

207 Waiver

Title

Legal Description

Policy or Appeals

Correspondence Between Legal & Staff

Letter of Authorization

After Recording Return To:
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[DESERT MOUNTAIN 19]
MASTER COVENANT

Maricopa County, Arizona

NOTE: NO PORTION OF THE PROPERTY DESCRIBED ON EXHIBIT "A" IS SUBJECT TO THE TERMS OF THIS COVENANT UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PORTION OF THE PROPERTY IS RECORDED IN THE OFFICIAL RECORDS OF MARICOPA COUNTY, ARIZONA IN ACCORDANCE WITH SECTION 9.5 BELOW.

Declarant: DM19, LLC, an Arizona limited liability company



Error! Unknown document property name.

7-PP-2017
3/15/2017

[DESERT MOUNTAIN 19]

MASTER COVENANT

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[DESERT MOUNTAIN 19]

MASTER COVENANT

This [Desert Mountain 19] Master Covenant (the "Covenant") is made by DM19, LLC an Arizona limited liability company (the "Declarant"), and is as follows:

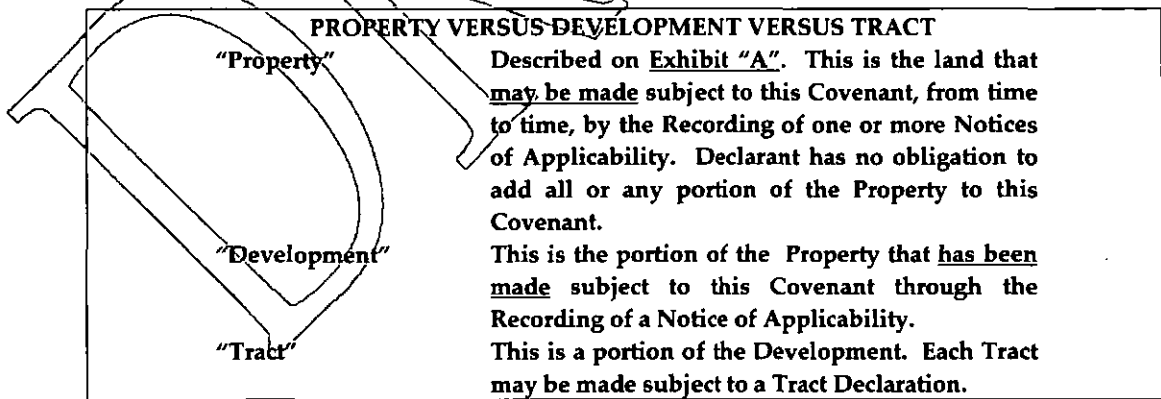
RECITALS:

A. Declarant is the present owner of certain real property located in Maricopa County, Arizona, as more particularly described on Exhibit "A" attached hereto (the "Property").

B. Declarant desires to create a uniform plan for the development, improvement, and sale of the Property and to act as the "Declarant" for all purposes under this Covenant.

C. Portions of the Property may be made subject to this Covenant upon the Recording of one or more Notices of Applicability pursuant to Section 9.5 below, and once such Notices of Applicability have been Recorded, the portions of the Property described therein shall constitute the Development (defined below) and shall be governed by and fully subject to this Covenant, and the Development in turn shall be comprised of separate Tracts (defined below) which shall be governed by and subject to separate Tract Declarations (defined below) in addition to this Covenant.

No portion of the Property is subject to the terms and provisions of this Covenant until a Notice of Applicability is Recorded. A Notice of Applicability may only be Recorded by the Declarant.



D. This Covenant serves notice that upon the further Recording of one or more Notices of Applicability, portions of the Property identified in such notice or notices shall be subject to the terms and provisions of this Covenant.

NOW, THEREFORE, it is hereby declared that: (i) those portions of the Property as and when made subject to this Covenant by the Recording of a Notice of Applicability shall be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which shall run with such portions of the Property and shall be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and shall inure to the benefit of each Owner thereof; and (ii) each contract or deed conveying those portions of the Property which are made subject to this Covenant shall conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed.

This Covenant uses notes (text set apart in boxes) to illustrate concepts and assist the reader. If there is a conflict between any note and the text of the Covenant, the text shall control.

ARTICLE 1 DEFINITIONS

Unless the context otherwise specifies or requires, terms used in this Covenant shall have the meanings set forth below:

"ACC" means the architectural control committee, as defined in Section 6.2. As more particularly described in Article 6, during the Development Period, the Declarant acts as the [Desert Mountain 19] Reviewer and exercises all rights to approve Improvements within the Development. The ACC will not be formed and has no rights to review and approve Improvements until such rights have been assigned to the Association by a written Recorded instrument executed by the Declarant, or the Development Period has expired or is terminated by a written Recorded instrument executed by the Declarant.

"Applicable Law" means all statutes, public laws, ordinances, policies, rules, regulations and orders of all federal, state, county and municipal governments or their agencies having jurisdiction and control over the Development, and any other applicable building codes, zoning restrictions, permits and ordinances adopted a Governmental Entity (defined below), which are in effect at the time a provision of the Documents is applied, and pertaining to the subject matter of the Document provision. Statutes, ordinances and regulations specifically referenced in the Documents are "Applicable Law" on the effective date of the Document, and are not intended to apply to the Development if they cease to be applicable by operation of law, or if they are replaced or superseded by one or more other statutes or ordinances.

"Articles of Incorporation" means the Articles of Incorporation of the Association, filed with the Arizona Corporation Commission, as the same may be amended from time to time.

"Assessment" or **"Assessments"** means assessments the Association may impose under this Covenant.

"Assessment Unit" has the meaning set forth in *Section 5.9.2*.

"Association" means [DESERT MOUNTAIN 19] COMMUNITY ASSOCIATION, INC., an Arizona nonprofit corporation, which will be created by the Declarant to exercise the authority and assume the powers specified in *Article 3* and elsewhere in this Covenant. The failure of the Association to maintain its corporate charter from time to time does not affect the existence or legitimacy of the Association, which derives its authority from this Covenant, the Articles of Incorporation, the Bylaws, and Applicable Law.

"Board" means the Board of Directors of the Association.

"Bulk Rate Contract" or "Bulk Rate Contracts" means one or more contracts which are entered into by the Association for the provision of utility services or other services of any kind or nature to the Lots and/or Condominium Units. The services provided under Bulk Rate Contracts may include, without limitation, security services, trash pick-up services, propane service, natural gas service, landscape maintenance services, cable television services, telecommunications services, internet access services, "broadband services", wastewater services, and any other services of any kind or nature which are considered by the Board to be beneficial. During the Development Period, Declarant must approve each Bulk Rate Contract.

"Bylaws" means the bylaws of the Association, which may be initially adopted and Recorded by Declarant or the Board of the Association and Recorded as part of the initial project documentation for the benefit of the Association. The Bylaws may be amended, from time to time, by the Declarant until expiration or termination of the Development Period. During the Development Period, Declarant must approve any amendment to the Bylaws. After the Development Period, a Majority of the Board may amend the Bylaws.

"City" means the City of Phoenix.

"Club" means [CONFIRM: the Desert Mountain Club, Inc., an Arizona nonprofit corporation, any wholly-owned subsidiaries, or its designee(s), successors or assigns thereof, or any other similar golf or recreational facilities in proximity to the Development].

"Club Parties" shall mean the Club Owner, and any officer, owner, member, director, agent or partner of any of the Club Owner, and any officer, owner or director of any of the foregoing, the Club, Club staff, employees, and contractors, Club Manager (as defined in the Club Provisions), Club Parties and their families, guests, and invitees, Club guests, invitees and designees, Club tournament participants, staff, sponsors and officials, and Club function and party participants.

“Common Area” means any property and facilities that the Association owns or in which it otherwise holds rights or obligations, including any property or facilities the Declarant holds for the benefit of the Association or its Members. Declarant reserves the right, from time to time and at any time, to designate by Recorded instrument portions of the Property being held by the Declarant for the benefit of the Association. Upon the Recording of such designation, the portion of the Property identified therein shall be considered Common Area for the purpose of this Covenant. Common Area also includes any property that the Association holds under a lease, license, or any easement in favor of the Association. Some Common Area shall be solely for the common use and enjoyment of the Owners, while other portions of the Common Area may be designated by the Board for the use and enjoyment of the Owners and members of the public.

“Community Enhancement Covenant” means the community enhancement covenant that may be Recorded by the Declarant as part of the initial project documentation for the benefit of the Association. The Community Enhancement Covenant may be amended, from time to time, by the Declarant during the Development Period. Upon expiration or termination of the Development Period, the Community Enhancement Covenant may be amended by a Majority of the Board.

“Community Manual” means the community manual, which the Declarant may initially adopt and Record as part of the initial project documentation for the Development. The Community Manual may include the Bylaws, Rules and other policies governing the Association. A Majority of the Board may amend or modify the Community Manual from time to time in accordance with the terms of this Covenant. During the Development Period, the Declarant must approve any amendment or modification to the Community Manual.

“Condominium Unit” means an individual unit, including any common element assigned thereto, within a condominium regime, if any, established within the Development. A Condominium Unit shall be designated by the Declarant in a condominium declaration under the Arizona Condominium Act, A.R.S. § 33-1201 *et. seq.* from time to time, for residential, commercial or live/work purposes.

“Covenant” means this [Desert Mountain 19] Master Covenant, as defined in the preamble.

“Declarant” means DM19, LLC, an Arizona limited liability company, its successors and permitted assigns. Notwithstanding any provision in this Covenant to the contrary, Declarant may, by Recorded written instrument, assign, in whole or in part, exclusively or non-exclusively, any of its privileges, exemptions, rights, reservations and duties under this Covenant to any person. Declarant may also, by Recorded written instrument, permit any other person to participate in whole, in part, exclusively or non-exclusively, in any of Declarant’s privileges, exemptions, rights and duties under this Covenant.

Declarant enjoys special rights and privileges to facilitate the development, construction, and marketing of the Property and the Development, and to direct the size, shape and composition of the Property and the Development. These special rights are described in this Covenant. Many of these rights do not terminate until either Declarant: (i) has sold all Lots or Condominium Units which may be created out of the Property; or (ii) voluntarily terminates these rights by a Recorded instrument. Declarant may also assign, in whole or in part, all or any of the Declarant's rights established under the terms and provisions of this Covenant to one or more third-parties.

"[Desert Mountain 19] Reviewer" means the party holding the rights to approve Improvements within the Development and shall be Declarant or its designee until expiration or termination of the Development Period. Upon expiration or termination of the Development Period, the rights of the [Desert Mountain 19] Reviewer shall automatically be transferred to the ACC appointed by the Board, as set forth in *Section 6.2*.

"Design Guidelines" means the instrument setting forth the standards for design and construction of Improvements, landscaping and exterior items proposed to be placed on any Lot or Condominium Unit, which may be adopted pursuant to *Section 6.4.2* as the same may be amended from time to time. The Design Guidelines may consist of multiple written design guidelines applying to specific portions of the Development. The Design Guidelines may be Recorded as a separate written instrument or may be incorporated into a Tract Declaration by exhibit or otherwise. Notwithstanding anything in this Covenant to the contrary, Declarant shall have no obligation to establish Design Guidelines for the Property, the Development, or any portion thereof.

"Development" refers to all or any portion of the Property made subject to this Covenant by the Recording of a Notice of Applicability.

"Development Period" means the period of time beginning on the date when this Covenant has been Recorded, and ending thirty (30) years thereafter], unless earlier terminated by Recorded instrument executed by the Declarant. The Development Period is the period of time in which Declarant reserves the right to facilitate the development, construction, and marketing of the Property and the Development, and the right to direct the size, shape and composition of the Property and the Development. The Development Period is for a term of years and does not require that Declarant own any portion of the Property or the Development.

"Documents" means, singularly or collectively, as the case may be, this Covenant, including the Articles of Incorporation, Bylaws, the Community Manual, the Community Enhancement Covenant, the Design Guidelines (if adopted), any applicable Tract Declaration, any applicable Notice of Applicability, as each may be amended from time to time, and any Rules, or policies or procedures the Association promulgates pursuant to this Covenant, and any Tract Declaration, as adopted and amended from time to time. An appendix, exhibit,

schedule, or certification accompanying a Document is part of such Document. See Table 1 for a summary of the Documents.

"Golf Club Facilities" means the golf courses, clubhouses, parking and other facilities, amenities or improvements related to such facilities, located on the property described on Exhibit "B", presently constructed or to be constructed on said real property or any additional real property owned or leased by Club and all appurtenances thereto including, but not limited to, easements, rights, entitlements or agreements benefiting said property. The Golf Club Facilities are not included in the Property, Common Area or Special Common Area and are not subject to the Documents, unless agreed to in writing by the Club and the Association.

"Governmental Entity" means (i) a quasi-governmental entity created for the purpose of providing benefits or services to the Development; or (ii) any other regulatory authority with jurisdiction over the Development.

"Homebuilder" refers to any Owner (other than Declarant) who is in the business of constructing single-family residences for resale to third parties and acquires all or a portion of the Property to construct single-family residences for resale to third parties.

"Improvement" means any and all physical enhancements and alterations to the Development, including, but not limited to, grading, clearing, removal of trees, site work, utilities, landscaping, irrigation, trails, hardscape, exterior lighting, alteration of drainage flow, drainage facilities, detention/retention ponds, water features, fences, walls, signage, and every structure, fixture, and all appurtenances of every type and kind, whether temporary or permanent in nature, including, but not limited to, buildings, outbuildings, storage sheds, patios, tennis courts, sport courts, recreational facilities, swimming pools, putting greens, garages, driveways, parking areas and/or facilities, storage buildings, sidewalks, fences, gates, screening walls, retaining walls, stairs, patios, decks, walkways, landscaping, mailboxes, awnings and exterior air conditioning equipment or fixtures.

"Lot" means any portion of the Development the Declarant designates as such in a Recorded instrument or as shown as a subdivided lot on a Plat other than Common Area, Special Common Area, or a Lot on which a condominium regime has been established.

"Majority" means more than half.

"Manager" has the meaning set forth in *Section 3.8.8*.

"Members" means every person or entity that holds membership privileges in the Association.

"Mortgage" or **"Mortgages"** means any mortgage(s) or deed(s) of trust securing indebtedness and covering any Lot or Condominium Unit.

"Mortgagee" or **"Mortgagees"** means the holder(s) of any Mortgage(s).

"Neighborhood" has the meaning set forth in *Section 3.2*.

"Neighborhood Delegate" means the representative elected by the Owners of Lots and Condominium Units in each Neighborhood pursuant to the Representative System of Voting (as further defined herein) which may be established by the Declarant to cast the votes of all Lots and Condominium Units in the Neighborhood on all matters requiring a vote of the membership of the Association, except for the following situations in which this Covenant specifically requires Members or Owners to cast their vote individually: (i) changes to the term of the Covenant as described in *Section 10.1*; (ii) amendments to the Covenant as described in *Section 10.3*; and (iii) initiation of any judicial or administrative proceeding as described in *Section 10.4*. Notwithstanding the foregoing, the Documents may set forth additional circumstances in which the Members or Owners are required to cast their vote individually, and voting by Neighborhood Delegates is prohibited.

