

When recorded return to:

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**AMENDMENT TO DECLARATION  
OF MASTER COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
FLAGSTAFF RANCH GOLF CLUB RESIDENTIAL COMMUNITY**

**RECITALS**

A. FLAGSTAFF RANCH GOLF CLUB, an Arizona limited liability company ("Declarant") is the successor Declarant under that Declaration Of Master Covenants, Conditions And Restrictions For Flagstaff Ranch Golf Club Residential Community, on December 22, 2001, at Docket 3122291, records of the Coconino County Recorder (the "Master Declaration"), against that real property described therein, which description is hereby incorporated by reference as if fully restated herein.

B. Article XX, Section 20.5 of the Master Declaration provides that until the Transition Date as identified therein, Declarant reserves the right to unilaterally amend the Master Declaration without the approval of the Board or the Members as identified therein.

C. Declarant executes and records this Amendment to Declaration Of Master Covenants, Conditions And Restrictions For Flagstaff Ranch Golf Club Residential Community (this "Amendment") pursuant to Article XX Section 20.5 of the Master Declaration, prior to the Transition Date, for the purpose of amending the Master Declaration to impose an obligation and lien upon any Lot acquired by a "Builder" as defined in the Master Declaration, to purchase a Golf or Social Membership in the Flagstaff Ranch Golf Club, an Arizona nonprofit corporation ("Golf Club"). Such obligation and lien shall apply independently from and in addition to those obligations and liens provided under the Golf Course Easement Agreement.

**AMENDMENT**

1. Any terms capitalized herein shall have the meaning assigned to it in the Master Declaration; and if not expressly assigned in the Master Declaration, shall have the meaning assigned to it in that Declaration of Golf Club Easement and Restriction

recorded December 22, 2001, Docket 3122290, records of the Coconino County Recorder (the "Golf Club Easement Agreement").

2. Article XXIII of the Master Declaration is hereby amended by adding the following new Sections 23.3 and 23.4, immediately following existing Section 23.2:

**23.3 Golf Club Membership – Builder Owners.**

(a) **Builder Obligation to Acquire Golf Club Membership.** In addition to and independent from the foregoing Section 23.2, and from the Golf Club Easement Agreement and any membership purchase obligations and liens or exemptions thereunder, any Owner of a Lot within the Residential Property who constitutes a Builder shall be required to purchase or otherwise acquire one Golf Membership or Social Membership (as those terms are defined in the Bylaws of Golf Club) in Golf Club with respect to each such Lot owned. Each such Builder, by acquiring such Lot, covenants and agrees to acquire and maintain ownership of such a required Golf or Social Membership in Golf Club so long as such Builder owns such Lot, and to otherwise comply with and perform the obligations of this Declaration applicable to it. If any Builder fails to acquire a Membership in Golf Club as required hereby or fails to maintain ownership of such a Membership as required hereby, such Owner agrees to pay to Golf Club an amount equal to one hundred fifty percent (150%) of the then prevailing price for a Golf Membership (or if no Golf Memberships are then available, a Social Membership) sold by the Golf Club, as determined by the Golf Club, and any Transfer Fee (as provided in the Bylaws of Golf Club) plus interest on all such amounts at the Default Rate of Interest, from the date such Builder was required to own such Membership but did not, until paid in full. Until such amount is paid in full such Builder shall have the obligation to pay to Golf Club all dues, assessments, and other amounts which would be due if such Builder were a Member, but shall have no right to exercise Membership rights or privileges until all such amounts required to be paid by this Section are paid in full. The amounts payable by a Builder to Golf Club under this Section are referred to herein as the "Builder Obligation." No Mortgagee shall be deemed to be in violation of the requirements of this Section unless it fails to acquire such required Membership within sixty (60) days after the date it comes into possession of or acquires title to a Lot. The provisions of this Section shall not apply to the Annexation Property except pursuant to specific amendments hereto executed by the Owner of such Annexation Property, the Golf Club, and the owner of the Golf Course, if different than the Golf Club.

(b) **Certificate Evidencing Golf Club Membership.** Upon purchase or other acquisition of a Golf Club Membership by a Builder, as required by the foregoing, or upon request of such Builder or First Mortgagee, Golf Club shall, upon request, issue a certificate evidencing such membership of such Builder.

(c) **Builder Deferral Program.** A Builder may apply to the Golf Club for a deferral of the Builder Obligation, which the Golf Club may approve or deny in its sole and absolute discretion, which deferral shall be subject to the following terms and conditions: (1) Builder shall have purchased the applicable Lot directly from

Declarant or any of the Joinder Parties; (2) Builder shall enter into a written agreement with the Golf Club (a "Builder Deferral Agreement"), which shall include terms in the format prepared by the Golf Club including but not limited to an express written covenant by Builder to construct and complete a residential dwelling on the applicable Lot, for the purpose of resale, such construction to be initiated, maintained and completed in a safe and commercially reasonable manner and according to the terms of the Builder Deferral Agreement; and (3) the entire Builder Obligation shall become due and payable in full, and enforceable in accordance with the provisions of this Article, at the earlier of (i) the sale or transfer of the Lot by Builder, (ii) the second anniversary of Builder's acquisition of the Lot, or (iii) a material breach by Builder of any of the terms of the Builder Deferral Agreement.

#### **23.4 Lien to Secure Builder Obligations to Acquire Memberships.**

(a) **Creation of Lien and Personal Obligation.** The Builder Obligation, together with interest thereon, attorneys' fees and court costs, and other costs of collection thereof, as hereinafter provided, shall be a continuing lien upon such Builder's Lot (or Parcel, as the case may be). Such Obligations, together with such interest and other costs, shall also be the personal obligation of the Builder to whom such Obligation relates. The personal obligation of a Builder for Obligations shall not pass to the Builder's successor, unless assumed by him or her. The lien against a Lot as provided in this Section shall be continuing and shall not be extinguished by the sale, conveyance or other transfer of the Lot. The obligation of an Owner of the Lot to which such Membership appertains for the payment of Obligations as herein provided, shall be joint and several.

(b) **Homestead Waiver.** Each Builder, to the extent permitted by law, hereby waives, to the extent of any liens created under this Article, whether such liens are now in existence or are created at any time in the future, the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter.

(c) **Subordination of Obligation Lien to First Mortgage Lien.** Any lien which arises against a Lot pursuant to this Article shall be subordinate to the lien of a prior recorded First Mortgage on the Lot, acquired in good faith and for value, except for the amount of the unpaid Obligations which accrues front and after sixty (60) days after the date on which a First Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first (together with any interest, costs, reasonable attorneys' fees and any late charge related thereto), and if any lien for unpaid Obligations prior to the date the First Mortgagee comes into possession of or acquires title to the Lot has not been extinguished by the process by which such First Mortgagee came into possession of or acquired title to the Lot, such First Mortgagee shall not be liable for unpaid Obligations arising prior to such date and, upon written request to the Golf Club by such First Mortgagee, such lien shall be released in writing by the Golf Club. Any unpaid Obligations which are extinguished pursuant to the foregoing sentence shall continue to be the personal obligation of the delinquent Builder.

(d) **Certificate of Payment.** Any Person acquiring an interest in any Lot shall be entitled to a certificate from the Golf Club setting forth the amount of due but unpaid Obligations relating to such Lot, if any, and such Person shall not be liable for, nor shall any lien attach to the Lot in excess of, the amount set forth in the certificate, except for Obligations which occur or become due after the date thereof and any interest, costs and attorneys' fees related to such unpaid Obligations.

(e) **Enforcement of Lien.** The lien provided for in this Section may be foreclosed by the Golf Club in any manner provided or permitted for the foreclosure of realty mortgages or deeds of trust in the State of Arizona. Nothing herein shall be construed as requiring that the Golf Club take any action required hereunder in any particular instance, and the failure of the Golf Club to take such action at any time shall not constitute a waiver of the right to take such action at a later time or in a different instance.

IN WITNESS WHEREOF, the Declarant has caused this Amendment to be duly executed as of the date set forth below.

**FLAGSTAFF RANCH GOLF CLUB**, an Arizona nonprofit corporation

By:

*John A. Carr*  
John A. Carr  
President

Its:

STATE OF ARIZONA

ss.

County of Maricopa

The foregoing instrument was acknowledged before me the undersigned Notary Public, personally appeared John A. Carr, known to me to be the person whose name is subscribed to the foregoing Amendment, and acknowledged that he executed same in the capacity and for the purposes therein stated.

IN WITNESS WHEREOF, I hereunto set my hand and official seal this 19<sup>th</sup> day of February, 2009.

*Dee Steadman*  
Notary Public

My commission expires:

*Jan 14, 2012*

