

When recorded mail to:

km11706ccr-7-1-1--  
Garcia

MAXWELL & MORGAN, P.C.  
4854 E. BASELINE RD., STE. 104  
MESA, ARIZONA 85206

---

**FIRST AMENDMENT TO  
FOURTH AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR  
APACHE WELLS**

This FIRST AMENDMENT TO FOURTH AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR APACHE WELLS ("First Amendment") is made this 25<sup>th</sup> day of Aug, 2022, by Apache Wells Homeowners Association, Inc., an Arizona nonprofit corporation ("Association"), in accordance with the amendment provision of the Fourth Amended and Restated Declaration of Covenants, Conditions and Restrictions for Apache Wells, recorded on July 17, 2012, at Document No. 2012-0626618 in the Official Records of the County Recorder of Maricopa County, Arizona ("Declaration").

**RECITALS**

A. WHEREAS, the Declaration was recorded, thereby submitting the real property described on Exhibit "A" thereto to the covenants, conditions and restrictions contained therein pursuant to the Arizona Planned Communities Act, Arizona Revised Statutes, Section 33-1801, et seq.;

B. WHEREAS, Section 10.4 of the Declaration provides that the "Declaration may be amended by an instrument in writing, executed by the then Lot Owners of more than fifty percent (50%) of the Lots in the Project. Any amendment approved pursuant to this Section 10.4 of this Declaration shall be signed by the President of the Association and shall become effective upon recordation of the same with the County Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section 10.4"; and

C. WHEREAS, the Owners of more than fifty percent (50%) of the Lots within the Association have executed an instrument evidencing their approval of this amendment; and

D. WHEREAS, the President of the Board of Directors has certified that the First Amendment has been approved as required by Section 10.4 of the Declaration;

**AMENDMENT**

**NOW THEREFORE**, the Declaration is amended as follows:

1. Section 1.29 of the Declaration is hereby deleted in its entirety and replaced by the following amendment:

**1.29. Single Family.** A group of one or more persons each related to the other by blood, marriage or legal adoption, or a domestic partnership of two individuals, or a group of not more than three (3) persons not all so related who maintain a common household in a Dwelling Unit.

2. Section 3.6 of the Declaration is hereby amended by deleting the sentence beginning with "All pets permitted herein . . ." and replacing it with the following language:

Pets permitted herein and capable of being walked on a leash that weigh more than fifteen (15) pounds shall be kept on a leash not to exceed six (6) feet in length, while pets less than fifteen (15) pounds shall be kept on a leash not to exceed ten (10) feet in length (an adjustable leash is acceptable) when outside a Dwelling Unit, and all pets shall be directly under the Lot Owner's control at all times when outside a Dwelling Unit or in the fenced back yard.

3. Section 3.31 of the Declaration is hereby deleted in its entirety and replaced by the following amendment:

**3.31. Leasing of Lots.** This is a single family residential community and the Lots within the Association are restricted to single family, residential use. All tenants shall be at least 55 years of age, and any rental term of any Lot shall be for not fewer than 30 consecutive days. Whether or not expressly stated in any lease agreement, the terms of the Project Documents are deemed incorporated within and made a part of every lease agreement. (For definitional purposes, "lease" shall include any agreement or understanding whereby an Owner allows possession, use or occupancy of a Lot by another Person). The Manager of the Association shall be informed of the lease in writing by the Owner prior to the commencement of the tenancy. The Owner must ensure that renters/tenants register at the Apache Wells Homeowners Association Office prior to or immediately following move-in. The renter/tenant will be required to show their identification, complete a Certificate of Residence and provide all tenant information permitted by law. All Owners of Lots that are leased hereby grant to the Association a power of attorney to enforce against the Lessee the provisions of the Project Documents and to enforce against the Lessee those provisions of such leases that relate to violations by the Lessee or by such Lessee's visitors, guests, invitees, employees or contractors of the Project Documents and to enforce

the lease agreement (except those provisions that relate to the payment of rent). The power of attorney granted hereby authorizes the Association to take any lawful action to enforce the Project Documents and the lease agreement, including, without limitation, bringing actions at law or in equity and to recover from the Owner and/or the Lessee against whom any enforcement effort or actions brought, the costs of enforcing the terms of the Project Documents and the lease with respect to violations thereof by the Lessee or by such Lessee's visitors, guests invitees, employees or contractors. The "costs of enforcing" shall include properly levied fines and penalties, penalty late fees and interest, costs of collection (including all legal fees incurred in matters where court action is not taken or where an action is taken but is resolved short of court action), attorneys' fees, court costs, property damage, etc., and shall also constitute a Lot Specific Assessment subject to the provisions of Section 7 hereof.