"Notice of Applicability" means the Recorded notice the Declarant executes for the purpose of adding all or any portion of the Property to the terms and provisions of this Covenant. In accordance with *Section 9.5*, a Notice of Applicability may also subject a portion of the Property to a previously Recorded Tract Declaration.

"Occupant" means a resident, occupant or tenant of a Lot or Condominium Unit, other than an Owner.

"Owner" means the person(s), entity or entities, including Declarant, holding all or a portion of the fee simple interest in any Lot or Condominium Unit and in no event shall mean any Occupant. Mortgagees who acquire title to a Lot or Condominium Unit through a deed in lieu of foreclosure or through foreclosure are Owners. Persons or entities having ownership interests merely as security for the performance of an obligation are not Owners. Every Owner is a Member of the Association.

"Permittee" means any Occupant and any officer, agent, employee, licensee, lessee, customer, vendor, supplier, guest, invitee or contractor of an Owner or Declarant (as applicable).

"Plat" means a Recorded subdivision plat of any portion of the Development, and any amendments thereto.

"Property" means all of that certain real property described on Exhibit "A", attached hereto and incorporated herein by reference, subject to any additions thereto or withdrawals therefrom as may be made pursuant to *Section 9.3* and *Section 9.4*, respectively, of this Covenant.

"Record, Recording, Recordation and Recorded" means recorded in the Official Records of Maricopa County, Arizona.

"Representative System of Voting" means the method of voting which the Declarant may establish pursuant to *Section 3.6* below. Declarant shall have no obligation to implement the Representative System of Voting.

"Residential Developer" refers to any Owner, other than Declarant, who acquires undeveloped land, one or more Lots, or any other portion of the Property for the purposes of development for and/or resale to a Homebuilder.

"Rules" means any instrument, however denominated, which the Declarant may adopt as part of the Community Manual, or the Board may subsequently adopt for the regulation and management of the Development, including any amendments thereto. Until expiration or termination of the Development Period, the Declarant must approve any amendment to the Rules.

"Service Area" means a group of Lots and/or Condominium Units designated as a separate Service Area pursuant to this Covenant for purpose of receiving benefits or services from the Association which are not provided to all Lots and Condominium Units. A Service Area may be comprised of more than one type of use or structure and may include noncontiguous Lots. A Lot or Condominium Unit may be assigned to more than one Service Area. Service Area boundaries may be established and modified as provided in *Section 2.4*.

"Service Area Assessments" means assessments levied against the Lots and/or Condominium Units in a particular Service Area to fund Service Area Expenses, as described in *Section 5.6*.

"Service Area Expenses" means the estimated and actual expenses which the Association incurs or expects to incur for the benefit of Owners within a particular Service Area, which may include a reasonable reserve for capital repairs and replacements.

"Special Common Area" means any interest in real property or improvements which the Declarant designates in a Recorded Notice of Applicability pursuant to *Section 9.5*, in a Tract Declaration or in any written instrument Recorded by Declarant (which designation shall be made in the sole and absolute discretion of Declarant) as Special Common Area which is assigned for the purpose of exclusive use and/or the obligation to pay Special Common Area Assessments attributable thereto, to one or more, but less than all of the Lots, Condominium Units, Owners or Tracts, and is or shall be conveyed to the Association or as to which the Association shall be granted rights or obligations, or otherwise held by the Declarant for the benefit of the Association. The Notice of Applicability, Tract Declaration, or other written notice shall identify the Lots, Condominium Units, Owners or Tracts assigned to such Special Common Area and further indicate whether the Special Common Area is assigned to such parties for the purpose of exclusive use and the payment of Special Common Area Assessments, or only for the purpose of paying Special Common Area Assessments attributable thereto. By way of illustration and not limitation, Special Common Area might include such things as

private drives and roads, entrance facilities and features, monumentation or signage, walkways or landscaping.

"Special Common Area Expenses" means the estimated and actual expenses which the Association incurs or expects to incur to operate, maintain, repair and replace Special Common Area, which may include a reasonable reserve for capital repairs and replacements.

"Special Common Area Assessments" means assessments levied against the Lots and/or Condominium Units as described in *Section 5.5*.

"Tract" means any part of the Development (less than the whole), which Tract may be subject to a Tract Declaration in addition to being subject to this Covenant.

"Tract Declaration" means, with respect to any Tract, the separate instruments containing covenants, restrictions, conditions, limitations and/or easements, to which the property within such Tract is subjected.

"Voting Group" has the meaning set forth in *Section 3.7* below.

DRAFT

TABLE 1: DOCUMENTS

Covenant (Recorded)	Creates obligations that are binding upon the Association and all present and future owners of Property made subject to the Covenant by the Recording of a Notice of Applicability.
Community Enhancement Covenant (Recorded)	Establishes a fee payable to the Association upon the transfer of a Lot from one party to another.
Notice of Applicability (Recorded)	Describes the portion of the Property being made subject to the terms and provisions of the Covenant and any applicable Tract Declaration.
Tract Declaration (Recorded)	Includes additional covenants, conditions and restrictions governing portions of the Development.
Articles of Incorporation (Filed with Arizona Corporate Commission and included in Community Manual)	Establishes the Association as a not-for-profit corporation under Arizona law.
Community Manual (Recorded)	Includes the Bylaws, Rules and policies governing the Association and the Development.
Design Guidelines (if adopted)	If adopted, governs the design and architectural standards for the construction of Improvements and modifications thereto. Neither the Declarant nor the [Desert Mountain 19] Reviewer shall have any obligation to adopt Design Guidelines.

**ARTICLE 2
GENERAL RESTRICTIONS**

2.1 General.

2.1.1 Conditions and Restrictions. All Lots and Condominium Units within the Development to which a Notice of Applicability has been Recorded in accordance with *Section 9.5*, shall be owned, held, encumbered, leased, used, occupied and enjoyed subject to the Documents and Applicable Law. **NO PORTION OF THE PROPERTY SHALL BE SUBJECT TO THE TERMS AND PROVISIONS OF THIS COVENANT UNTIL A NOTICE OF APPLICABILITY HAS BEEN RECORDED.**

2.1.2 Compliance with the Documents and Applicable Law. Compliance with the Documents is mandatory. However, compliance with the Documents is not a substitute for compliance with Applicable Law. Please be advised that the Documents do not purport to list or describe each requirement, rule, or restriction which may be applicable to a Lot or a Condominium Unit located within the Development. Each Owner is advised to review all encumbrances affecting the use and improvement of their Lot or Condominium Unit. Furthermore, Owners should not construe an approval by the [Desert Mountain 19] Reviewer as confirmation that any Improvement complies with the terms and provisions of all encumbrances which may affect the Owner's Lot or Condominium Unit. The Association, each

Owner, Occupant or other user of any portion of the Development must comply with the Documents and Applicable Law, as supplemented, modified or amended from time to time.

2.2 Incorporation of Tract Declarations. Upon Recordation of a Tract Declaration such Tract Declaration shall, automatically and without the necessity of further act, be incorporated into, and be deemed to constitute a part of this Covenant, to the extent not in conflict with this Covenant, but shall apply only to portions of the Property made subject to the Tract upon the Recordation of one or more Notices of Applicability. To the extent of any conflict between the terms and provisions of a Tract Declaration and this Covenant, the terms and provisions of this Covenant shall apply.

2.3 Conceptual Plans. All master plans, site plans, brochures, illustrations, information and marketing materials related to the Property or the Development (collectively, the "**Conceptual Plans**") are conceptual in nature and are intended to be used for illustrative purposes only. **The land uses and Improvements reflected on the Conceptual Plans are subject to change at any time and from time to time, and it is expressly agreed and understood that land uses within the Property or the Development may include uses which are not shown on the Conceptual Plans.** Neither Declarant, a Residential Developer, nor any Homebuilder or other developer of any portion of the Property or the Development makes any representation or warranty concerning such land uses and Improvements shown on the Conceptual Plans or otherwise planned for the Property or the Development and it is expressly agreed and understood that no Owner will be entitled to rely upon the Conceptual Plans or any statement made by the Declarant or any of Declarant's representatives regarding proposed land uses, or proposed or planned Improvements, in making the decision to purchase any land or Improvements within the Property or the Development. Each Owner who acquires a Lot or Condominium Unit within the Development acknowledges development will extend over many years, and agrees that the Association shall not engage in, or use Association funds to support, protest, challenge, or make any other form of objection to development of the Property or changes in the Conceptual Plans as they may be amended or modified from time to time.

2.4 Provision of Benefits and Services to Service Area.

(i) Declarant, in a Notice of Applicability Recorded pursuant to *Section 9.5* or in any Recorded notice, may assign Lots and/or Condominium Units to one or more Service Areas (by name or other identifying designation) as it deems appropriate, which Service Areas may be then existing or newly created, and may require that the Association provide benefits or services to such Lots and/or Condominium Units in addition to those which the Association generally provides to the Development. During the Development Period, Declarant may unilaterally amend any Notice of Applicability or any Recorded notice, to re-designate Service Area boundaries. All costs associated with the provision of services or benefits to a Service Area shall be assessed against the

Lots and/or Condominium Units within the Service Area as a Service Area Assessment.

(ii) In addition to Service Areas which Declarant may designate, until expiration or termination of the Development Period, any group of Owners may petition the Board to designate their Lots and/or Condominium Units as a Service Area for the purpose of receiving from the Association: (i) special benefits or services which are not provided to all Lots and/or Condominium Units; or (ii) a higher level of service than the Association otherwise provides. Upon receipt of a petition signed by Owners of a Majority of the Lots and/or Condominium Units within the proposed Service Area, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and associated expenses, which may include a reasonable administrative charge in such amount as the Board deems appropriate (provided, any such administrative charge shall apply at a uniform rate per Lot and/or Condominium Units among all Service Areas receiving the same service). If approved by the Board, the Declarant during the Development Period, and the Owners of at least sixty-seven percent (67%) of the total number of votes held by all Lots and/or Condominium Units within the proposed Service Area, the Association shall provide the requested benefits or services on the terms set forth in the proposal or in a manner otherwise determined by the Board. The cost and administrative charges associated with such benefits or services shall be assessed against the Lots and/or Condominium Units within such Service Area as a Service Area Assessment. After expiration or termination of the Development Period, the Board may discontinue or modify benefits or services provided to a Service Area.

2.5 Designation of Special Common Areas. Until the expiration or termination of the Development Period, Declarant may designate, in a Notice of Applicability, a Tract Declaration or in any written instrument Recorded by Declarant (which designation will be made in the sole and absolute discretion of Declarant), any interest in real property or improvements which benefits certain Lot(s), Condominium Unit(s) or one or more portion(s) of but less than all of the Development as Special Common Area, for the exclusive use of and/or the obligation to pay Special Common Area Assessments by the Owners of such Lot(s), Condominium Unit(s) or portion(s) of the Development attributable thereto, and is or will be conveyed to the Association or as to which the Association will be granted rights or obligations, or otherwise held by the Declarant for the benefit of the Association. The Notice of Applicability, Tract Declaration, or other Recorded written notice designating such Special Common Area will identify the Lot(s), Condominium Unit(s) or portion(s) of the Development assigned to such Special Common Area and further indicate whether the Special Common Area designated therein is for the purpose of the exclusive use and the payment of Special Common Area Assessments by the Owner(s) thereof, or only for the purpose of paying Special Common

Area Assessments attributable thereto, but not also for exclusive use. By way of illustration and not limitation, Special Common Area might include such things as private drives and roads, entrance facilities and features, monumentation or signage, walkways or landscaping, which may or may not be exclusively used by the Owners paying the attributable Special Common Area Assessments therefor. All costs associated with maintenance, repair, replacement, and insurance of such Special Common Area will be assessed as a Special Common Area Assessment against the Owners of the Lots and/or Condominium Units to which the Special Common Area is assigned. During the Development Period, Declarant may Record a written instrument converting any previously designated Special Common Area, or any portion thereof, as Common Area.

ARTICLE 3
[DESERT MOUNTAIN 19] COMMUNITY ASSOCIATION, INC.

3.1 Organization. The Association shall be a nonprofit corporation created for the purposes, charged with the duties, and vested with the powers of an Arizona non-profit corporation. Neither the Articles of Incorporation nor the Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Covenant. Unless expressly provided in the Documents, the Association acts through a Majority of the Board. Certain acts and activities of the Association and the Board must be approved by the Declarant during the Development Period. If Declarant approval is required, Declarant's approval must be evidenced in writing.

3.2 Neighborhoods. Declarant reserves the right, but has no obligation, to record a Designation of Neighborhood pursuant to Section 9.6 to assign portions of the Development to a "Neighborhood." A Neighborhood may be comprised of any number of Lots and/or Condominium Units and may include Lots or Condominium Units of more than one type, as well as Lots or Condominium Units that are not contiguous to one another. Each Designation of Neighborhood shall initially assign the portion of the Development described therein to a specific Neighborhood which may then exist (being identified and described in a previously Recorded Notice of Applicability) or may be newly created. After a Designation of Neighborhood is Recorded, any and all portions of the Development which are not assigned to a specific Neighborhood shall constitute a single Neighborhood. During the Development Period, Declarant may Record an amendment to any previously Recorded Designation of Neighborhood to designate or change Neighborhood boundaries.

3.3 Membership.

3.3.1 Mandatory Membership. Any person or entity, upon becoming an Owner, shall automatically become a Member of the Association. Membership shall be appurtenant to and shall run with the ownership of the Lot or Condominium Unit that qualifies the Owner thereof for membership, and membership may not be severed from the ownership of

the Lot or Condominium Unit, or in any way transferred, pledged, mortgaged or alienated, except together with the title to such Lot or Condominium Unit.

3.3.2 Easement of Enjoyment – Common Area. Every Member shall have a right and easement of enjoyment in and to all of the Common Area and an access easement, if applicable, by and through any Common Area, which easements shall be appurtenant to and shall pass with the title to such Member's Lot or Condominium Unit, subject to the following restrictions and reservations:

(i) The right of the Declarant, or the Declarant's designee, or with the advance written approval of the Declarant during the Development Period, the right of the Board, to cause such Improvements and features to be constructed upon the Common Area;

(ii) The right of the Association to suspend the Member's rights to use the Common Area for any period during which any Assessment against such Member's Lot or Condominium Unit remains past due and for any period during which such Member is in violation of any provision of this Covenant;

(iii) The right of the Declarant, during the Development Period, and the Board, with Declarant's advance written consent during the Development Period, to dedicate or transfer all or any part of the Common Area to Governmental Entity;

(iv) The right of the Declarant, during the Development Period, and the Board, with Declarant's advance written consent during the Development Period, to grant easements or licenses over and across the Common Area;

(v) The right of the Declarant, during the Development Period, and the Board, with Declarant's advance written consent during the Development Period, to promulgate Rules regarding the use of the Common Area and any Improvements thereon;

(vi) With the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Common Area and, in furtherance thereof, mortgage the Common Area; and

(vii) The right of the Association to contract for services with any third parties on such terms as the Board may determine.

