

2021-14083

Page 1 of 8

Requested By: Chance Whiteman

Navajo County Recorder - Michael Sample

06-24-2021 10:43 AM Recording Fee \$30.00

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**SECOND AMENDED AND RESTATED  
JOINT USE AND MAINTENANCE AGREEMENT**

This Amended and Restated Joint Use and Maintenance Agreement (hereafter referred to as the "Facilities Use Agreement") is entered into per the dates indicated below and is intended to amend and fully restate and replace any prior versions of this Agreement between the parties, including the Joint Use and Maintenance Agreement entered into between the parties on February 17, 2006 and recorded in the office of the Navajo County Recorder in Reception #2006- 05339 (referred to as the "Original Use Agreement") and the Amended and Restated Use Agreement entered into between the parties on May 26, 2011 and recorded in the office of the Navajo County Recorder in Reception #2011-10289 (referred to as the "Amended Use Agreement").

The following parties ("Parties") are the only surviving Parties remaining as of the date of this Agreement and have agreed to the terms and conditions of this Facilities Use Agreement:

VOYAGER AT JUNIPER RIDGE HOMEOWNERS ASSOCIATION, an  
Arizona nonprofit corporation, dba Juniper Ridge Homeowners Association  
(hereinafter referred to as "Juniper Ridge"), and

WHITE MOUNTAIN LAKE VISTAS HOMEOWNERS ASSOCIATION, an  
Arizona nonprofit corporation (hereinafter referred to as "WMLV").

**BACKGROUND**

1. According to the Plat for Juniper Ridge, Juniper Ridge is the owner of Tract 1 and Tracts 3 through 16 of Juniper Ridge as shown on the Plat recorded in Book 15 of Maps, Page 45 of the Navajo County Arizona Recorder's Office, as amended, (the "JR Plat") and the improvements thereon, including private roads, administrative buildings, and recreational facilities ("JR Common Areas").
2. The JR Common Areas are subject to the Declaration of Covenants, Conditions and Restrictions, and any amendments thereto (collectively, the "Juniper Ridge CC&Rs"). The Members of Juniper Ridge are the Owners of the 528 Lots shown on the JR Plat.
3. Among the recreational facilities located on the JR Common Areas and other areas owned by JR (the "Expanded Golf Course Property") is an 18-hole golf course, which is owned and maintained by Juniper Ridge.

4. WMLV owns Tracts A, B and D through J of White Mountain Lake Vistas Unit I, as shown on the Amended Final Plat recorded in Book 27, Pages 26 and 27 of the Navajo County Recorder's Office (the WMLV Plat), as amended by 2012-00056 recorded January 3, 2012, 2018-09207 recorded June 11, 2018 and 2020-06498 recorded April 27, 2020, and the improvements thereon.
5. WMLV consists of 59 Owner-owned Lots ("Owner Lots"), with 4 Lots owned by the Bank of Oklahoma Financial by virtue of a Trustee's Sale of certain Lots in September 2012.
6. Pursuant to the Amendment to the Declaration of Covenants, Conditions and Restrictions for Juniper Ridge and recorded on February 21, 2006 in Fee 2006-05338, Juniper Ridge was authorized to enter into the Original Use Agreement.
7. Pursuant to Section 5.13 of the Declaration of Covenants, Conditions and Restrictions for White Mountain Lake Vistas, recorded on February 17, 2006 in Fee 2006-5129, WMLV was authorized to enter into the Original Use Agreement.
8. Paragraph 12 of the Original Use Agreement states that it can be amended with the unanimous consent of Juniper Ridge, WMLV, and Voyager at Juniper Ridge, LLC ("VJR"), as long as VJR owns any property within the Vistas Parcel.
9. As of the date of this Agreement, VJR no longer owns any property within the Vistas Parcel or within WMLV.
10. Therefore, the Juniper Ridge Board of Directors and WMLV Board of Directors are authorized to amend and fully restate the prior Agreements that exist between the parties.

NOW, THEREFORE, the Parties have determined that it would be mutually beneficial to fully amend and restate the Original Use Agreement and Amended Use Agreement that such Facilities Use Agreement would more accurately reflect the agreement between the parties and would provide for the joint use of the JR Common Areas and the Expanded Golf Course Property to the benefit of the respective current and prospective Members of both Juniper Ridge and WMLV per the terms and conditions set forth herein.