4. Section 3.36 of the Declaration is hereby deleted in its entirety and replaced by the following amendment:

**3.36. Age Restrictions.** Each and every Lot must be occupied by at least one (1) person fifty-five (55) years of age or older ("Qualifying Occupant"). No person who is less than fifty-five (55) years of age may occupy a Lot. The foregoing restrictions shall not prohibit the occupancy of a Lot by the following persons:

(i) A person who is less than fifty-five (55) years of age who is a guest or an invitee of a Qualifying Occupant, including children and grandchildren, for a period not to exceed thirty (30) consecutive days, and not to exceed a combined total of sixty (60) days in any consecutive twelve (12) month period;

(ii) The spouse, domestic partner or significant other of a Qualifying Occupant who is fifty-five (55) years old or older;

(iii) The surviving spouse or other surviving cohabitant of a deceased Qualifying Occupant who was fifty-five (55) years old or older at the time of death; or

(iv) The spouse or other Occupants of a Lot wherein the Qualifying Occupant is advised by a medical doctor licensed in the State of Arizona to move to, or is placed in a facility for the care of the elderly or the infirm on the advice of a medical doctor licensed by the State of Arizona.

Notwithstanding the foregoing, in the event occupancy of a Lot is required pursuant to the Fair Housing Act for an individual who would otherwise be

prohibited under this Section, the Association will grant reasonable accommodations as necessary. Any other person who is not fifty-five (55) years old or older and does not qualify under (i) through (iv) above who wishes to occupy a Lot must be approved by the Board.

The Board is authorized to publish, adhere to and enforce policies and procedures which demonstrate an intent to provide housing for persons fifty-five (55) years of age or older. The Board may adopt rules and regulations which are more restrictive than the provisions set forth above, provided that any such rules and regulations promote and preserve the Association as an active adult community and are consistent with the policies and procedures set forth above and with all applicable laws regulating age restrictions, including, without limitation, the Fair Housing Amendments Act of 1988 and the rules and regulations interpreting such Act published by the Department of Housing and Urban Development under 24 CFR Part 14, *et al.*, and any amendments thereto.

In addition to the other enforcement powers given the Association, the Association shall have all remedies available for enforcing this or any other provision of the Project Documents, including, but not limited to: seeking injunctions and other legal remedies; imposing fines; suspension of voting rights; suspension of use of the recreational facilities; and assessing costs incurred in connection with such violation, including, but not limited to administration costs and attorneys' fees and costs, whether or not lawsuit is filed.

Notwithstanding anything contained in this Section 3.36 to the contrary regarding exceptions to the age restrictions, IN NO EVENT can less than eighty percent (80%) of the Lots (or such higher percentage to the extent required by law) at any time be occupied by persons, groups, or families where no individual is at least fifty-five (55) years of age or older.

5. Section 6.7 of the Declaration is hereby deleted in its entirety and replaced by the following amendment:

**6.7. Voting.** When directors are to be elected or any other matter is submitted to a vote of the Members, such vote may be conducted by electronic means through a company approved to conduct such election or by mail as provided in the Bylaws, as determined by the Board, or as otherwise required by law.

6. Section 6.9 of the Declaration is hereby deleted in its entirety and replaced by the following amendment:

**6.9. Conveyance or Encumbrance of Common Area.**

(a) The Common Area shall not be transferred without the prior written consent or affirmative vote of Owners representing at least sixty-seven percent (67%) of the votes cast by Members of the Association, or in such greater amounts to the extent required by law.

(b) The Common Area shall not be encumbered without the prior written consent or affirmative vote of the Owners representing at least fifty percent (50%) plus one (1) vote of the votes cast by Members of the Association, or in such greater amounts to the extent required by law.