3.3.3 Easement of Enjoyment – Special Common Area. Each Owner of a Lot or Condominium Unit which has been assigned use of Special Common Area in a Notice of Applicability, Tract Declaration, or other Recorded instrument, shall have a right and easement

of enjoyment in and to all of such Special Common Area for its intended purposes, and an access easement, if applicable, by and through such Special Common Area, which easement shall be appurtenant to and shall pass with title to such Owner's Lot or Condominium Unit, subject to *Section 3.3.2* and subject to the following restrictions and reservations:

(i) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to cause such Improvements and features to be constructed upon the Special Common Area;

(ii) The right of Declarant during the Development Period to grant additional Lots or Condominium Units use rights in and to Special Common Area in a subsequently Recorded Notice of Applicability, Tract Declaration, or Recorded instrument;

(iii) The right of the Association to suspend the Member's rights to use the Special Common Area for any period during which any Assessment against such Member's Lot or Condominium Unit remains past due and for any period during which such Member is in violation of any provision of this Covenant;

(iv) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to grant easements or licenses over and across the Special Common Area;

(v) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to dedicate or transfer all or any part of the Special Common Area to any Governmental Entity;

(vi) With the advance written approval of the Declarant during the Development Period, the right of the Board to borrow money for the purpose of improving the Special Common Area and, in furtherance thereof, mortgage the Special Common Area;

(vii) The right of the Declarant, during the Development Period, and the Board, with the Declarant's advance written consent during the Development Period, to promulgate Rules regarding the use of the Special Common Area and any Improvements thereon; and

(viii) The right of the Association to contract for services with any third parties on such terms as the Board may determine.

3.4 Governance. As more specifically described in the Bylaws, the Board will consist of at least three (3) individuals elected at the annual meeting of the Association, or at a

special meeting called for such purpose. **Notwithstanding the foregoing provision or any provision in this Covenant to the contrary, until the expiration or termination of the Development Period, Declarant will be entitled to appoint and remove all members of the Board and officers of the Association. Declarant may terminate its right as to the appointment and removal of one or more or all the Board members by the Recordation of a termination notice executed by the Declarant. In the event Declarant terminates its right to appoint and remove less than all of the Board members, the Board positions to which the termination applies will be elected by the Members. Each Board member elected by the Members in accordance with the foregoing sentence will be elected for a term of one (1) year and shall serve until his or her successor is elected or he or she is replaced in accordance with the Bylaws.**

3.4.1 At such time as Declarant no longer has or terminated the right to appoint and remove any members of the Board as provided in this *Section 3.4*, the President of the Association will call a meeting of the Members of the Association where the Members will elect one (1) Director for a one (1) year term. Upon expiration of the term of a Director elected by the Members as provided herein, his or her successor will be elected by the Members for a term of two (2) years. A Director takes office upon the adjournment of the meeting of balloting at which he or she is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his or her successor is elected or appointed.

3.5 **Voting Allocation.** The number of votes which may be cast to elect members to the Board (except as provided by *Section 3.4*), and on all other matters the Members may vote on shall be calculated as set forth below.

3.5.1 **Lot.** Each Owner of a Lot or Condominium Unit shall be allocated one (1) vote for each Lot so owned. In the event of the re-subdivision of any Lot or Condominium Unit into two or more, as applicable: (i) the number of votes to which such Lot is entitled shall be increased as necessary to retain the ratio of one (1) vote for each Lot resulting from such re-subdivision, *e.g.*, each Lot Unit resulting from the re-subdivision shall be entitled to one (1) vote; and (ii) each Lot resulting from the re-subdivision shall be allocated one (1) Assessment Unit. In the event of the consolidation of two (2) or more Lots for purposes of construction of a single residence thereon, the voting rights and Assessments will continue to be determined according to the number of original Lots contained in such consolidated Lot. The Notice of Applicability may include a provision with an alternative assessment unit allocation with respect to any Condominium Unit. Nothing in this Covenant shall be construed as authorization for any re-subdivision or consolidation of Lots or Condominium Units, such actions being subject to the conditions and restrictions of the [Desert Mountain 19] Reviewer.

3.5.2 **Declarant.** In addition to the votes to which Declarant is entitled by reason of *Section 3.5.1*, for every one (1) vote outstanding in favor of any other person or entity, Declarant shall have four (4) additional votes until the expiration or termination of the Development Period. Declarant may cast votes allocated to the Declarant pursuant to this

Section 3.5.2 and shall be considered a Member for the purpose of casting such votes, and need not own any portion of the Development as a pre-condition to exercising such votes.

3.5.3 Co-Owners. If there is more than one Owner of a Lot or Condominium Unit, the vote for such Lot or Condominium Unit shall be exercised as the co-Owners holding a Majority of the ownership interest in the Lot or Condominium Unit determine among themselves and advise the Secretary of the Association in writing prior to the close of balloting. Any co-Owner may cast the vote for the Lot or Condominium Unit, and majority agreement shall be conclusively presumed unless another co-Owner of the Lot or Condominium Unit protests promptly to the President or other person presiding over the meeting or the balloting, in the case of a vote taken outside of a meeting. In the absence of a majority agreement, the Lot's or Condominium Unit's vote shall be suspended if two or more co-Owners seek to exercise it independently. In no event shall the vote for such Lot or Condominium Unit exceed the total votes to which such Lot or Condominium Unit is otherwise entitled pursuant to this Section 3.5.3.

3.6 Optional Representative System of Voting. The Representative System of Voting shall only be established if the Declarant first calls for election of a Neighborhood Delegate for a particular Neighborhood. The Declarant shall have no obligation to establish the Representative System of Voting. In addition, Declarant may terminate the Representative System of Voting at any time prior to expiration of the Development Period by Recorded written instrument.

3.6.1 Election of Initial Neighborhood Delegate. In the event that the Declarant chooses to establish a Representational System of Voting, the Owners of Lots and Condominium Units within each Neighborhood shall elect a Neighborhood Delegate and an alternate Neighborhood Delegate, in the manner provided below, to cast the votes of all Lots and Condominium Units in the Neighborhood on matters requiring a vote of the membership, except where this Covenant specifically requires the Owners or Members to cast their votes individually as more particularly described in the definition of "Neighborhood Delegate" in Article 1 of this Covenant. In the event that a quorum is not met to elect a Neighborhood Delegate and an alternate Neighborhood Delegate by the Owners of Lots and Condominium Units within each Neighborhood, during the Development Period, Declarant shall have the right to appoint a Neighborhood Delegate until the next election is held as provided in Section 3.6.3. Notwithstanding the foregoing or any provision to the contrary in this Covenant, as provided in Section 3.4, until the 10th anniversary of the date this Covenant is Recorded, Declarant will have the sole right to appoint and remove all members of the Board.

3.6.2 Term. The Neighborhood Delegate and the alternate Neighborhood Delegate shall be elected on a yearly basis (once every year), by electronic and absentee ballot without a meeting of Owners, or at a meeting of the Owners within each Neighborhood where written, electronic, proxy, and/or absentee ballots may also be utilized, as the Board determines. If the Board determines to hold a meeting for the election of the Neighborhood Delegate and the

alternate Neighborhood Delegate, the presence, in person or by proxy, absentee or electronic ballot, of Owners representing at least ten percent (10%) of the total votes in a Neighborhood shall constitute a quorum at such meeting. In the event that a quorum is not met to elect a Neighborhood Delegate and an alternate Neighborhood Delegate by the Owners of Lots and Condominium Units within each Neighborhood, Declarant, during the Development Period, and the Board thereafter, shall have the right to appoint a Neighborhood Delegate and an alternate Neighborhood Delegate until the next election is held. Notwithstanding the foregoing provision, the Declarant during the Development Period, and the Board thereafter, may elect to extend the term of a Neighborhood Delegate and alternate Neighborhood Delegate to the extent Declarant or the Board, as applicable, determines that such extension will result in administrative efficiencies by allowing elections within different Neighborhoods to occur in close proximity to one another; provided, however, that the term of an existing Neighborhood Delegate and alternate Neighborhood Delegate shall not be extended for more than twelve (12) months. If the Neighborhood Delegate is removed in accordance with *Section 3.6.6* below, the alternate Neighborhood Delegate shall automatically assume the obligations and duties of the Neighborhood Delegate and the serve the remainder of the Neighborhood Delegate's term, in which event either the Declarant during the Development Period, or the Board thereafter, shall appoint a new alternate Neighborhood Delegate.

3.6.3 Election Results. At any Neighborhood election, the candidate for each position who receives the greatest number of votes shall be elected to serve as the Neighborhood Delegate and the candidate with the second greatest number of votes shall be elected to serve as the alternate Neighborhood Delegate. The Neighborhood Delegate and alternate Neighborhood Delegate shall serve until his or her successor is elected or appointed.

3.6.4 Voting by the Neighborhood Delegate. The Neighborhood Delegate or, in his or her absence, the alternate Neighborhood Delegate, attends Association meetings and casts all votes allocated to Lots and Condominium Units in the Neighborhood that he or she represents on any matter as to which such Neighborhood Delegate is entitled to vote under this Covenant, including the election of Board members upon the expiration or termination of the Development Period. A Neighborhood Delegate may cast all votes allocated to Lots and Condominium Units in the Neighborhood in such delegate's discretion and may, but need not, poll the Owners of Lots and Condominium Units in the Neighborhood which he or she represents prior to voting.

3.6.5 Qualification. Candidates for election as the Neighborhood Delegate and alternate Neighborhood Delegate from a Neighborhood shall be Owners of Lots or Condominium Units in the Neighborhood, spouses of such Owners, Occupants of the Neighborhood, or an entity representative where an Owner is an entity.

3.6.6 Removal. Any Neighborhood Delegate or alternate Neighborhood Delegate may be removed, with or without cause, upon the vote or written petition of Owners holding a Majority of the votes allocated to the Lots and Condominium Units in the

Neighborhood that the Neighborhood Delegate represents or by the Declarant, until the expiration or termination of the Development Period. If a Neighborhood Delegate is removed in accordance with the foregoing sentence, the alternate Neighborhood Delegate shall serve as the Neighborhood Delegate unless also removed.

3.6.7 Subordination to the Board. Neighborhood Delegates are subordinate to the Board and their responsibility and authority does not extend to policy making, supervising, or otherwise being involved in Association governance.

3.6.8 Running for the Board. An Owner may not simultaneously hold the position of Neighborhood Delegate and be a member of the Board of Directors. In addition, if Neighborhood Delegates are established, a Neighborhood Delegate running for the Board shall resign their position prior to casting any vote for a member of the Board. In such event, the alternate Neighborhood Delegate shall serve out the rest of the term as the former Neighborhood Delegate, and another alternate Neighborhood Delegate shall be elected by the Owners or Members in the Neighborhood to serve out the term as the successor alternate Neighborhood Delegate.

3.7 Voting Groups. Declarant may designate voting groups consisting of one or more Neighborhoods for the purpose of electing members of the Board (the "Voting Groups"). The purpose of Voting Groups is to provide groups with dissimilar interests the opportunity to be represented on the Board and to avoid a situation in which less than all the Neighborhoods are able to elect the entire Board. Voting Groups may be established by the Declarant during the Development Period without regard to whether the Representative System of Voting has been implemented in accordance with Section 3.6 by the Declarant. If Voting Groups are established and the Representative System of Voting has been implemented, then a Neighborhood Delegate shall only vote on the slate of candidates assigned to the Neighborhood Delegate. If Voting Groups are established and the Representative System of Voting has not been implemented, then each Owner of a Lot or Condominium Unit shall only vote on the slate of candidates assigned to their Neighborhood.

3.7.1 Voting Group Designation. Declarant shall establish Voting Groups, if at all, by Recording a written instrument identifying the Neighborhoods within each Voting Group (the "Voting Group Designation"). The Voting Group Designation will assign the number of members of the Board which the Voting Group is entitled to exclusively elect.

3.7.2 Amendment of Voting Group Designation. The Voting Group Designation may be amended unilaterally by the Declarant at any time during the Development Period. After expiration or termination of the Development Period, the Board shall have the right to Record or amend such Voting Group Designation upon the vote of a Majority of the Board and approval of Neighborhood Delegates representing a Majority of the Neighborhoods. Neither Recordation nor amendment of such Voting Group Designation shall constitute an

amendment to this Covenant, and no consent or approval to modify the Voting Group Designation shall be required except as stated in this paragraph.

3.7.3 Single Voting Group. Until such time as Voting Groups are established, all of the Development shall constitute a single Voting Group. After a Voting Group Designation is Recorded, any and all portions of the Development which are not assigned to a specific Voting Group shall constitute a single Voting Group.

3.8 **Powers**. The Association shall have the powers of an Arizona nonprofit corporation. It shall further have the power to do and perform any and all acts that may be necessary or proper, for or incidental to, the exercise of any of the express powers granted to it under Applicable Law or this Covenant. Without in any way limiting the generality of the two preceding sentences, the Board, acting on behalf of the Association, shall have the following powers at all times:

3.8.1 Rules. To make, establish and promulgate, and in its discretion to amend from time to time, or repeal and re-enact, Rules, policies, the Bylaws and the Community Manual, as applicable, which are not in conflict with this Covenant, as the Board deems proper, covering any and all aspects of the Development (including the operation, maintenance and preservation thereof) or the Association. During the Development Period, the Declarant must approve Rules or policies the Board proposes, as well as the Bylaws and the Community Manual, and any modifications thereto.

3.8.2 Insurance. To obtain and maintain in effect, policies of insurance that, in the opinion of the Board, are reasonably necessary or appropriate to carry out the Association's functions.

3.8.3 Records. To keep books and records of the Association's affairs, and to make such books and records, together with current copies of the Documents available for inspection by the Owners, Mortgagees, and insurers or guarantors of any Mortgage upon request during normal business hours in accordance with Applicable Law.

3.8.4 Assessments. To levy and collect Assessments and to determine Assessment Units, as provided in *Article 5* below.

3.8.5 Right of Entry and Enforcement. To enter at any time without notice in an emergency (or in the case of a non-emergency, after twenty-four (24) hours written notice), without being liable to any Owner, upon any Lot or into any Condominium Unit for the purpose of enforcing the Documents or for the purpose of maintaining or repairing any area, Improvement or other facility to conform to the Documents. The expense the Association incurs in connection with the entry upon any Lot or into any Condominium Unit and the removal or maintenance and repair work conducted therefrom, thereon or therein shall be a personal obligation of the Owner of the Lot or the Condominium Unit so entered, shall be

deemed an Individual Assessment against such Lot or Condominium Unit, shall be secured by a lien upon such Lot or Condominium Unit, and shall be enforced in the same manner and to the same extent as provided in *Article 5* hereof for Assessments. The Association shall have the power and authority from time to time, in its own name and on its own behalf, or in the name of and on behalf of any Owner who consents thereto, to commence and maintain actions and suits to enforce, by mandatory injunction or otherwise, or to restrain and enjoin, any breach or threatened breach of the Documents. The Association is also authorized to settle claims, enforce liens, and take all such action as it may deem necessary or expedient to enforce the Documents; provided, however, that the Board shall never be authorized to expend any Association funds for the purpose of bringing suit against Declarant, or its successors or assigns. The Association may not enter into, alter or demolish any Improvements on any Lot, or any Condominium Unit, other than Common Area or Special Common Area, in enforcing this Covenant before the Association obtains either (i) a judicial order authorizing such action, or (ii) the written consent of the Owner(s) of the affected Lot(s) or Condominium Unit(s). **EACH OWNER AND OCCUPANT HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE ASSOCIATION'S NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT TO THE EXTENT SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

3.8.6 Legal and Accounting Services. To retain and pay for legal and accounting services necessary or proper in the operation of the Association, including an annual financial audit, review or compilation of the Association to be completed no later than one hundred and eighty (180) days after the end of the Association's fiscal year to be made available upon request to the Members within thirty (3) days after completion.

3.8.7 Conveyances. To grant and convey to any person or entity the real property and/or other interest, including fee title, leasehold estates, easements, rights-of-way or mortgages, out of, in, on, over, or under any Common Area or Special Common Area. During the Development Period, the Declarant must approve any grant or conveyance under this *Section 3.8.7*. In addition, the Association (with the advance written approval of the Declarant during the Development Period) and the Declarant are expressly authorized and permitted to convey easements over and across Common Area or Special Common Area for the benefit of property not otherwise subject to the terms and provisions of this Covenant.

3.8.8 Manager. To retain and pay for the services of a person or firm (the "Manager"), which may include Declarant or any affiliate of Declarant, to manage and operate

the Association, including Common Area, Special Common Area, and/or any Service Area, to the extent deemed advisable by the Board. Additional personnel may be employed directly by the Association or may be furnished by the Manager. To the extent permitted by Applicable Law, the Board may delegate any other duties, powers and functions to the Manager. In addition, the Board may adopt transfer fees, resale certificate fees required under Arizona Revised Statutes § 33-1806 subject to the limitations set forth in such section, fees for Recording the Association notice required under Arizona Revised Statutes § 33-1807(I), or any other fees associated with the provision of management services to the Association or its Members. **THE MEMBERS HEREBY RELEASE THE ASSOCIATION AND THE MEMBERS OF THE BOARD FROM LIABILITY FOR ANY OMISSION OR IMPROPER EXERCISE BY THE MANAGER OF ANY SUCH DUTY, POWER OR FUNCTION SO DELEGATED.**

3.8.9 Property Services. To pay for water, sewer, garbage removal, street lights, landscaping, and all other utilities, services, repair and maintenance, including but not limited to private or public recreational facilities, easements, roads, roadways, rights-of-ways, signs, parks, parkways, median strips, sidewalks, paths, trails, ponds, canals, and lakes.

3.8.10 Other Services and Properties. To obtain and pay for any other property and services, and to pay any other taxes or assessments that the Association or the Board is required or permitted to secure or to pay for pursuant to Applicable Law or under the terms of the Documents or as determined by the Board.

3.8.11 Construction on Common Area and Special Common Area. To construct new Improvements or additions to Common Area and Special Common Area, subject to the approval of the Declarant during the Development Period.

3.8.12 Contracts. To enter into Bulk Rate Contracts or other contracts or licenses with Declarant or any third party on such terms and provisions as the Board shall determine, to operate and maintain the Development, any Common Area, Special Common Area, Improvement, or other property, or to provide any service, including but not limited to cable, utility, or telecommunication services, or perform any function on behalf of Declarant, the Board, the Association, or the Members. During the Development Period, the Declarant must approve all Bulk Rate Contracts.

3.8.13 Property Ownership. To acquire, own and dispose of all manner of real and personal property, whether by grant, lease, easement, gift or otherwise. During the Development Period, the Declarant must approve all acquisitions and dispositions of the Association hereunder.

3.8.14 Authority with Respect to the Documents. To do any act, thing or deed that is necessary or desirable, in the judgment of the Board, to implement, administer or enforce any of the Documents. Any decision by the Board to delay or defer the exercise of the power

and authority granted under this *Section 3.8.14* shall not subsequently in any way limit, impair or affect ability of the Board to exercise such power and authority.

3.8.15 Membership Privileges. To establish Rules governing and limiting the use of the Common Area, Special Common Area, and any Improvements thereon as well as the use, maintenance, and enjoyment of the Lots and Condominium Units. During the Development Period, the Declarant must approve all Rules governing and limiting the use of the Common Area, Special Common Area, Service Area and any Improvements thereon.

3.9 Conveyance of Common Area and Special Common Area to the Association.

The Association may acquire, hold, and dispose of any interest in tangible and intangible personal property and real property. Declarant and its assignees reserve the right, from time to time and at any time, to designate, convey, assign or transfer by written and Recorded instrument property being held by the Declarant for the benefit of the Association. Upon the Recording of a designation, the portion of the property identified therein will be considered Common Area or Special Common Area, as applicable, for the purpose of this Covenant and the Association shall have an easement over and across the Common Area or Special Common Area necessary or required to discharge the Association's obligations under this Covenant, subject to any terms and limitations to such easement set forth in the designation. Declarant and its assignees may also assign, transfer or convey to the Association interests in real or personal property within or for the benefit of the Development for the Development and the general public, or otherwise, as determined in the sole and absolute discretion of the Declarant. All or any real or personal assigned, transferred and/or conveyed by the Declarant to the Association shall be deemed accepted by the Association upon Recordation, and without further action by the Association, and shall be considered Common Area or Special Common Area without regard to whether such real or personal property is designated by the Declarant as Common Area or Special Common Area. If requested by the Declarant, the Association will execute a written instrument, in a form requested by the Declarant, evidencing acceptance of such real or personal property, provided, however, execution of a written consent by the Association shall in no event be a precondition to acceptance by the Association. The assignment, transfer, and/or conveyance of real or personal property to the Association may be by deed without warranty, may reserve easements in favor of the Declarant or a third party designated by Declarant over and across such property, and may include such other provisions, including restrictions on use, determined by the Declarant, in the Declarant's sole and absolute discretion. Property assigned, transferred, and/or conveyed to the Association may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association for no payment. Declarant and/or its assignees may construct and maintain upon portions of the Common Area and/or the Special Common Area such facilities and may conduct such activities which, in Declarant's sole opinion, may be required, convenient, or incidental to the construction or sale of Improvements on the Development, including, but not limited to,

business offices, signs, model homes, and sales offices. Declarant and its assignees shall have an easement over and across the Common Area and the Special Common Area for access and shall have the right to use such facilities and to conduct such activities at no charge.

3.10 Indemnification. To the fullest extent permitted by Applicable Law but without duplication (and subject to) any rights or benefits arising under the Articles of Incorporation or Bylaws of the Association, the Association shall indemnify any person who was, or is, a party, or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative by reason of the fact that such person is, or was, a director, officer, committee member, employee, servant or agent of the Association against expenses, including attorneys' fees, reasonably incurred by him or her in connection with such action, suit or proceeding if it is found and determined by the Board or a court of competent jurisdiction that such person: (a) acted in good faith and in a manner such person reasonably believed to be in, or not opposed to, the best interests of the Association; or (b) with respect to any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful. The termination of any action, suit or proceeding by settlement, or upon a plea of *nolo contendere* or its equivalent, shall not of itself create a presumption that the person did not act in good faith or in a manner which was reasonably believed to be in, or not opposed to, the best interests of the Association or, with respect to any criminal action or proceeding, had reasonable cause to believe that his or her conduct was unlawful.

3.11 Insurance. The Board may purchase and maintain, at the expense of the Association, insurance on behalf of any person who is acting as a director, officer, committee member, employee, servant or agent of the Association against any liability asserted against such person or incurred by such person in their capacity as an director, officer, committee member, employee, servant or agent of the Association, or arising out of the person's status as such, whether or not the Association would have the power to indemnify the person against such liability or otherwise.

3.12 Bulk Rate Contracts.

3.12.1 Without limitation on the generality of the Association powers set out in Section 3.8, the Association shall have the power to enter into Bulk Rate Contracts at any time and from time to time. The Association may enter into Bulk Rate Contracts with any service providers the Board chooses (including Declarant, and/or any entities in which Declarant, or the owners or partners of Declarant are the owners or participants, directly or indirectly). The Bulk Rate Contracts may be entered into on such terms and provisions as the Board may determine in its sole and absolute discretion. Notwithstanding the foregoing, during the Development Period, the Declarant must approve all Bulk Rate Contracts.

3.12.2 The Association may, at its option and election add the charges payable by such Owner under such Bulk Rate Contract to the Assessments (Regular, Special, Service Area, Special Common Area, or Individual, as the case may be) against such Owner's Lot or

Condominium Unit. In this regard, it is agreed and understood that, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association shall be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Covenant with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Lot or Condominium Unit which is reserved under the terms and provisions of this Covenant. In addition, in the event of nonpayment by any Owner of any charges due under any Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12-day period), in addition to all other rights and remedies available at law, equity or otherwise, terminate, in such manner as the Board deems appropriate, any utility service or other service provided at the cost of the Association and not paid for by such Owner (or Occupant of such Owner's Lot or Condominium Unit) directly to the applicable service or utility provider. Such notice shall consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice shall include the office or street address where the Owner (or Occupant of such Owner's Lot or Condominium Unit) can make arrangements for payment of the bill and for re-connection or re-institution of service. No utility or cable television service shall be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

3.13 Community Services and Systems. The Declarant, or a designee of the Declarant, is specifically authorized, but not required, to install, provide, maintain or furnish, or to enter into contracts with other persons to install, provide, maintain or furnish, central telecommunication receiving and distribution systems (e.g. cable television, high speed data/Internet/intranet services, and security monitoring) and utility services (e.g., electricity, solar, gas, water), and related components, including associated infrastructure, equipment, hardware, and software to serve all or any portion of the Development ("**Community Services and Systems**"). The Community Services and Systems may be located on Common Area or Special Common Area, and on or in any Improvements constructed upon the Common Area or Special Common Area, and an easement is herein reserved in favor of Declarant or its designee for the purpose of installing, operating, managing, maintaining, upgrading and modifying the Community Services and Systems. In the event the Declarant, or a designee of the Declarant, elects to provide any of the Community Services and Systems to all or any portion of the Development, the Declarant or designee of the Declarant, may enter into an agreement with the Association with respect to such services. In the event Declarant, or any designee of the Declarant, enters into a contract with a third party for the provision any Community Services and Systems to serve all or any portion of the Development, the Declarant or the designee of the Declarant may assign any or all of the rights or obligations of the Declarant or the designee of the Declarant under the contract to the Association or any individual or entity. Any such contracts may provide for installation, operation, management, maintenance, and upgrades or

modifications to the Community Services and Systems as the Declarant or its designee determines appropriate. Each Owner acknowledges that interruptions in Community Services and Systems will occur from time to time. The Declarant and the Association, or any of their respective affiliates, directors, officers, employees and agents, or any of their successors or assigns shall not be liable for, and no Community Services and Systems user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Services and Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

3.14 Protection of Declarant's Interests. Despite any assumption of control of the Board by Owners other than Declarant, until the expiration or termination of the Development Period, the Board is prohibited from taking any action which would discriminate against Declarant, or which would be detrimental to the sale of Lots, Condominium Units or any portion of the Property owned by Declarant. Declarant shall be entitled to determine, in its sole and absolute discretion, whether any such action discriminates or is detrimental to Declarant. Unless the Declarant agrees otherwise in advance and in writing, the Board shall be required to continue the same level and quality of maintenance, operations and services as that provided immediately prior to assumption of control of the Board by Owners other than Declarant until the expiration or termination of the Development Period.

3.15 Right of Action by Association. The Association shall not have the power to institute, defend, intervene in, settle or compromise litigation or administrative proceedings: (i) in the name of or on behalf of any Lot Owner (whether one or more); or (ii) pertaining to a Claim, as such term is defined in Section 11.1.2 below, relating to the design or construction of Improvements on a Lot. This Section 3.15 may not be amended or modified without the written and acknowledged consent of the Declarant and Members entitled to cast at least one hundred percent (100%) of the total number of votes of the Association, which must be part of a Recorded amendment instrument.

ARTICLE 4 INSURANCE AND RESTORATION

4.1 Insurance. Each Owner shall be required to purchase and maintain commercially standard insurance on the Improvements located upon such Owner's Lot or Condominium Unit. The Association shall not maintain insurance on the Improvements constructed upon any Lot or Condominium Unit. The Association may, however, obtain such other insurance as it may deem necessary, including but not limited to such policies of liability and property damage insurance as the Board, in its discretion, may deem necessary. Insurance premiums for such policies shall be a common expense the Association will include in the Assessments levied. The acquisition of insurance by the Association shall be without prejudice to the right and obligation of any Owner to obtain additional individual insurance.

ARE YOU COVERED?

The Association will not provide insurance which covers an Owner's Lot, a Condominium Unit, or any Improvements or personal property located on a Lot or within a Condominium Unit.

4.2 Restoration Requirements. In the event of any fire or other casualty, unless otherwise approved by the [Desert Mountain 19] Reviewer, the Owner shall: (i) promptly repair, restore and replace any damaged or destroyed structures to their same exterior condition existing prior to the damage or destruction thereof or (ii) in the case of substantial or total damage or destruction of any Improvement, remove all such damaged Improvements and debris from the Development within sixty (60) days after the occurrence of such damage. Such repair, restoration or replacement shall be commenced and completed in a good and workmanlike manner using exterior materials substantially similar to those originally used in the structures damaged or destroyed. To the extent that the Owner fails to commence such repair, restoration or replacement of substantial or total damage or destruction within one hundred and twenty (120) days after the occurrence of such damage or destruction, and thereafter prosecute the same to completion, or if the Owner does not clean up any debris resulting from any damage within sixty (60) days after the occurrence of such damage, the Association may commence, complete or effect such repair, restoration, replacement, removal, or clean-up, and such Owner shall be personally liable to the Association for the cost of such work; provided, however, that if the Owner is prohibited or delayed under Applicable Law from commencing such repair, restoration, replacement or clean-up, the rights of the Association under this provision shall not arise until the expiration of thirty (30) days after such prohibition or delay is removed. If the Owner fails to pay such cost upon demand by the Association, the cost thereof (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, than at the rate of one and one-half percent (1½%) per month) shall be added to the Assessment chargeable to the Owner's Lot. Any such amounts added to the Assessments chargeable against a Lot or Condominium Unit shall be secured by the liens reserved in this Covenant for Assessments and may be collected by any means provided in this Covenant for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot or Condominium Unit. **EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE DEVELOPMENT, HEREBY RELEASES AND HOLDS HARMLESS THE ASSOCIATION AND ITS OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE ASSOCIATION'S ACTS OR ACTIVITIES UNDER THIS SECTION, EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR COST OF ACTION ARISING BY REASON OF THE ASSOCIATION'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.**

4.3 Restoration - Mechanic's and Materialmen's Lien. Each Owner whose structure the Association repairs, restores, replaces or cleans up pursuant to the rights granted under this Article, hereby grants to the Association an express mechanic's and materialmen's lien for the reasonable cost of such repair, restoration, replacement or clean-up of the damaged or destroyed Improvement to the extent that the cost of such repair, restoration, replacement, or clean-up exceeds any insurance proceeds allocable to such repair, restoration, replacement, or clean-up which are delivered to the Association. Upon request by the Board, and before the commencement of any reconstruction, repair, restoration, replacement, or clean-up such Owner shall execute all documents sufficient to effectuate such mechanic's and materialmen's lien in favor of the Association.

ARTICLE 5 COVENANT FOR ASSESSMENTS

5.1 Assessments.

5.1.1 Established by Board. The Board shall levy Assessments pursuant to the provisions of this Article against each Lot and Condominium Unit in such amounts as the Board shall determine pursuant to *Section 5.9*. The Board shall determine the total amount of Assessments in accordance with the terms of this Article.

5.1.2 Personal Obligation; Lien. Each Assessment, together with such interest thereon and costs of collection as hereinafter provided, shall be the personal obligation of the Owner of the Lot or Condominium Unit against which the Assessment is levied and shall be secured by a lien hereby granted and conveyed by Declarant to the Association against each such Lot and all Improvements thereon and each such Condominium Unit (such lien, with respect to any Lot or Condominium Unit not in existence on the date hereof, shall be deemed granted and conveyed at the time that such Lot or Condominium Unit is created). The Association may enforce payment of such Assessments in accordance with the provisions of this Article. Unless the Association elects otherwise (which election may be made at any time), each residential condominium association established by a condominium regime imposed upon all or a portion of the Tract shall collect all Assessments levied pursuant to this Covenant from Condominium Unit Owners within such condominium regime. The condominium association shall promptly remit all Assessments collected from Condominium Unit Owners to the Association. If the condominium association fails to timely collect any portion of the Assessments due from the Owner of the Condominium Unit, then the Association may collect such Assessments allocated to the Condominium Unit on its own behalf and enforce its lien against the Condominium Unit without joinder of the condominium association. The condominium association's right to collect Assessments on behalf of the Association is a license from the Association which may be revoked by written instrument at any time, and from time to time, at the sole and absolute discretion of the Board.

5.1.3 Declarant Subsidy. Declarant may, but is not obligated to, reduce Assessments which would otherwise be levied against Lots and Condominium Units for any fiscal year by the payment of a subsidy to the Association. Any subsidy the Declarant pays to the Association may be treated as a contribution or a loan, in Declarant's sole and absolute discretion. The payment of a subsidy in any given year shall not obligate Declarant to continue payment of a subsidy to the Association in future years.

5.2 Maintenance Fund. The Board shall establish a maintenance fund into which shall be deposited all monies paid to the Association and from which disbursements shall be made in performing the functions of the Association under this Covenant. The funds of the Association may be used for any purpose authorized under the Documents and Applicable Law.

5.3 Regular Assessments. Prior to the beginning of each fiscal year, the Board will prepare a budget for the purpose of determining amounts sufficient to pay the estimated net expenses of the Association ("Regular Assessments") which sets forth: (a) an estimate of expenses the Association will incur during such year in performing its functions and exercising its powers under this Covenant, including, but not limited to, the cost of all management, repair and maintenance, the cost of providing street and other lighting, the cost of administering and enforcing the Documents; and (b) an estimate the amount needed to maintain a reasonable provision for contingencies and an appropriate replacement reserve, but excluding (c) the operation, maintenance, repair and management costs and expenses associated with any Service Area and Special Common Area. The Board will give due consideration to any expected income and any surplus from the prior year's fund in order to determine the amounts to be levied against the Members to pay such expenses as Regular Assessments. Regular Assessments sufficient to pay such estimated expenses will then be levied at the level set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding, so long as made in good faith. If the sums collected prove inadequate for any reason, including nonpayment of any Assessment by an Owner, the Association may at any time, and from time to time, levy further Regular Assessments in the same manner. All such Regular Assessments will be due and payable to the Association in accordance with any of the following: (i) at the beginning of the fiscal year, (ii) during the fiscal year in equal monthly installments on or before the first day of each month, or (iv) in such other manner as the Board may designate in its sole and absolute discretion. Notwithstanding the foregoing, the Board shall not impose a Regular Assessment that is more than twenty percent (20%) greater than the immediately preceding fiscal year's Assessment without the approval of the Majority of the Members of the Association.

5.4 Special Assessments. In addition to the Regular Assessments provided for above, the Board may levy special assessments (the "Special Assessments") whenever in the Board's opinion such Special Assessments are necessary to enable the Board to carry out the functions of the Association under the Documents. The amount of any Special Assessments will be at the sole discretion of the Board. In addition to the Special Assessments authorized above,

the Association may, in any fiscal year, levy a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area or Special Common Area. Any Special Assessment the Association levies for the purpose of defraying, in whole or in part, costs of any construction, reconstruction, repair or replacement of capital improvement upon the Common Area will be levied against all Owners based on Assessment Units. Any Special Assessments the Association levies for the purpose of defraying in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon any Special Common Area will be levied against all Owners who have been assigned the obligation to pay Special Common Area Assessments based on Assessment Units. All Special Assessments will be due and payable to the Association at the beginning of the fiscal year or in such other manner as the Board may designate in its sole and absolute discretion.

5.5 Special Common Area Assessments. Prior to the beginning of each fiscal year, the Board will prepare a separate budget covering the estimated expenses to be incurred by the Association to operate, maintain, repair, or manage any Special Common Area. The budget will be an estimate of the amount needed to operate, maintain, repair and manage such Special Common Area including a reasonable provision for contingencies and an appropriate replacement reserve. The level of Special Common Area Assessments will be set by the Board in its sole and absolute discretion, and the Board's determination will be final and binding. If the sums collected prove inadequate for any reason, including non-payment of any Assessment by an Owner, the Association may at any time, and from time to time, levy further Special Common Area Assessments in the same manner as aforesaid. All such Special Common Area Assessments will be due and payable to the Association at the beginning of the fiscal year or in such other manner as the Board may designate in its sole and absolute discretion.

5.6 Service Area Assessments. Prior to the beginning of each fiscal year, the Board will prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses to be incurred by the Association in the coming year. The total amount of Service Area Assessments will be allocated (a) equally among Lots or Condominium Units within the Service Area, (b) based on Assessment Units assigned to Lots or Condominium Units within the Service Area, or (c) based on the benefit received among all Lots and Condominium Units in the Service Area. All amounts that the Association collects as Service Area Assessments will be expended solely for the benefit of the Service Area for which they were collected and will be accounted for separately from the Association's general funds.

5.7 Individual Assessments. In addition to any other Assessments, the Board may levy an individual assessment (the "**Individual Assessment**") against an Owner and the Owner's Lot or Condominium Unit, which may include, but is not limited to: (i) interest, late charges, and collection costs on delinquent Assessments; (ii) reimbursement for costs incurred in bringing an Owner or the Owner's Lot or Condominium Unit into compliance with the Documents; (iii) fines for violations of the Documents; (iv) transfer-related fees and resale certificate fees; (v) fees for estoppel letters and project documents; (vi) insurance deductibles;

(vii) reimbursement for damage or waste caused by willful or negligent acts of the Owner, the Owner's guests, invitees or Occupants of the Owner's Lot or Condominium Unit; (viii) common expenses that benefit fewer than all of the Lots or Condominium Units, which may be assessed according to benefit received; (ix) fees or charges levied against the Association on a per-Lot or per-Condominium Unit basis; and (x) "pass through" expenses for services to Lots or Condominium Units provided through the Association and which are paid by each Lot or Condominium Unit according to benefit received.

5.8 Working Capital Assessment. Each Owner (other than Declarant) will pay a one-time working capital assessment to the Association in such amount, if any, as may be determined by the Declarant, until expiration or termination of the Development Period, and the Board thereafter. The working capital assessment hereunder will be due and payable to the Association by the transferee immediately upon each transfer of title to the Lot or Condominium Unit, including upon transfer of title from one Owner of such Lot or Condominium Unit to any subsequent purchaser or transferee thereof. Such working capital assessment need not be uniform among all Lots or Condominium Units, and the Declarant or the Board, as applicable, is expressly authorized to establish working capital assessments of varying amounts depending on the size, use and general character of the Lots or Condominium Units. The working capital assessment may be used to discharge operating expenses or capital expenses, as determined from time to time by the Board. The levy of any working capital assessment will be effective only upon the Recordation of a written notice, signed by the Declarant or a duly authorized officer of the Association, setting forth the amount of the working capital assessment and the Lots or Condominium Units to which it applies.

Notwithstanding the foregoing provision, the following transfers will not be subject to the working capital assessment: (a) foreclosure of a deed of trust lien, tax lien, or the Association's Assessment lien; (b) transfer to, from, or by the Association; (c) voluntary transfer by an Owner to one or more co-owners, or to the Owner's spouse, child, or parent. Additionally, an Owner who is a Homebuilder or a Residential Developer will not be subject to the working capital assessment. In the event of any dispute regarding the application of the working capital assessment to a particular Owner, Declarant, until expiration or termination of the Development Period, will determine application of an exemption in its sole and absolute discretion. The working capital assessment will be in addition to, not in lieu of, any other Assessments levied in accordance with this *Article 5* and will not be considered an advance payment of such Assessments. The Declarant during the Development Period, and thereafter the Board, will have the power to waive the payment of any working capital assessment attributable to a Lot or Condominium Unit (or all Lots and Condominium Units) by the Recordation of a waiver notice or in the Notice of Applicability, which waiver may be temporary or permanent.

5.9 Amount of Assessment.

5.9.1 Assessments to be Levied. The Board shall levy Assessments against each Assessment Unit (defined in *Section 5.9.2*). Unless otherwise provided in this Covenant, Assessments levied pursuant to *Section 5.3* and *Section 5.4* shall be levied uniformly against each Assessment Unit. Special Common Area Assessments levied pursuant to *Section 5.5* shall be levied uniformly against each Assessment Unit allocated to a Lot or Condominium Unit that has been assigned the obligation to pay Special Common Area Assessments for specified a Special Common Area. Service Area Assessments levied pursuant to *Section 5.6* shall be levied (i) equally, (ii) based on Assessment Units allocated to the Lots and/or Condominium Units within the Service Area, or (iii) based on the benefit received among all Lots and Condominium Units in the benefited Service Area that has been included in the Service Area to which such Service Area Assessment relates.

5.9.2 Assessment Unit. Each Lot or Condominium Unit shall constitute one "Assessment Unit" unless otherwise provided in *Section 5.9.3*.

5.9.3 Residential Assessment Allocation. Declarant, in Declarant's sole and absolute discretion, may elect to allocate more than one Assessment Unit to a Lot or Condominium Unit. An allocation of more than one Assessment Unit to a Lot or Condominium Unit must be made in a Notice of Applicability or in a Tract Declaration for the Development in which the Lot or Condominium Unit is located. Declarant's determination regarding the number of Assessment Units applicable to a Lot or Condominium Unit pursuant to this *Section 5.9.3* shall be final, binding and conclusive.

5.9.4 Declarant Exemption. Notwithstanding anything in this Covenant to the contrary, no Assessments shall be levied upon Lots or Condominium Units owned by Declarant.

5.9.5 Other Exemptions. Declarant may, in its sole discretion, elect to: (i) exempt any un-platted or unimproved portion of the Development, Lot or Condominium Unit from Assessments; (ii) delay the levy of Assessments against any un-platted, unimproved or improved portion of the Development, Lot or Condominium Unit; or (iii) reduce the levy of Assessments against any un-platted, unimproved or improved portion of the Development, Lot or Condominium Unit. In the event Declarant elects to delay or reduce Assessments pursuant to this *Section 5.9.5*, the duration of the delay or the amount of the reduction shall be set forth in a Recorded instrument. Declarant may terminate, extend or modify any delay or reduction set forth in a previously Recorded instrument by Recording a replacement instrument. Declarant or the Board may also exempt from Assessments any portion of the Development which is dedicated to and accepted by a Governmental Entity.

5.10 Late Charges. If any Assessment is not paid by the due date applicable thereto, the Owner responsible for the payment may be required by the Board, at the Board's election at

any time and from time to time, to pay a late charge in such amount as the Board may designate, and the late charge (and any reasonable handling costs) shall be a charge upon the Lot or Condominium Unit owned by such Owner, collectible in the manner as provided for collection of Assessments, including foreclosure of the lien against such Lot or Condominium Unit; provided, however, such charge shall never exceed the maximum charge permitted under Applicable Law. Notwithstanding the foregoing to the contrary, the amount of any late charge imposed is limited to the greater of fifteen dollars (\$15.00) or ten percent (10%) of the amount of the unpaid Assessment.

5.11 Owner's Personal Obligation for Payment of Assessments. Assessments levied as provided for herein will be the personal and individual debt of the Owner of the Lot or Condominium Unit against which are levied such Assessments. No Owner may exempt himself from liability for such Assessments. In the event of default in the payment of any such Assessment, the Owner of the Lot or Condominium Unit shall be obligated to pay interest on the amount of the Assessment at the highest rate allowed by applicable usury laws then in effect on the amount of the Assessment from the due date thereof (or if there is no such highest rate, then at the rate of twelve percent (12%) per annum, together with all costs and expenses of collection, including reasonable attorney's fees.