#### FACILITIES USE AGREEMENT

Now therefore, in consideration of the agreements between the Parties and for other good and valuable consideration, the Parties hereby agree as follows:

1. Joint Use of 18-Hole Golf Course and Juniper Ridge Recreational and Administrative Facilities.

- a. Grant of Easement. Juniper Ridge HOA hereby grants WMLV HOA and its Members a non-exclusive license and easement to use and enjoy the Juniper Ridge recreational and administrative facilities, including, but not limited to, the Grand Lodge, the Pro Shop, and the 18 Hole Golf Course (in common with the Members of the Juniper Ridge HOA), all subject to such rules, regulations, restrictions, and limitations that will apply uniformly to owners of Lots within both Juniper Ridge and WMLV. Juniper Ridge HOA further grants a non-exclusive license and easement to WMLV HOA and its Members to use the private roads within Juniper Ridge (in common with the Members of the Juniper Ridge HOA) for the purpose of accessing the Juniper Ridge recreational and administrative facilities described herein. WMLV HOA hereby grants a non-exclusive license and easement to Juniper Ridge HOA and its Members to use the private roads within WMLV and the golf cart paths located on WMLV Common Area tracts to access golf holes on the portion of the Expanded Golf Course Property surrounded by WMLV property.
- b. Facilities Use Fee. Commencing on July 1, 2021 WMLV HOA agrees to pay a Facilities Use Fee to Juniper Ridge HOA at a flat rate of \$150.00 per month, per Owner Lot, in exchange for Juniper Ridge granting WMLV HOA and its Members the right to use and enjoy the Juniper Ridge Recreational and Administrative Facilities and participate in the social activities organized by Juniper Ridge within the JR Common Areas. The Facilities Use Fee shall be subject to an increase annually each July 1 consistent with the rise, if any, of the Consumer Price Index (“CPI”) as of December 31 of the immediately preceding year, published by the Department of Labor, U.S. Bureau of Labor Statistics, said increase not to exceed three percent (3%) from the immediately preceding year in any given year.
- c. Maintenance of the Administrative and Recreational Facilities. In consideration of the payment of the Facilities Use Fee by WMLV, Juniper Ridge agrees to operate, manage, insure, maintain, and repair the Administrative and Recreational Facilities in good condition in accordance with the provisions herein and the policies adopted by Juniper Ridge HOA. Said obligations shall include the golf cart paths on WMLV Tracts B and F. The maintenance and operation of the Administrative and Recreational Facilities are solely under the control and discretion of Juniper Ridge.
- d. Periodic Adjustments for Number of Sold WMLV Lots. Once the remaining Bank-owned WMLV Lots are sold or otherwise conveyed to new Owners, said Lots will become subject to the Facilities Use Fee at the flat rate described above. Upon notification to the WMLV Board of Directors of a sale or transfer of any of the Bank-owned WMLV Lots, WMLV will notify Juniper Ridge of such sale or transfer. WMLV shall remit payment of the Facilities Use Fee for these additional Lots through its management company within the first month after the close of sale or transfer of title.

- e. Costs Included. The Facilities Use Fees are also intended to contribute to the cost, borne by Juniper Ridge HOA, of Snow Removal on WMLV streets, which extend to the mailbox and dumpster enclosure, for WMLV Members and residents. WMLV shall provide its gate code to Juniper Ridge's management so Juniper Ridge may access the property for Snow Removal purposes. Juniper Ridge agrees to provide Snow Removal services to WMLV when Juniper Ridge also engages in Snow Removal activity within the Juniper Ridge property. This agreement does not grant WMLV the ability to demand Snow Removal at times when Juniper Ridge is not engaging in Snow Removal activity within the Juniper Ridge property. In the event that Juniper Ridge is unable to engage in Snow Removal activities, whether due to the malfunction of Snow Removal equipment, if said equipment shall be inoperable or a similar reason outside the control of Juniper Ridge, it shall be WMLV's responsibility to coordinate Snow Removal Services for its property with a Snow Removal service at no additional cost to Juniper Ridge.
  
- f. Compliance with Juniper Ridge Governing Documents. The use of the portions of the Juniper Ridge Administrative and Recreational Facilities, including the Golf Course, by the Members of the Juniper Ridge HOA and WMLV HOA and their respective guests shall be subject to such rules and regulations of uniform applicability to the Members of the Juniper Ridge HOA and the WMLV HOA as may be adopted and amended by the Juniper Ridge HOA Board of Directors. Such rules and regulations may include green fees, guest policies, tee time allocations, hiring and firing of golf course staff, and other policies and procedures related to the use, operation, and maintenance of the Golf Course and Recreational Facilities. Said rules and regulations shall not discriminate against Members from either Juniper Ridge HOA or WMLV HOA and shall treat all Members from both Associations equally and fairly.
  