7. Section 6.10 of the Declaration is hereby deleted in its entirety and replaced by the following amendment:

**6.10. Suspension of Voting Rights and Use of Common Facilities.** If an Owner otherwise entitled to vote is delinquent in the payment of Annual or Special Assessments, Lot Specific Assessments, fines, penalties, interest, late charges, transfer fees, refinance fees, costs of collection, lien fees, attorneys' fees or other monies owed to the Association or is not in compliance with the terms of the Project Documents, the Board may, in its sole discretion, certify that such Owner is not in good standing and such Owner's right to vote and to use the Common Facilities shall be suspended until the delinquency, breach or violation is paid in full, cured or corrected.

8. Section 7.4 of the Declaration is hereby deleted in its entirety and replaced by the following amendment:

**7.4. Rate of Assessment.** The amount of the Annual Assessment for each Lot shall not be less than the amount obtained by dividing the anticipated Common Expenses of the Association for the Assessment Period for which the Annual Assessment is being levied by the total number of the Lots, less carry over funds from the prior year not designated as reserves or otherwise.

9. Section 7.5 of the Declaration is hereby deleted in its entirety and replaced by the following amendment:

**7.5. Special Assessments.** The Association may levy against each Lot, in any Assessment Period, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of an Improvement upon the Common Area, including fixtures and personal property related thereto, or to cover any unanticipated expense, provided that any Special Assessment shall have the assent of fifty percent

(50%) plus one (1) vote of the votes cast by Members who are voting by electronic means through a company approved to conduct such election, by mail or by absentee ballot. Written notice of a meeting called for the purpose of discussing the Special Assessment shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting by electronic means or posting on the bulletin board. Thereafter, a ballot will be sent for voting on the Special Assessment by methods noted above. When a Special Assessment is approved, each Lot Owner will be assessed a pro rata share of the total amount.

10. Section 7.18 of the Declaration is hereby deleted in its entirety and replaced by the following amendment:

**7.18. Reserve Fund.** For the purpose of establishing or maintaining a reserve fund to be utilized by the Association for the periodic maintenance, repair and replacement of Improvements to the Common Area or to handle unexpected expenses, each Purchase of a Lot hereafter shall pay to the Association immediately upon becoming an Owner of the Lot, a sum not less than the Annual Assessment then in effect or an amount determined by the Board of Directors. Said amount shall be nonrefundable and shall not constitute an advance payment of Annual Assessments.

11. Section 8.3 of the Declaration is amended as follows:

The final sentence of Section 8.3 beginning with "No yard equipment . . ." is hereby deleted in its entirety.

12. Section 10.4 of the Declaration is hereby deleted in its entirety and replaced by the following amendment:

**10.4 Amendments.** At any time this Declaration may be amended at a duly noticed and called meeting where a quorum of Members is present or participating by absentee or electronic ballot, by the affirmative vote of the Lot Owners representing not less than sixty-six percent (66%) of the votes cast at such a meeting. Any amendment approved pursuant to this Section 10.4 of this Declaration shall be signed by the President of the Association and shall become effective upon recordation of the same with the County Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section 10.4. For purposes of this Section 10.4, a quorum of Members is 50% of the Lots entitled to cast a vote.

THIS AREA INTENTIONALLY LEFT BLANK

Except as expressly amended by this First Amendment, all other provisions of the Declaration shall remain in full force and shall be unaffected by this First Amendment. In the event of any conflict or inconsistency between this First Amendment and the Declaration, this First Amendment shall control.

The President of the Association hereby certifies that this First Amendment was adopted in accordance with the requirements of Section 10.4 of the Declaration and that the requisite number of Members approved the First Amendment.

DATED this 25<sup>th</sup> day of July, 2022.

Apache Wells Homeowners Association, Inc.

Scott Whalen  
President of the Board of Directors

STATE OF ARIZONA     )  
                                      ) ss.  
County of Maricopa     )

On this 25 day of July, 2022, before me the undersigned Notary Public, personally appeared Scott Whalen, who acknowledged to me that (s)he is the President of the Association and that (s)he executed the foregoing agreement on behalf of the Association for the purposes expressed therein.

Jessica R. Shoultz  
Notary Public

My Commission expires:

10/17/2025