5.12 Assessment Lien and Foreclosure. The payment of all sums assessed in the manner provided in this Article, together with late charges as provided in *Section 5.10* and interest as provided in *Section 5.11* hereof and all costs of collection, including attorney's fees, as herein provided, are secured by the continuing Assessment lien granted to the Association pursuant to *Section 5.1.2* above, and shall bind each Lot and Condominium Unit in the hands of the Owner thereof, and such Owner's heirs, devisees, personal representatives, successors or assigns. The aforesaid lien shall be superior to all other liens and charges against such Lot or Condominium Unit, except only for: (i) tax or governmental assessment liens; (ii) all sums secured by a Recorded first mortgage lien or Recorded first deed of trust lien, to the extent such lien secures sums borrowed for the acquisition or improvement of the Lot or Condominium Unit in question; (iii) home equity loans or home equity lines of credit which are secured by a second mortgage lien or Recorded second deed of trust lien provided that, in the case of *subparagraph (ii)* above, such Mortgage was Recorded before the delinquent Assessment was due; and (iv) the seller's interest in a first contract for sale pursuant to Arizona Revised Statutes §33-741, *et seq.* The Association will have the power to subordinate the aforesaid Assessment lien to any other lien. Such power shall be entirely discretionary with the Board, and such subordination may be signed by a Board member or officer of the Association. The Association may, at its option and without prejudice to the priority or enforceability of the Assessment lien granted hereunder, prepare a written notice of Assessment lien setting forth the amount of the unpaid indebtedness, the name of the Owner of the Lot or Condominium Unit covered by such lien and a description of the Lot or Condominium Unit. Such notice may be signed by an authorized officer of the Association and shall be Recorded. Each Owner, by accepting a deed or ownership interest to a Lot or Condominium Unit subject to this Covenant shall be deemed

conclusively to have granted a power of sale to the Association to secure and enforce the Assessment lien granted hereunder, so long as the amounts to be foreclosed exclude fees, charges, late charges (other than charges for the late payment of Assessments), monetary penalties and interest charged pursuant to Arizona Revised Statutes § 33-108 (the "Excluded Amounts"). The Association may assert a lien for any Excluded Amounts upon the entry of a judgment in a civil suit from a court of competent jurisdiction and the recording of such judgment in the Official Records of Maricopa County, Arizona. Such lien asserted for Excluded Amounts is effective only upon conveyance of the applicable Owner's Lot, and may not be foreclosed upon. The Assessment liens and rights to foreclosure thereof shall be in addition to and not in substitution of any other rights and remedies the Association may have pursuant to Applicable Law and under this Covenant, including the rights of the Association to institute suit against such Owner personally obligated to pay the Assessment and/or for foreclosure of the aforesaid lien; provided, however, that any foreclosure proceeding shall not be initiated by the Association until such time as an Owner is delinquent in the payment of the Assessment amounts secured by the lien, excluding reasonable collection fees, reasonable attorneys' fees and charges for late payment of, and costs incurred as a result of, such unpaid Assessments, for a period of one (1) year or in the amount of at least one thousand two hundred dollars (\$1,200.00), whichever occurs first. In any foreclosure proceeding, such Owner shall be required to pay the costs, expenses and reasonable attorney's fees incurred. The Association shall have the power to bid (in cash or by credit against the amount secured by the lien) on the property at foreclosure or other legal sale and to acquire, hold, lease, mortgage, convey or otherwise deal with the same. Upon the written request of any Mortgagee, the Association shall report to said Mortgagee within ten (10) days of such request any unpaid Assessments. The lien hereunder shall not be affected by the sale or transfer of any Lot or Condominium Unit; except, however, that in the event of foreclosure of any lien superior to the Assessment lien, the lien for any Assessments that were due and payable before the foreclosure sale shall be extinguished, provided that past-due Assessments shall be paid out of the proceeds of such foreclosure sale only to the extent that funds are available after the satisfaction of the indebtedness secured by the Mortgage. The provisions of the preceding sentence shall not, however, relieve any subsequent Owner (including any Mortgagee or other purchaser at a foreclosure sale) from paying Assessments becoming due and payable after the foreclosure sale. Upon payment of all sums secured by a lien of the type described in this *Section 5.12*, the Association shall upon the request of the Owner, and at such Owner's cost, execute an instrument releasing the lien relating to any lien for which written notice has been Recorded as provided above, except in circumstances in which the Association has already foreclosed such lien. Such release must be signed by an authorized officer of the Association and Recorded. Except as otherwise provided by Applicable Law, the sale or transfer of a Lot or Condominium Unit shall not relieve the Owner of such Lot or Condominium Unit or such Owner's transferee from liability for any Assessments thereafter becoming due or from the lien associated therewith. If an Owner conveys its Lot or Condominium Unit and on the date of such conveyance Assessments against the Lot or Condominium Unit remain unpaid, or said Owner owes other sums or fees under this Covenant to the Association, the Owner shall pay such amounts to the Association out of

the sales price of the Lot or Condominium Unit, and such sums shall be paid in preference to any other charges against the Lot or Condominium Unit other than liens superior to the Assessment liens and charges in favor of the State of Arizona or a political subdivision thereof for taxes on the Lot or Condominium Unit which are due and unpaid. The Owner conveying such Lot or Condominium Unit shall remain personally liable for all such sums until the same are fully paid, regardless of whether the transferee of the Lot or Condominium Unit also assumes the obligation to pay such amounts. The Board may adopt an administrative transfer fee to cover the administrative expenses associated with updating the Association's records upon the transfer of a Lot or Condominium Unit to a third party.

5.13 Exempt Property. The following area within the Development shall be exempt from the Assessments provided for in this Article:

- (i) All area dedicated and accepted by a Governmental Entity;
- (ii) The Common Area and the Special Common Area; and
- (iii) Any portion of the Development owned by Declarant.

No portion of the Property shall be subject to the terms and provisions of this Covenant, and no portion of the Property (or any owner thereof) shall be obligated to pay Assessments hereunder unless and until such Property has been made subject to the terms of this Covenant by the Recording of a Notice of Applicability in accordance with Section 9.5.

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5.14 Fines and Damages Assessment.

5.14.1 Board Assessment. The Board may assess fines against an Owner for violations of the Documents committed by such Owner, an Occupant or an Owner's or Occupant's guests, agents or invitees pursuant to the *Fine and Enforcement Policy* contained in the Community Manual. Any fine and/or charge for damage levied in accordance with this Section 5.14 shall be considered an Individual Assessment pursuant to this Covenant. Each day of violation may be considered a separate violation if the violation continues after written notice to the Owner. The Board may assess damage charges against an Owner for pecuniary loss to the Association from property damage or destruction of Common Area, Special Common Area, Service Area or any Improvements caused by the Owner, the Occupant or their guests, agents, or invitees. The Manager shall have authority to send notices to alleged violators, informing them of their violations and asking them to comply with the Documents and/or informing them of potential or probable fines or damage assessments. The Board may from time to time adopt a schedule of fines. Notwithstanding the foregoing, the amount of any charges imposed for the late payment of a fine is limited to the greater of fifteen dollars (\$15.00) or ten percent (10%) of the amount of the unpaid fine.

(i) Procedure. The procedure for assessment of fines and damage charges will be as follows. Before levying a fine or damage charge, the Association will give the Owner a written violation notice and an opportunity to be heard. This requirement may not be waived. The Association shall send a written violation notice to the Owner containing the following information:

- (A) the date the violation notice is prepared or mailed;
- (B) a description of the violation, including the date of the violation or the date the violation was observed and the first and last name of the person or persons who observed the violation;
- (C) a reference to the rule or provision that is being violated;
- (D) a description of the action required to cure the violation;
- (E) the timeframe in which the violation is required to be cured;
- (F) the amount of the fine;
- (G) the date the fine attaches or begins accruing; and
- (H) a statement that not later than the tenth (10th) business day after the date the Owner receives the violation notice, the Owner may provide the Association with a written response via certified mail to the

address contained in the violation notice or the address set forth in the Association notice Recorded in the Official Records of Maricopa County.

Within ten (10) business days after receipt of the certified mail containing the response from the Owner, the Association shall respond to the Owner with a written explanation regarding the notice and provide the Association's position in regard to the violation based upon the Owner's response thereto and whether the Association shall be imposing the fine or damage charge as a result thereof. At any time before or after completion of the exchange of information pursuant to this subsection (a), the Owner may petition for a hearing pursuant to Arizona Revised Statutes § 41-2198.01, if the dispute is within the jurisdiction of the department of fire, building and life safety as prescribed in Arizona Revised Statutes § 41-2198.01(B). Otherwise, the fine or damage charge will be due and owing hereunder.

5.14.2 **Lien Created.** The payment of each fine and/or damage charge levied by the Board against the Owner of a Lot or Condominium Unit is, together with interest as provided in Section 5.11 hereof and all costs of collection, including attorney's fees as herein provided, secured by the lien granted to the Association pursuant to Section 5.12.

5.15 **Suspension of Voting Rights.** In addition to any and all remedies set forth in this Article 5, if any Owner fails to pay any Assessment or other amounts due under the restrictions set out in the Documents within thirty (30) days after such payment is due or if the Owner violates any other provision of the restrictions set out in the Documents and such violation is not cured within fifteen (15) days after the Association notifies the Owner of such violation, the Board shall have the right to suspend such Owner's right to vote until such time as all Assessments and payments, including interest, late charges, fines and attorney's fees, are paid in full or until all violations are cured or the Owner is otherwise deemed in compliance of the restrictions set out in the Documents in the sole discretion of the Board or the [Desert Mountain 19] Reviewer, as applicable.

5.16 **Homestead Waiver.** To the extent permitted by law, each Owner hereby waives the benefit of any homestead or exemption laws of the State of Arizona now in effect, or in effect from time to time hereafter, to the extent of any liens created pursuant to the Documents, whether such liens are now in existence or are created at any time in the future.

ARTICLE 6 [DESERT MOUNTAIN 19] REVIEWER

6.1 **Architectural Control By Declarant.** During the Development Period, none of the Association, the Board, or any committee appointed by the Association or Board (no matter how the committee is named) may involve itself with the approval of any Improvements. Until expiration of the Development Period, the [Desert Mountain 19] Reviewer for Improvements is

Declarant or its designee. No Improvement the Declarant constructs or causes to be constructed shall be subject to the terms and provisions of this Article or approval by the [Desert Mountain 19] Reviewer.

6.1.1 Declarant's Rights Reserved. Each Owner, by accepting an interest in or title to a Lot or Condominium Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees that during the Development Period no Improvements shall be started or progressed without the prior written approval of the [Desert Mountain 19] Reviewer, which approval may be granted or withheld at Declarant's sole discretion. In reviewing and acting on an application for approval, Declarant may act solely in its self-interest and owes no duty to any other person or any organization. Declarant may designate one or more persons from time to time to act on its behalf in reviewing and responding to applications.

6.1.2 Delegation by Declarant. During the Development Period, Declarant may from time to time, but is not obligated to, delegate all or a portion of its reserved rights under this Article to an architectural control committee appointed by the Board or a committee comprised of architects, engineers, or other persons who may or may not be members of the Association. Any such delegation shall be in writing and shall specify the scope of delegated responsibilities. Any such delegation is at all times subject to the unilateral rights of Declarant to: (i) revoke such delegation at any time and reassume jurisdiction over the matters previously delegated until expiration of twenty-four (24) months after the expiration of the Development Period; and (ii) to veto any decision which Declarant in its sole discretion determines to be inappropriate or inadvisable for any reason. The Declarant is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the Declarant; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with Applicable Law.

6.2 Architectural Control by Association. Until such time as Declarant delegates all or a portion of its reserved rights to the Board, or the Development Period is terminated or expires, the Association has no jurisdiction over architectural matters. On termination or expiration of the Development Period, or earlier if delegated in writing by Declarant, the Association, acting through an architectural control committee (the "ACC") shall assume jurisdiction over architectural control and shall have the powers of the [Desert Mountain 19] Reviewer hereunder.

6.2.1 ACC. The ACC shall consist of at least three (3) but no more than seven (7) persons appointed by the Board. Members of the ACC serve at the pleasure of the Board and may be removed and replaced at the Board's discretion. At the Board's option, the Board may act as the ACC, in which case all references in the Documents to the ACC shall be construed to mean the Board. Members of the ACC need not be Owners or Occupants, and may but need not include architects, engineers, and design professionals whose compensation, if any, may be established from time to time by the Board.

6.2.2 Limits on Liability. The ACC has sole discretion with respect to taste, design, and all standards specified by this Article. The members of the ACC have no liability for the ACC's decisions made in good faith, and which are not arbitrary or capricious. The ACC is not responsible for: (i) errors in or omissions from the plans and specifications submitted to the ACC; (ii) supervising construction for the Owner's compliance with approved plans and specifications; or (iii) the compliance of the Owner's plans and specifications with Applicable Law.

6.2.3 Release. EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE DEVELOPMENT, HEREBY RELEASES AND HOLDS HARMLESS THE DECLARANT, THE [DESERT MOUNTAIN 19] REVIEWER, ASSOCIATION AND THEIR OFFICERS, DIRECTORS, COMMITTEE MEMBERS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE [DESERT MOUNTAIN 19] REVIEWER'S ACTS OR ACTIVITIES UNDER THIS COVENANT.

6.3 Prohibition of Construction, Alteration and Improvement. No Improvement, or any addition, alteration, improvement, installation, modification, redecoration, or reconstruction thereof may occur unless approved in advance by the [Desert Mountain 19] Reviewer. The [Desert Mountain 19] Reviewer has the right but not the duty to evaluate every aspect of construction, landscaping, and property use that may adversely affect the general value or appearance of the Development. Unless otherwise provided in the Design Guidelines, an Owner will have the right to modify, alter, repair, decorate, redecorate, or improve the interior of an Improvement located on such Owner's Lot or within such Owner's Condominium Unit, provided that such action is not visible from any other portion of the Development or Property.

6.4 Architectural Approval.

6.4.1 Submission and Approval of Plans and Specifications. Construction plans and specifications or, when an Owner desires solely to plat, re-subdivide or consolidate Lots or Condominium Units, a proposal for such plat, re-subdivision or consolidation, shall be submitted in accordance with the Design Guidelines, if any, or any additional rules adopted by the [Desert Mountain 19] Reviewer together, with any review fee which is imposed by the [Desert Mountain 19] Reviewer in accordance with Section 6.4.2. No plat, re-subdivision or consolidation shall be made, nor any Improvement placed or allowed on any Lot or Condominium Unit, until the plans and specifications and the contractor which the Owner intends to use to construct the proposed Improvement have been approved in writing by the [Desert Mountain 19] Reviewer. The [Desert Mountain 19] Reviewer may, in reviewing such plans and specifications consider any information that it deems proper; including, without limitation, any permits, environmental impact statements or percolation tests that may be required by the [Desert Mountain 19] Reviewer or any other entity; and harmony of external design and location in relation to surrounding structures, topography, vegetation, and finished

grade elevation. The [Desert Mountain 19] Reviewer may postpone its review of any plans and specifications submitted for approval pending receipt of any information or material which the [Desert Mountain 19] Reviewer, in its sole discretion, may require. Site plans must be approved by the [Desert Mountain 19] Reviewer prior to the clearing of any Lot or Condominium Unit, or the construction of any Improvements. The [Desert Mountain 19] Reviewer may refuse to approve plans and specifications for proposed Improvements, or for the plat, re-subdivision or consolidation of any Lot or Condominium Unit on any grounds that, in the sole and absolute discretion of the [Desert Mountain 19] Reviewer, are deemed sufficient, including, but not limited to, purely aesthetic grounds. Notwithstanding any provision to the contrary in this Covenant, the [Desert Mountain 19] Reviewer may issue an approval to Homebuilders or a Residential Developer for the construction of Improvements based on the review and approval of plan types and adopt a procedure which differs from the procedures for review and approval otherwise set forth in this Covenant.

6.4.2 Design Guidelines. The [Desert Mountain 19] Reviewer shall have the power, from time to time, to adopt, amend, modify, revoke, or supplement the Design Guidelines which may apply to all or any portion of the Development. In the event of any conflict between the terms and provisions of the Design Guidelines and the terms and provisions of this Covenant, the terms and provisions of this Covenant shall control. In addition, the [Desert Mountain 19] Reviewer shall have the power and authority to impose a fee for the review of plans, specifications and other documents and information submitted to it pursuant to the terms of this Covenant. Such charges shall be held by the [Desert Mountain 19] Reviewer and used to defray the administrative expenses and any other costs incurred by the [Desert Mountain 19] Reviewer in performing its duties hereunder; provided, however, that any excess funds held by the [Desert Mountain 19] Reviewer shall be distributed to the Association at the end of each calendar year. The [Desert Mountain 19] Reviewer shall not be required to review any plans until a complete submittal package, as required by this Covenant and the Design Guidelines, is assembled and submitted to the [Desert Mountain 19] Reviewer. The [Desert Mountain 19] Reviewer shall have the authority to adopt such additional or alternate procedural and substantive rules and guidelines not in conflict with this Covenant (including, without limitation, the imposition of any requirements for a compliance deposit, certificates of compliance or completion relating to any Improvement, and the right to approve in advance any contractor selected for the construction of Improvements), as it may deem necessary or appropriate in connection with the performance of its duties hereunder.

6.4.3 Failure to Act. In the event that any plans and specifications are submitted to the [Desert Mountain 19] Reviewer as provided herein, and the [Desert Mountain 19] Reviewer fails to either approve or reject such plans and specifications for a period of thirty (30) days following such submission, the plans and specifications shall be deemed disapproved.

6.4.4 Variances. The [Desert Mountain 19] Reviewer may grant variances from compliance with any of the provisions of the Documents, when, in the opinion of the [Desert Mountain 19] Reviewer, in its sole and absolute discretion, such variance is justified by specific

circumstances of a particular case. All variances shall be evidenced in writing and, if Declarant has assigned its rights to the ACC, must be approved by the Declarant until expiration or termination of the Development Period, or otherwise by a Majority of the members of the ACC. Each variance shall also be Recorded; provided, however, that failure to Record a variance shall not affect the validity thereof or give rise to any claim or cause of action against the [Desert Mountain 19] Reviewer, Declarant, the Board or the ACC. If a variance is granted, no violation of the covenants, conditions, or restrictions contained in the Documents shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such variance shall not operate to waive or amend any of the terms and provisions of the Documents for any purpose, except as to the particular property and in the particular instance covered by the variance, and such variance shall not be considered to establish a precedent for any future waiver, modification, or amendment of the terms and provisions of the Documents.

6.4.5 Duration of Approval. The approval of the [Desert Mountain 19] Reviewer of any final plans and specifications, and any variances granted by the [Desert Mountain 19] Reviewer shall be valid for a period of one hundred and eighty (180) days only. If construction in accordance with such plans and specifications or variance is not commenced within such one hundred and eighty (180) day period and diligently prosecuted to completion within either: (i) one year after issuance of approval of such plans and specifications; or (ii) such other period thereafter as determined by the [Desert Mountain 19] Reviewer, in its sole and absolute discretion, the Owner shall be required to resubmit such final plans and specifications or request for a variance to the [Desert Mountain 19] Reviewer, and the [Desert Mountain 19] Reviewer shall have the authority to re-evaluate such plans and specifications in accordance with this Section 6.4.5 and may, in addition, consider any change in circumstances which may have occurred since the time of the original approval.

6.4.6 No Waiver of Future Approvals. The approval of the [Desert Mountain 19] Reviewer to any plans or specifications for any work done or proposed in connection with any matter requiring the approval or consent of the [Desert Mountain 19] Reviewer shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any plans and specifications on any other matter, subsequently or additionally submitted for approval by the same or a different person, nor shall such approval or consent be deemed to establish a precedent for future approvals by the [Desert Mountain 19] Reviewer.

6.4.7 Bonds and Deposits. The [Desert Mountain 19] Reviewer shall have the power and authority to require a fully-refundable construction deposit or bond to ensure compliance with the Documents, the approved plans, and to protect the [Desert Mountain 19] Reviewer against damage to the Common Areas or Special Common Areas. The amount of the deposit shall be determined from time to time by the (i) Board of Directors with Declarant consent or Declarant during the Development Period, or (ii) the Board of Directors thereafter. Such deposit shall be payable by the Owner at the time the applications and submittals for approval are submitted to the [Desert Mountain 19] Reviewer. When the applicable improvements are complete, such Owner shall be eligible for refund of all or a portion of the

deposit, without any interest thereon, upon written request to the [Desert Mountain 19] Reviewer and after [Desert Mountain 19] Reviewer has confirmed that all improvements have been completed in accordance with the plans or specifications approved by the [Desert Mountain 19] Reviewer. The Owner shall have no right to demand return of the deposit and the [Desert Mountain 19] Reviewer shall have no obligation to pay over the deposit until thirty (30) days after the [Desert Mountain 19] Reviewer has issued its final construction approval in writing. All or a portion of the deposit may be withheld for any of the following purposes: (a) to repair any Common Area or Special Common Area damaged or destroyed by the Owner, its agents or contractors; (b) for additional costs and fees incurred by [Desert Mountain 19] Reviewer due to incomplete or non-compliant improvements (including without limitation, follow-up inspections); (c) to pay for fines levied for violations related to the improvements covered by the deposit; and (d) to pay for fines levied for violations committed by vendors or contractors providing goods or services during the course of construction of the improvements. The Association's costs of repairing any Common Areas or Special Common Areas beyond the construction deposit or bond amount shall be paid by the Owner upon demand from the Association and any sum not paid by such Owner may be treated as an Individual Assessment, subject to lien, and collected in like manner as Assessments levied pursuant to this Covenant.

ARTICLE 7 MORTGAGE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Lots or Condominium Units within the Development. The provisions of this Article apply to the Covenant and the Bylaws of the Association.

7.1 Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Lot or Condominium Unit to which its Mortgage relates (thereby becoming an "**Eligible Mortgage Holder**")), shall be entitled to timely written notice of:

(i) Any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Lot or Condominium Unit on which there is an eligible Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder; or

(ii) Any delinquency in the payment of assessments or charges owed for a Lot or Condominium Unit subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Documents relating to such Lot or Condominium Unit or the Owner or occupant which is not cured within sixty (60) days after notice by the Association to the Owner of such violation; or

(iii) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

7.2 **Examination of Books.** The Association shall permit Mortgagees to examine the books and records of the Association during normal business hours.

7.3 **Taxes, Assessments and Charges.** All taxes, assessments and charges that may become liens prior to first lien mortgages under Applicable Law shall relate only to the individual Lots or Condominium Units and not to any other portion of the Development.

ARTICLE 8 EASEMENTS

8.1 **Right of Ingress and Egress.** Declarant, its agents, employees, successors, and assigns shall have a right of ingress and egress over and the right of access to the Common Area or Special Common Area to the extent necessary to use the Common Area or Special Common Area and the right to such other temporary uses of the Common Area or Special Common Area as may be required or reasonably desirable (as determined by Declarant in its sole discretion) in connection with construction and development of the Property or the Development. The Development shall be subject to a perpetual non-exclusive easement for the installation and maintenance of, including the right to read, meters, service or repair lines and equipment, and to do any work necessary to properly maintain and furnish the Community Services and Systems and the facilities pertinent and necessary to the same, which easement shall run in favor of Declarant. Declarant shall have the right, but not the obligation, to install and provide the Community Services and Systems and to provide the services available through the Community Services and Systems to any Lots or Condominium Units within the Development. Neither the Association, nor any Owner, shall have any interest therein. Such services may be provided either: (i) directly through the Association and paid for as part of the Assessments; or (ii) directly by Declarant, any affiliate of Declarant, or a third party, to the Owner who receives such services or the Association. The Community Services and Systems, including any fees or royalties paid or revenue generated therefrom, shall be the property of Declarant unless transferred by Declarant, whereupon any proceeds of such transfer shall belong to Declarant. Declarant shall have the right but not the obligation to convey, transfer, sell or assign all or any portion of the Community Services and Systems or all or any portion of the rights, duties or obligations with respect thereto, to the Association or to any Person. The rights of Declarant with respect to the Community Services and Systems installed by Declarant and the services provided through such Community Services and Systems are exclusive, and no other person may provide such services through the Community Services and Systems installed by Declarant without the prior written consent of Declarant. In recognition of the fact that interruptions in the Community Services and Systems services will occur from time to time, no person or entity described above shall in any manner be liable, and no user of the Community Services and Systems shall be entitled to any refund, rebate, discount or offset in applicable fees, for any

interruption in Community Services and Systems services, regardless of whether or not same is caused by reasons within the control of the then-provider of such services.

8.2 Reserved Easements. All dedications, limitations, restrictions and reservations shown on any Plat and all grants and dedications of easements, rights-of-way, restrictions and related rights made by Declarant or any third-party prior to any portion of the Property becoming subject to this Covenant are incorporated herein by reference and made a part of this Covenant for all purposes as if fully set forth herein, and shall be construed as being adopted in each and every contract, deed or conveyance executed or to be executed by or on behalf of Declarant. Declarant reserves the right to relocate, make changes in, and additions to said easements, rights-of-way, dedications, limitations, reservations and grants for the purpose of developing the Property and the Development.

8.3 Roadway and Utility Easements. Declarant hereby reserves for itself and its assigns a perpetual non-exclusive easement over and across the Development for: (i) the installation, operation and maintenance of utilities and associated infrastructure to serve the Development, the Property, and any other property owned by Declarant; (ii) the installation, operation and maintenance of cable lines and associated infrastructure for sending and receiving data and/or other electronic signals, security and similar services to serve the Development, the Property, and any other property owned by Declarant; (iii) the installation, operation and maintenance of, walkways, pathways and trails, drainage systems, street lights and signage to serve the Development, the Property, and any other property owned by Declarant; and (iv) the installation, location, relocation, construction, erection and maintenance of any streets, roadways, or other areas to serve the Development, the Property, and any other property owned by Declarant. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party who owns, operates or maintains the facilities and Improvements described in (i) through (iv) of this Section. In addition, Declarant may designate all or any portion of the easements or facilities constructed therein as Common Area, Special Common Area, or a Service Area.

8.4 Entry and Fencing Easement. Declarant reserves for itself and the Association, an easement over and across the Development for the installation, maintenance, repair or replacement of (i) fencing which serve either the Development or an individual Lot, and (ii) subdivision entry facilities which serves the Development, the Property, and any other property owned by Declarant. Declarant will have the right, from time to time, to Record a written notice which identifies the fencing and/or subdivision entry facilities to which the easement reserved hereunder applies. Declarant may designate all or any portion of the fencing and/or subdivision entry facilities as Common Area, Special Common Area, or a Service Area.

8.5 Landscape, Monumentation and Signage Easement. Declarant hereby reserves an easement over and across the Development for the installation, maintenance, repair or replacement of landscaping, monumentation and signage which serves the Development, the Property, and any other property owned by Declarant. Declarant will have the right, from time

to time, to Record a written notice which identifies the landscaping, monumentation, or signage to which the easement reserved hereunder applies. Declarant may designate all or any portion of the landscaping, monumentation, or signage as Common Area, Special Common Area, or a Service Area.

8.6 Easement for Special Events. The Declarant reserves for itself and the Association, and their successors, assigns, and designees, a perpetual, nonexclusive easement over the Common Area, for the purpose of conducting educational, cultural, artistic, musical and entertainment activities; and other activities of general community interest at such locations and times as the Declarant or the Association, in their reasonable discretion, deem appropriate. Members of the public may have access to such events. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot or Condominium Unit subject to this Covenant acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf of itself and the Occupants to take no action, legal or otherwise, which would interfere with the exercise of such easement.

8.7 Shared Amenities Reciprocal Easements. Certain portions of real property located near the Property, including but not limited to, the Golf Club Facilities (the "Other Development") may be developed and made subject to a separate covenants or rules and governed by a separate property owners association or owner including, but not limited to, the Club, which in turn may share certain amenities, including drainage improvements, signage, monumentation, open space and landscaping (the "Shared Amenities") with the Association. Declarant reserves the right to grant and convey easements to the owner(s) of the Other Development, any property owners' association or other similar entity responsible for the Shared Amenities (each an "Other Party") over and across Common Area, Special Common Area, or any portion of the Development which may be necessary or required to utilize and/or maintain the Shared Amenities, provided, however, that such easements may in no event unreasonably interfere with use of the Development or owner(s) thereof. Declarant reserves the right to (i) grant any Other Party the right to access and/or use the Shared Amenities, as applicable, located within the Development; (ii) obligate any Other Party to participate in performing the maintenance of the Shared Amenities located within the Development; (iii) require any Other Party to share in the expenses associated with the use and maintenance of the Shared Amenities; and (iv) enter into with any Other Party or cause any Other Party to enter into a shared amenity and cost allocation agreement (the "SACA"), to govern the rights and responsibilities of both the Association and the Other Party in regard to use and maintenance of the Shared Amenities, to allocate costs for the operation, maintenance and reserves for the Shared Amenities and to grant reciprocal easements for access and use of the Shared Amenities. Each Owner, by accepting an interest in or title to a Lot or Condominium Unit, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay any fee allocated under the SACA to the Association as an Assessment to be levied and secured by a continuing

lien on the Lot or Condominium Unit in the same manner as any other Assessment and Assessment lien arising under *Article 5* of this Covenant.

8.8 Solar Equipment Easement. Declarant hereby reserves for itself and the Association, and their successors, assigns, and designees, a perpetual, nonexclusive easement over and across the Development for the installation, maintenance, repair or replacement of a rooftop solar electric generating system designed to deliver electric power to a particular residence built on a Lot or Common Area. Declarant will have the right, from time to time, to Record a written notice which identifies the solar equipment to which the easement reserved hereunder applies. Declarant will be entitled to unilaterally assign the easements reserved hereunder to any third party.