- g. Nonpayment of Use Fees. In the event WMLV fails to pay the Facilities Use Fee within 10 days of its due date, such Facilities Use Fees will be deemed to be delinquent. Juniper Ridge shall have the right to charge a late fee, which shall be 10% of the delinquent Facilities Use Fee. In addition, if WMLV fails to cure the default within 5 business days, Juniper Ridge has the right to revoke the use of the 18-Hole Golf Course and the use of the Juniper Ridge Administrative and Recreational Facilities for all WMLV Members.
  
- h. Common Area Costs Not Covered by this Agreement. Anything contained in subparagraph (e) to the contrary notwithstanding:
  - i. The costs of maintaining and repairing the private roads within WMLV shall be borne by WMLV HOA (and its Members);
  - ii. The costs of maintaining and repairing the private roads within Juniper Ridge shall be borne by Juniper Ridge HOA (and its Members).

2. Dispute Resolution and Attorneys' Fees. The Parties agree that, prior to any legal action being filed to enforce the terms of this Facilities Use Agreement, the Parties will attempt to meet amicably to resolve their disputes, including participation in formal mediation or dispute resolution with a mediator or settlement conference judge. In the event the dispute is not resolved by said alternative dispute resolution process, the Parties agree that any litigation shall be filed in the Arizona Superior Court in Navajo County. If either party commences any legal or equitable action or proceeding related to any of the provisions in this Agreement, the prevailing party shall recover its reasonable attorney' fees and costs in doing so.
3. Binding Effect, Covenants Running with the Land. This Facilities Use Agreement is intended to be, and shall be, a covenant running with the land with respect to the JR Common Areas and the WMLV Common Areas specified herein, which shall be binding upon and inure to the benefit of the Parties hereto, and their respective heirs, successors and assigns, subject to the termination provision contained herein. However, the easement granted on WMLV Common Areas shall survive termination for so long as Juniper Ridge is operating the 18-Hole Golf Course.
4. Termination. Either party may terminate this Agreement for any reason upon 45-days' written notice to the other party; provided, however, that the terminating Association must first obtain the affirmative vote of a majority of the Association's Board of Directors.
5. Amendment and Review Period. This Agreement may be amended by the written approval of both WMLV HOA Board of Directors and Juniper Ridge HOA Board of Directors. Any subsequent Amendment must be recorded with the Navajo County Recorder.

AGREED TO on the dates set forth opposite the signatures below.

JUNIPER RIDGE  
HOMEOWNERS ASSOCIATION

[Handwritten Signature]

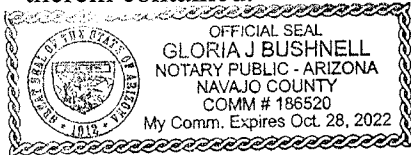
By:

Its: JRRA HOA President

6/23/21  
Date

STATE OF ARIZONA                    )  
  ) ss.  
County of Navajo                    )

The foregoing instrument was acknowledged before me this 23 day of June 2021, by the President of the Juniper Ridge Homeowners Association, who executed the foregoing on behalf of the corporation, being authorized so to do for the purposes therein contained.



[Handwritten Signature]  
Notary Public

My Commission Expires:

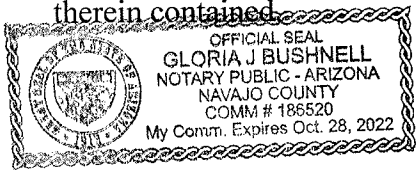
JUNIPER RIDGE  
HOMEOWNERS ASSOCIATION

Gail K. Vatter  
By: JRR Secretary  
Its:

June 23, 2021  
Date

STATE OF ARIZONA                    )  
  ) ss.  
County of Navajo                    )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of June 2021, by the Secretary of the Juniper Ridge Homeowners Association, who executed the foregoing on behalf of the corporation, being authorized so to do for the purposes therein contained.



Gloria J Bushnell  
Notary Public

My Commission Expires:

WHITE MOUNTAIN LAKE VISTAS  
HOMEOWNERS ASSOCIATION

Chance Whitena

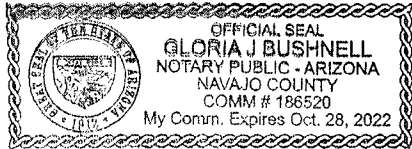
By:  
Its: WMLV PRESIDENT

6-23-21

Date

STATE OF ARIZONA                    )  
  ) ss.  
County of Navajo                    )

The foregoing instrument was acknowledged before me this 23 day of June 2021, by the President of the White Mountain Lake Vistas Homeowners Association, who executed the foregoing on behalf of the corporation, being authorized so to do for the purposes therein contained.



Gloria J. Bushnell  
Notary Public

My Commission Expires: