

**AMENDED AND RESTATED AGREEMENT  
FOR USE OF RECREATIONAL FACILITIES**

**IN**

**VENTURE OUT**

This Amended and Restated Agreement for Use of Recreational Facilities in Venture Out (this "Agreement") is made as of this 29<sup>th</sup> day of January, 2020 by and between Venture Out at Mesa, Inc., an Arizona non-profit corporation (the "Condominium Association"), and Venture Out Social Club, Inc., an Arizona nonprofit corporation (the "Social Club").

**Recitals**

1. Venture Out, at Mesa ("Venture Out") is a recreational vehicle condominium located in Mesa, Arizona, governed by Restrictions recorded in the Official Records of Maricopa County as Instrument No. 91-048995 ("the Condominium Declaration"). The Condominium Association is the governing body of Venture Out, and the members of the Condominium Association are the owners of lots in Venture Out.
2. The Social Club was incorporated on December 5, 1977, to work in conjunction and cooperation with the Condominium Association in planning and providing recreational facilities and activities for the residents of Venture Out. The members of the Social Club are the owners of lots in Venture Out.
3. One of the purposes of the Condominium Association is to enhance the lifestyle available to all residents of Venture Out by providing the environment, facilities, and staff support necessary to promote and encourage participation in organized social, recreational, and educational activities.
4. In the spirit of unity and cooperation, the Board of Directors of the Condominium Association and the Social Club placed the best interest of the lot owners, their common members, as the **guiding principle** of their relationship.
5. To further that purpose, the Condominium Association and the Social Club desire to enter into this Agreement, and supersede in their entirety all prior agreements related to this subject, including, without limitation, those listed in **Appendix D**.

For good and valuable consideration, the receipt of which are hereby acknowledged, the Condominium Association and the Social Club agree as follows:

### **Agreement**

#### **1. Duties of the Condominium Association.**

- a. Provide recreational facilities and meeting rooms for use by the Social Club for fulfillment of its obligations under this Agreement.
- b. Provide the staff to administer the affairs of the Social Club (the "Recreation Department").
- c. The Condominium Association hereby acknowledges and agrees that all revenues generated by organized social, recreational, and educational activities operating under the Social Club and the Recreation Department, and all commissions or other amounts paid by instructors or other vendors of merchandise and services using the recreational facilities and meeting rooms of the Condominium Association, are administered and retained by the Social Club.

#### **2. Duties of the Social Club.**

- a. Be responsible for the recreational activities of Venture Out, with support from the Recreation Department.
- b. Utilize funds generated by the Social Club and Recreation Department to conduct the recreational activities of Venture Out.
- c. Have an annual audit performed of the financial statements of the Social Club (the "annual audit") and made available for member review. A copy of the final annual audit report shall be provided to the Condominium Association Treasurer.
- d. Transfer to the Recreational Activities Capital Fund (defined in Section 9) any Unallocated Funds (formerly referred to as 'excess funds' and currently defined in Section 7) of the Social Club remaining after provision for Cash Flow (defined in Section 4), the FFE Reserve Fund (defined in Section 5), and payment of all Social Club operating expenditures (defined in Section 7). The transfer to the Recreational Activities Capital Fund must occur by December 31 annually. Unallocated Funds will be calculated from each fiscal year ending on June 30.
- e. Maintain the following insurance policies:
  - i. Commercial General Liability (CGL) policy
  - ii. Umbrella Liability policy
  - iii. Business Personal Property (BPP) policy
  - iv. Directors and Officers policy.

Annually review the insurance policies and adjust as necessary.

### 3. Condominium Association and Social Club Communication.

While the Condominium Association and Social Club are incorporated separately, they work together pursuant to this Agreement. Both parties work for the good of the lot owners of Venture Out. Accordingly, it is important that the Condominium Association and Social Club maintain direct communication with each other and the parties agree to the following:

- Guidelines for Joint Condo and Social Board Work Sessions (9x9) - **Appendix A**
- Guidelines for Condo and Social Board Executive Team meetings (4x4) – **Appendix B**
- Guidelines for Condo and Social Board Presidents meetings - **Appendix C**

### 4. Cash Flow.

Cash Flow is defined as the amount of money equal to Social Club expenditures for furniture, fixtures and equipment (“FFE”) anticipated from April 1 to December 31 annually.

The following methodology will be used to determine the amount of money to be assigned to Cash Flow.

The Social Club Treasurer shall:

- a. Compile a list of approved new Capital Expenditures for FFE during the coming April 1 to December 31 period (“Capital FFE Expenditures”). The list will include the description of the expenditures and the dollar value.
- b. Compile a list including all Historical Actual Capital FFE Expenditures made during the April 1 to December 31 period in the prior 5-year, by year (“Historical Actual Capital FFE Expenditures”).
- c. Compile a list including all Historical Planned Capital FFE Expenditures made during the April 1 to December 31 period in the prior 5-year, by year (“Historical Planned Capital FFE Expenditures”).
- d. Compare total value of the Historical Actual Capital FFE Expenditures (4.b) to the Historical Planned Capital FFE Expenditures (4.c).
- e. The difference between Historical Actual Capital FFE Expenditures (4.b) and the Historical Planned Capital FFE Expenditures (4.c) shall then be used to determine the Contingency amount to be added to the approved new Capital FFE Expenditures (3.a).
- f. Discuss the data and methodology used to determine the Cash Flow with the Condominium Association Treasurer.
- g. Create a written Cash Flow financial summary sheet to facilitate and record the annual calculation of Cash Flow.

## 5. Furniture Fixtures and Equipment (FFE) Reserve Fund

The Social Club Treasurer will annually update the Social Club list of FFE reflecting the useful life and remaining life of Social Club equipment ("FFE Reserve Fund Asset List").

The FFE Reserve Fund Asset List will include:

- a. Assets with a value exceeding \$500 ("current assets")
- b. Original purchase cost and date of acquisition of current assets
- c. Estimated lifespan of current assets
- d. Current accumulated depreciation of current assets
- e. Net present value (NPV) of current assets

The FFE Reserve Fund Asset List will then be summarized and totaled to reflect:

- a. Current assets
- b. Original cost
- c. Current accumulated depreciation of current assets
- d. NPV of current assets

Once the above is completed, a percentage will be applied to the total original cost of current assets to determine the amount of funds to be maintained in the FFE Reserve Fund. That percentage will be: 14%.

- a. The amount of funds as determined by the above methodology will be included in the annual FFE Reserve Fund listed in the Social Club Annual Budget (defined in Section 6).
- b. The Social Club will maintain the FFE Reserve Fund Asset List during each fiscal year. This process will begin in November with a target completion in mid-January, in advance of the annual budget process.
- c. The FFE Reserve Fund Asset List and the determined amount of the FFE Reserve Fund will be verified during the annual audit of the Social Club at the end of each fiscal year.
- d. A copy of the Annual Audit will be provided to the Condominium Association Treasurer.

## 6. Annual Budget.

The Social Club shall prepare an annual budget (the "Annual Budget") including, but not limited to, the following, all of which shall be available to the Condominium Association.

- a. Expected income
- b. Operating expenses, including Non-Budgeted Contingency expenses in the Annual Budget
- c. Transfer of Unallocated Funds to the Recreational Activities Capital Fund, as described in Section 9
- d. FFE Reserve Fund, as described in Section 5
- e. Cash Flow expenditures (April 1 to December 31), as described in Section 4.

Procedures for the preparation and communication of the Social Club Annual Budget to the Condominium Association are listed in **Appendix E**.

The Condominium Association and Social Club agree to exchange monthly financial statements. Where necessary the Treasurers will meet to discuss the information.

## 7. Unallocated Funds.

Unallocated Funds are defined as funds collected from Social Club activities that are not expended to support Social Club activities and responsibilities during the Fiscal Year in which the funds were generated.

As part of the process for creating the Social Club Annual Budget, the Social Club Treasurer shall:

- a. Review the amount of money allocated to (i) the FFE Reserve Fund, (ii) the Cash Flow, and (iii) all other operating expense disbursements that will be identified by line item. Provide a projection of the amount of any Unallocated Funds.

At the end of each Fiscal Year, the Social Club Treasurer shall:

- a. Create a written summary sheet identifying the process utilized for determining the final amount of Unallocated Funds.
- b. Transfer the final amount of Unallocated Funds to the Recreational Activities Capital Fund by December 31 annually.

The above information will be the subject of discussion between the Treasurers.

A record of the summary sheet and transfer will be added to the Social Club Budget Process file for that Fiscal Year.

The process and results of identifying Unallocated Funds for transfer to the Recreational

Activities Capital Fund will be included in the annual audit.

