, by mail, or by electronic transmission (Email or Fax), unless the law requires otherwise (ie service of process). Delivery by mail shall be deemed complete and accomplished 3 business days after deposited in the United States Mail with postage prepaid, and evidenced by either certification and return receipt or declaration of mailing by actual depositor. Delivery by Electronic transmission shall be deemed delivered and complete upon transmission, evidenced by appropriate transmission copy. All notices shall be addressed as follows:

13.7.1.If to the Association, the Villas Architectural Review Committee or the Board: to 3701 W. 36th Ave, Kennewick, Washington 99337.

13.7.2.The Board may designate in the by-laws a different mailing address than that listed above.

13.7.3.If to a Unit Owner, at the address given by him or her at the time of his or her purchase of a Unit or at the address of his or her Unit, or to the electronic address last consented to by the Member.

13.7.4.The address, electronic or otherwise, of any person may be changed at any time by notice in writing delivered as provided herein.

We, Glenn W. Gaboury and Taylor Mulvihill-Evans, President and Secretary respectively, of the Canyon Lakes Villas Homeowners' Association, hereby certify that the foregoing Amended, Merged and Restated Master Declaration of Covenants, Conditions and Restrictions for the Community of Canyon Lakes Villas (I, II, & III) was duly adopted by the Directors of the Villas Homeowners' Association on the day of 18th of November, 2020, at a time after the Unit Owners/Members of the Canyon Lakes Villas Homeowners' Association approved of and adopted the same on the 18 day of November, 2020, all of which was pursuant to the then effective provisions of the Declaration of Covenants, Conditions and Restrictions for the Community of Canyon Lakes Villas, Canyon Lakes Villas (II) and Canyon Lakes Villas - Phase III, as amended, and the By-laws of the Canyon Lakes Villas Homeowners' Association.

Taylor Evans

Secretary

Glenn W. Gaboury

President

State of Washington (County of Benton)

On this 18th day of November, 2020, before me, the undersigned, a Notary Public in and for the State of Washington, duly commissioned and sworn, personally appeared Glenn W. Gaboury and Taylor Mulvihill-Evans, to me known to be the President and Secretary, respectively, of Canyon Lakes Villas Homeowners' Association, the corporation that executed the foregoing instrument, and acknowledged the same to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned including recordation, and on oath stated they are authorized to execute said instrument. Witness my hand and seal the day and year first above written.

Sarah St. Hilaire

Notary Public in and for the  
State of Washington, residing at

Kennewick