**8. Communication of the Social Club Annual Budget to the Condominium Association.**

- a. Social Club Treasurer and Condominium Association Treasurer will meet and discuss the methodology (as listed) for quantification of funds to be held for Cash Flow and FFE Reserve Fund and the transfer of Unallocated Funds to the Recreational Activities Capital Fund per the requirements listed in this Agreement.
- b. The parties agree that the identified processes and requirements will ensure that the Annual Budget is in conformance with the provisions of this Agreement.
- c. In the event that there is disagreement regarding the funds to be held for Cash Flow and FFE Reserve Fund or funds to be transferred to the Recreational Activities Capital Fund, the parties will utilize the Dispute Resolution Process described in **Appendix F** to address, document and substantiate the identified disagreement.
- d. Following Dispute Resolution, if there is no agreement, the Social Club and Condominium Association will utilize a mutually agreed upon Certified Auditor to review in detail the items in dispute. If the Social Club and Condominium Association cannot agree upon a Certified Auditor, each will choose a Certified Auditor within 20 days following the impasse on selection of the Certified Auditor. The two chosen Certified Auditors will then choose a third Certified Auditor to conduct the review of the items in dispute. The finding by the chosen (whether by mutual agreement or otherwise) Certified Auditor will be binding on both parties.
- e. If the findings identified by the Certified Auditor demonstrate non-conformance with the processes and methodologies set forth in this Agreement for the use of funds received by the Social Club, then the Social Club Annual Budget will be subject to approval by the Condominium Association for each of the three years subsequent to the finding, after which the procedures set forth in this Agreement shall resume as stated.
- f. This provision will apply to the Social Club Annual Budget for the Fiscal Year ending 2020 and all subsequent Social Club Annual Budgets.

## **9. Recreational Activities Capital Fund (RAC Fund)**

On March 8, 2012, the Social Club and Condominium Association entered into an agreement titled "Resolution to Establish a Joint Projects Fund." The Social Club and Condominium Association hereby agree that the "Joint Projects Fund" is now known as the "Recreational Activities Capital Fund."

The Social Club will transfer on an annual basis by December 31 the Unallocated Funds determined pursuant to this Agreement to the Recreational Activities Capital Fund.

The Recreational Activities Capital Fund will be a source of funding for projects that meet the following criteria:

- a. Be of benefit to the clubs, recreational activities, and the residents of Venture Out.
- b. Be identified as for club infrastructure and other recreational activities.
- c. Have a value exceeding \$500.

The Recreational Activities Capital Fund cannot be used for any projects that do not satisfy the foregoing criteria.

The Social Club and Condominium Association will identify one member of their respective Board of Directors to provide oversight of the funds allocated to the Recreational Activities Capital Fund, who will have the Duties and Responsibilities listed in **Appendix G**.

## **10. Restriction on modification and improvements or additions to common elements**

The Social Club shall not make any modification, additions, or other changes to any of the recreational facilities and amenities of Venture Out or any portion of the common elements of Venture Out without approval of the Condominium Association Board of Directors.

## 11. Amendment

- a. The Agreement is meant to be a long-term agreement between the Condominium Association and the Social Club, however the parties agree that it may be necessary to revisit and mutually review the substance of their agreement.
- b. Either party may request to revisit and review this Agreement by written notice to the Presidents.
- c. Requests to revisit and review can be made only once during a fiscal year in the month of December.
- d. The party requesting to revisit and review this Agreement shall provide a detailed narrative of the reasons for the request with comments on the existing language and proposal(s) for modification, with substantiating explanation.
- e. Discussions based on the request will be directed to the 4X4 meetings described in **Appendix B** scheduled for early January, allowing each party to fully address and put forth information in support or against the proposal.
- f. Only the specific section and language cited in the request to revisit and review will be addressed and all other aspects of the agreement will remain in effect unchanged.
- g. If there is agreement at the 4X4 meeting regarding the proposed changes/amendments to the specific section/language of this Agreement, then a mutually approved written record will be provided to the parties' respective Board of Directors for review and discussion.
- h. If approved by each Board of Directors, a mutually agreed upon written amendment will then be executed.

## 12. Assignment

Neither party shall have the right to assign its rights nor obligations under this agreement to any other person without prior written approval of the other party, and any attempted assignment as prohibited by this paragraph shall be null and void.



### 13. Entire agreement

This Agreement sets forth the entire agreement between the Social Club and Condominium Association with respect to the subject matter of this Agreement. This Agreement shall supersede any prior understandings or agreements, stated, written, or implied between the Social Club and Condominium Association with respect to the matters set forth in this Agreement, including, but not limited to, the Initial Agreement and all prior agreements described in **Appendix D**.

By the signatures below, the parties agree to this Amended and Restated Agreement for Use of Recreational Facilities in Venture Out effective as of the first date set above.

Dated: This 29<sup>th</sup> day of January 2020.

#### For the Condominium Board:

Alice Anderson, President

Alice Anderson

Gary Johnson, Vice President

Gary Johnson

Ken Winters, Treasurer

Ken Winters

Gail Miller, Secretary

Gail Miller

#### For the Social Club:

Lorraine Hee, President

Lorraine Hee

Alan Thomson, Vice President

Alan Thomson

Gary Robbins, Treasurer

Gary Robbins

Kay Biediger, Secretary

Kay Biediger

## **Appendix A: Guidelines for Joint Condo and Social Board Work Sessions (9X9)**

Goal: To create a group comprised of all (18) members of the Condominium Association and the Social Club Board of Directors for the purpose of face to face communication between the two Boards.

Rationale: While the parties are separate corporations that work together via this Agreement, they work for the good of Venture Out. Accordingly, it is important that both Boards maintain communication with each other. The 9x9 work sessions provide an environment that allows for sharing of information, presentations, rumor clarification and development of strategies to further work together.

- a. The 9x9 work sessions consist of the current members of the Board of Directors of each of the Condominium Association and Social Club.
- b. Work sessions will be held 4 times per season in November, December, January and March or as needed.
- c. Agendas will be developed jointly by Board Presidents.
- d. Work sessions will be co-chaired by Board Presidents.
- e. Work sessions are open meetings and the agendas will be posted a minimum of 48 hours prior to the work session.
- f. Work sessions will not be videotaped.
- g. Minutes will be taken.

## **Appendix B: Guidelines for Condo and Social Board Executive Team Meetings (4X4)**

Goal: Create a group comprised of Executive Team members of the Condominium Association and Social Club for the purpose of working together and improving the lifestyle in Venture Out.

Rationale: While the parties are separate corporations that work together via this Agreement, they work for the good of Venture Out. Accordingly, it is important that both Boards maintain direct communication with each other, and the 4x4 meetings provide an environment that allows the Executive Team (officers) of each party to address issues, clarify rumors and problem solve.

- a. The 4x4 Executive Teams consist of the 4 officers from each of the Condominium Association and Social Club Board of Directors and are comprised of President, Vice President, Treasurer and Secretary.
- b. Meetings will be held monthly November through March or as needed.
- c. Summer conference calls may be scheduled if necessary.
- d. Agendas will be developed jointly by Board Presidents.
- e. Meetings will be co-chaired by Board Presidents.
- f. Meetings will be closed to the public.
- g. Minutes will be taken and will be shared with both Board of Directors at 9x9 meetings.

## Appendix C: Guidelines for Condo and Social Board Presidents Meetings

Goal: To set a schedule for the routine and ongoing communication between the two Presidents.

Rationale: While the parties are separate corporations that work together via this Agreement, they work for the good of Venture Out. Accordingly, it is important that the two Presidents maintain routine and frequent communication. The scheduled meetings will provide the setting for frequent and timely communication with one another. Routinely scheduled Presidents meetings provide an environment that allows for the sharing of information, rumor clarification and the development of strategies to further work together.

- a. Presidents face to face meetings will be held a minimum of 2 times per month in November, December, January, February and March.
- b. Presidents will communicate via phone/text/email at any time over issues that involve both Boards or to simply share information.
- c. Presidents will act in liaison position to the other party's Board of Directors when possible and/or necessary.

#### **Appendix D: List of prior agreements between the Condominium Association and Social Club**

This Amended and Restated Agreement for Use of Recreational Facilities in Venture Out supersedes and replaces all prior agreements between the parties, including, without limitation:

- a. November 14, 1983 (the "Initial Agreement"), generally providing for the Social Club to provide recreational facilities and activities to the residents of Venture Out.
- b. Amended and Restated Agreement for Use of Recreational Facilities in Venture Out at Mesa, Inc., dated April 1, 1991 (the "First Restated Agreement") between the Condominium Association and the Social Club, which superseded the Initial Agreement.
- c. An Amended and Restated Agreement dated May 1993, which superseded the First Restated Agreement (the "Second Restated Agreement").
- d. An Amended and Restated Agreement dated March 8, 2012, which superseded the Second Restated Agreement.

## **Appendix E: Preparation and Communication of the Social Club Budget**

The following process will be put in place each year during preparation of the Social Club Annual Budget. The Social Club Treasurer shall:

- a. Provide the Condominium Association Treasurer a calendar listing the Social Club budget meetings.
- b. Provide to the Condominium Association Treasurer pertinent information and data including, but not limited to, the following:
  - i. Cash Flow
  - ii. FFE Reserve Fund
  - iii. Unallocated Funds
  - iv. Non-Budgeted Contingency Expenses
- c. The Social Club Treasurer will project the amount of funds to be used for expenditures (including the Non-Budgeted Contingency Expense), Cash Flow, and the FFE Reserve Fund, and transfer of Unallocated Funds to the Recreational Activities Capital Fund as part of the Annual Budget process.
- d. On completion of the Social Club Annual Budget, a copy will be provided to the Condominium Association Treasurer.

## Appendix F: Dispute Resolution

If a dispute arises out of, or relates to this Agreement, the Social Club and Condominium Association (the parties) will assign a member of each Executive Team to jointly meet and develop an Information Sheet providing the following:

- a. A description of the issue in dispute, including a narrative listing the dates the issue has been jointly discussed, the substance of the discussions, the specific point(s) in dispute.
- b. Relevant sections of pertinent Agreements, Bylaws, Governing Documents, or other guidelines developed by the Social Club and Condominium Association.
- c. An historical account of the past actions/discussions/information further providing background information regarding the dispute.
- d. Meeting minutes and any other documentation pertinent to the dispute.

The above information will be collected within 30 days in a mutually agreeable documentation file and provided to the members of the Social Club and Condominium Association Executive Committees.

At the next regularly scheduled 4 X 4 Executive Team meeting, the dispute will be placed on the agenda for discussion. The designated members of each Board will jointly go over the dispute file. The 4 X 4 Executive Team members will then ask questions and/or offer comments.

After a full discussion of the Information Sheet and other relevant information, the 4 X 4 Executive Team will commence negotiations to determine if there is a mutually acceptable resolution, relying on, but not exclusively, the Information Sheet. Minutes will be taken of this discussion and, when mutually reviewed and approved, then added to the documentation file.

If there is agreement at the 4X4 meeting regarding the issue in dispute, then a mutually approved written record will be provided to the parties' respective Board of Directors for review and discussion.

If approved by each Board of Directors, a mutually agreed upon written resolution will then be executed.

Should a resolution not be reached, the parties will declare an impasse. The following will take place within the next 30 days:

- a. Each party will provide a position statement listing in detail the supporting reason(s) for their position regarding the dispute.
- b. The parties will agree on a qualified person to conduct Mediation. If the parties cannot agree upon a mediator within 10 days of the impasse, then each party will select a mediator and those two selected mediators shall, within five days, choose a third mediator who shall be the sole mediator of the dispute.
- c. A Mediation session will be scheduled and the Information Sheet, along with the position statement, will be used as the basis for discussions and mediation. The parties will not add information and the mediator will rely on the Information Sheet and

position statement, to provide the basis for discussions. If mediation does not provide a mutually acceptable resolution to the dispute, the parties will then have the ability to seek other available means to pursue the issue in dispute, as determined by each party.

#### **Appendix G: Duties and Responsibilities to Administer the Recreational Activities Capital Fund (RAC).**

The individuals from Condominium Association and Social Club that are designated to administer the Recreational Activities Capital Fund shall:

- a. Maintain a ledger balance of the funds transferred to the Recreational Activities Capital Fund on an annual basis.
- b. Receive and review projects identified, documented, and submitted for consideration for funding from the Recreational Activities Capital Fund from the existing Transmittal process.
- c. Consider projects that may be identified from other sources.
- d. Complete the Project Review Sheet.
- e. Determine that the project is of benefit to the recreational activities of Venture Out and the residents.
- f. Identify the amount of funding.
- g. Prioritize the projects to be considered for the Recreational Activities Capital Fund, by identifying and sorting approved projects as for timeliness, current situation, need, overall positive impact on recreational activities and residents, and cost.
- h. Notify the originator of any project that is not approved with a written response as to the reason(s) for non-acceptance.
- i. Make presentations at the 9 X 9 Work Sessions of projects that have been reviewed for consideration for funding from the Recreational Activities Capital Fund with all supporting documentation and recommendations.
- j. The Board of Directors members at the 9 X 9 Work Sessions will vote to approve/disapprove the submitted projects.
- k. For approved projects, notify the Condominium Controller of the approval and authorization of funding from the Recreational Activities Capital Fund submitting an approved project review sheet and provide a copy to the Social Club Accountant.
- l. Maintain a ledger of approved projects, funded projects, and a balance of funds in a financial statement, including line item disbursements with the date, source and title of the project.

The provisions of this **Appendix G** can be the subject of discussions between the Social Club and Condominium Association from October 15 to February 28 annually. The recommending party President will provide written notification to their counterpart including the specific section(s), proposed changes, and supporting information.



The Presidents will assign Board Members to review the proposed changes and make recommendations at the 9 X 9 Work Sessions for a vote on approval/disapproval. If approved the Duties and Responsibilities of the Designated Condominium and Social Club Board Members will be amended. The 4 X 4 Executive Team will sign the amendment.