8.9 Cellular Tower and Telecommunications Easement. Declarant hereby grants and reserves for itself and its assigns, an exclusive, perpetual and irrevocable easement, license and right to use any portion of the Common Area or Special Common Area, or any portion of the Property or the Development which Declarant intends to designate as Common Area or Special Common Area (the "**CTT Easement Area**") for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of CTT Equipment. Declarant or its assignee will have the right, from time to time, but no obligation, to Record a written notice which identifies the portion of the Common Area or Special Common Area to which the CTT Easement Area pertains, and Declarant, or its assignee, may fence, install landscaping, or otherwise install improvements restricting access to the CTT Easement Area identified in such Recorded instrument. Neither the Association, nor any Owner other than the Declarant or its assignee hereunder, may use the CTT Easement Area in any manner which interferes with operation of the CTT Equipment. Declarant hereby reserves for itself and its assigns the right to use, sell, lease or assign all or any portion of the CTT Easement Area, for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of the CTT Equipment. In addition, Declarant hereby reserves for itself and its assigns a non-exclusive, perpetual and irrevocable easement over the Property and the Development for access to and from the CTT Easement Area and to construct, install, use, maintain, repair, replace, improve, remove, and operate, or allow others to do the same, any utility lines servicing the CTT Equipment. Declarant also reserves for itself and its assigns the right to select and contract with any third-party for the construction, installation, use, maintenance, repair, replacement, improvement, removal and operation of the CTT Equipment and to provide any telecommunication, cellular, video or digital service associated therewith. Declarant shall have and hereby reserves for itself and its assigns the sole and exclusive right to collect and retain any and all income and/or proceeds received from or in connection with use or services provided by the CTT Equipment and the rights described in this *Section 8.9*. The rights reserved to Declarant under this *Section 8.9* shall benefit only Declarant and its assigns, and no other Owner or successor-in-title to any portion of the Property or the Development shall have any rights to income derived from or in connection with the rights and easements granted in this *Section 8.9*, except as expressly approved in writing by Declarant. **EACH**

OWNER AND OCCUPANT HEREBY RELEASES AND HOLDS HARMLESS THE DECLARANT AND ITS ASSIGNS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF ANY ACTS, ACTIONS OR ACTIVITIES PERMITTED BY DECLARANT ITS ASSIGNS UNDER THIS SECTION 8.9 (INCLUDING ANY COST, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF NEGLIGENCE IN CONNECTION THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE. The provisions of this Section 8.9 shall not be amended without the written and acknowledged consent of Declarant or the assignee of all or any portion of Declarant's rights hereunder.

8.10 Declarant as Attorney in Fact. To secure and facilitate Declarant's exercise of the rights reserved by Declarant pursuant to the terms and provisions of the Documents, each Owner, by accepting a deed to a Lot or Condominium Unit and each Mortgagee, by accepting the benefits of a Mortgage against a Lot or Condominium Unit, and any other third party by acceptance of the benefits of a mortgage, deed of trust, mechanic's lien contract, mechanic's lien claim, vendor's lien and/or any other security interest against any Lot or Condominium Unit, will thereby be deemed to have appointed Declarant such Owner's, Mortgagee's, and third party's irrevocable attorney-in-fact, with full power of substitution, to do and perform, each and every act permitted or required to be performed by Declarant pursuant to the terms of the Documents. The power thereby vested in Declarant as attorney-in-fact for each Owner, Mortgagee and/or third party, will be deemed, conclusively, to be coupled with an interest and will survive the dissolution, termination, insolvency, bankruptcy, incompetency and death of an Owner, Mortgagee and/or third party and will be binding upon the legal representatives, administrators, executors, successors, heirs and assigns of each such party.

8.11 Club Easement. By recordation of this Declaration, Declarant does hereby reserve for the Club a perpetual, alienable and transferable easement over, across and upon each and every Lot, Condominium Unit and the Common Area and Special Common Area for the purpose of doing every act necessary and appropriate to the use and enjoyment of the Golf Club Facilities (the "Club Easement"), which shall include the recovery of golf balls from any Lot or Condominium Unit, the flight of golf balls over and upon any Lot or Condominium Unit, the noise level created by the playing of golf, golf tournaments, and Club functions and parties, and the activities associated with the operation and maintenance of the Golf Club Facilities. Such Club Easement shall specifically constitute a part of the Golf Club Facilities.

8.11.1 Without limiting the foregoing, the Club Easement rights include the following:

(i) The Club shall have an unrestricted easement of access over the Property for the purpose of retrieving golf balls from bodies of water, other than swimming pools, lying reasonably within range of golf balls hit from the Golf Club Facilities. All golf balls within such bodies of water not immediately retrieved by the owner of such golf balls shall be the property of the Club.

(ii) The Club shall have a perpetual, nonexclusive easement over, under and upon each and every Lot, Condominium Unit, Common Area, and Special Common Area (but not through any structures thereon) for the purpose of installation, operation, service, repair, replacement, enhancement and maintenance of the Golf Club Facilities, including the installation of recreational and other facilities on the Golf Club Facilities and the use of usual and common equipment for irrigation, maintenance and landscaping thereof. By way of example and not limitation, such easement shall permit, but shall not require, entry into any Lot and/or Condominium Unit for the purpose of planting grass, applying fertilizer, mowing and edging and removing any underbrush, trash, debris and trees from the Golf Club Facilities.

(iii) The Club shall have a perpetual, nonexclusive easement over, under and upon the Property to provide for (a) installation, service, repair and maintenance of the equipment and lines required to provide utility services to the Golf Club Facilities, including power, lights, telephone, cable television, telecommunications, gas, water, sewer, irrigation and drainage, and (b) governmental services, including police, fire, health, sanitation and other public service personnel, including reasonable rights of access for persons and equipment necessary for such purposes for the benefit of the appropriate utility companies, agencies, franchises or governmental agencies.

(iv) The Club shall have a perpetual, nonexclusive easement for drainage and flowage of Property waters over, under and upon the Property, including the Lots, Condominium Units and the Common Area, and Special Common Area including reasonable rights of access for persons and equipment to construct, install, maintain, alter, inspect, remove, relocate and repair drainage facilities, culverts, swales, pumps, canals, electrical boxes, flowage pipes and irrigation pipes. Additionally, the Club shall have a perpetual, nonexclusive easement for drainage, stormwater collection, retention and detention over, upon and within the Property and all drainage and stormwater facilities serving the Property, and use of all drainage and storm water easements shown on each Plat or otherwise reserved, declared or created pursuant to this Covenant. Notwithstanding anything herein contained to the contrary, all such easements granted pursuant to this Section shall be consistent and in accordance with the plans on file with or approved by Yavapai County or the Town.

(v) The Club Parties (regardless of whether such persons are Owners hereunder) shall at all times have a perpetual, nonexclusive, unrestricted easement for pedestrian, vehicular, golf cart, construction, service and maintenance vehicle traffic for access and use over, alongside and through all streets, roadways, paths, and entry and exit gates located within the Property reasonably necessary to travel to and from each entrance and exit to the Property, from, to and between Golf Club Facilities, respectively. Without limiting the generality of the foregoing, the Club Parties shall have the right to enter and exit the Property through the entry and exit gates located within the Property, to use the pedestrian and golf cart paths located throughout the Property, and to park their vehicles on and alongside the streets and roadways located within the Property, seven (7) days a week and fifty-two (52) weeks a year, including all holidays, at reasonable times before, during and after the operating hours of the Club, tournaments on the Golf Club Facilities, and various other functions and parties held at the Golf Club Facilities (collectively referred to as the "Club Access Times"). To assure the Club Parties' ability to exercise their rights under this subsection, the Association shall have the obligation to staff and operate any entry and exit gates located within the Property during the Club Access Times, which staffing obligation shall be a common expense of the Association.

8.11.2 The Club shall have an unrestricted easement for errant golf balls, projectiles, Property waters, grass cuttings, landscape clippings, herbicides, pesticides and fertilizer that enter upon the Property, including each of the Lots, Condominium Units, Common Area, and Benefited Common Area from the Golf Course (the "Golf Projectile Easement").

8.11.3 UNDER NO CIRCUMSTANCES SHALL DECLARANT, THE CLUB PARTIES, THE ASSOCIATION AND ANY SUCCESSOR IN INTEREST TO THE FOREGOING BE RESPONSIBLE OR LIABLE FOR ANY DAMAGE OR INJURY TO PERSONS OR PROPERTY ARISING OUT OF OR RESULTING FROM THE EXERCISE OF THE CLUB ENCROACHMENT EASEMENT, THE CLUB EASEMENT, AND THE GOLF PROJECTILE EASEMENT.

8.11.4 Notwithstanding that one or more lakes or other retention areas constructed on the Golf Club Facilities may be constructed for the sole purpose of retaining and providing irrigation water for the Common Area, Club shall have a perpetual, nonexclusive easement to access and use any and all of the lakes and other retention areas located on the Golf Club Facilities for the purpose of withdrawing water for irrigation, construction and maintenance of the Golf Club Facilities with the result that the water levels in the lakes and retention areas may from time to time fluctuate upwards and downwards. Each Owner acknowledges that no representation has been made by Declarant and the Club Parties regarding the establishment or maintenance of any particular water level in any portion of the

lakes and other retention areas and that Club has the above rights. Each Owner agrees not to commence any cause of action or other proceeding involving the Club based on the exercise of such right or otherwise interfere therewith or based upon water levels. In the event there are insufficient water levels within the lakes and other retention areas located within the Golf Club Facilities to provide the necessary irrigation needs of the Golf Club Facilities and Common Area, subject to applicable governmental permits and requirements, the Golf Club Facilities shall have first priority of irrigation use of water from the lakes and retention areas, followed by the Common Area, Benefited Common Area, and other areas which the Association maintains that are not a part of the Golf Club Facilities.

ARTICLE 9 DEVELOPMENT RIGHTS

9.1 Development. It is contemplated that the Development shall be developed pursuant to a plan, which, from time to time, the Declarant may amend or modify in its sole and absolute discretion. Declarant reserves the right, but shall not be obligated, to designate Tracts, and to create and/or designate Lots, Condominium Units, Neighborhoods, Voting Groups, Common Area, Special Common Area, and Service Areas and to subdivide all or any portion of the Development and Property. As each area is conveyed, developed or dedicated, Declarant may Record one or more Tract Declarations and designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for that area. Any Tract Declaration may provide its own procedure for the amendment thereof.

9.2 Special Declarant Rights. Notwithstanding any provision of this Covenant to the contrary, at all times, Declarant will have the right and privilege: (a) to erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners for the purpose of aiding the sale of Lots and Condominium Units in the Development; (b) to maintain Improvements upon Lots, including the Common Area and Special Common Area, as sales, model, management, business and construction offices or visitor centers at no charge; and (c) to maintain and locate construction trailers and construction tools and equipment within the Development. The construction, placement or maintenance of Improvements by Declarant will not be considered a nuisance.

9.3 Addition of Land. Declarant may, at any time and from time to time, add additional lands to the Property and, upon the Recording of a notice of addition of land, such land shall be considered part of the Property for purposes of this Covenant, and upon the further Recording of a Notice of Applicability meeting the requirements of *Section 9.5*, such added lands shall be considered part of the Development subject to this Covenant and the terms, covenants, conditions, restrictions and obligations set forth in this Covenant, and the rights, privileges, duties and liabilities of the persons subject to this Covenant shall be the same with respect to such added land as with respect to the lands originally covered by this Covenant. Such added land need not be contiguous to the Property. To add lands to the Property, Declarant shall be required only to Record, a notice of addition of land (which notice

may be contained within any Tract Declaration affecting such land) containing the following provisions:

(i) A reference to this Covenant, which reference shall state the document number or volume and page wherein this Covenant is Recorded;

(ii) A statement that such land shall be considered Property for purposes of this Covenant, and that upon the further Recording of a Notice of Applicability meeting the requirements of *Section 9.5* of this Covenant, all of the terms, covenants, conditions, restrictions and obligations of this Covenant shall apply to the added land; and

(iii) A legal description of the added land.

9.4 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw from the Property, including the Development, and remove and exclude from the burden of this Covenant and the jurisdiction of the Association any portion of the Development. Upon any such withdrawal and removal, this Covenant and the covenants conditions, restrictions and obligations set forth herein shall no longer apply to the portion of the Development withdrawn. To withdraw lands from the Property or the Development hereunder, Declarant shall be required only to Record a notice of withdrawal of land containing the following provisions:

(i) A reference to this Covenant, which reference shall state the document number or volume and page number wherein this Covenant is Recorded;

(ii) A statement that the provisions of this Covenant shall no longer apply to the withdrawn land; and

(iii) A legal description of the withdrawn land.

9.5 Notice of Applicability. Upon Recording, this Covenant serves to provide notice that at any time, and from time to time, Declarant, and Declarant only, may subject all or any portion of the Property to the terms, covenants, conditions, restrictions and obligations of this Covenant and any applicable Tract Declaration. This Covenant and any applicable Tract Declaration shall apply to and burden a portion or portions of the Property upon the Recording of a Notice of Applicability describing such applicable portion of the Property by a legally sufficient description and expressly providing that such Property shall be considered a part of the Development and shall be subject to the terms, covenants conditions, restrictions and obligations of this Covenant and any applicable Tract Declaration. To be effective, a Notice of Applicability must be executed by Declarant, and the property included in the Notice of Applicability need not be owned by the Declarant if included within the Property. Declarant

may also cause a Notice of Applicability to be Recorded covering a portion of the Property for the purpose of encumbering such Property with this Covenant and any Tract Declaration previously Recorded by Declarant (which Notice of Applicability may amend, modify or supplement the restrictions, set forth in the Tract Declaration, which shall apply to such Property). To make the terms and provisions of this Covenant applicable to a portion of the Property, Declarant shall be required only to cause a Notice of Applicability to be Recorded containing the following provisions:

(i) A reference to this Covenant, which reference shall state the document number or volume and page number wherein this Covenant is Recorded;

(ii) A reference, if applicable, to the Recorded Tract Declaration which will apply to such portion of the Property (with any amendment, modification, or supplementation of the restrictions set forth in the Tract Declaration which shall apply to such portion of the Property);

(iii) A statement that all of the provisions of this Covenant shall apply to such portion of the Property;

(iv) A legal description of such portion of the Property; and

(v) If applicable, a description of any Special Common Area or Service Area which benefits the Property and the beneficiaries of such Special Common Area or Service Area.

NOTICE TO TITLE COMPANY

NO PORTION OF THE PROPERTY IS SUBJECT TO THE TERMS AND PROVISIONS OF THIS COVENANT AND THIS COVENANT DOES NOT APPLY TO ANY PORTION OF THE PROPERTY UNLESS A NOTICE OF APPLICABILITY DESCRIBING SUCH PROPERTY AND REFERENCING THIS COVENANT HAS BEEN RECORDED.

9.6 Designation of Neighborhood. Declarant may, at any time and from time to time, file a designation of neighborhood (a "**Designation of Neighborhood**") assigning portions of the Property to a specific Neighborhood. Upon the filing of a Designation of Neighborhood, such land will be considered part of the Neighborhood so designated. To assign portions of the Property to a specific Neighborhood, Declarant will be required only to Record a Designation of Neighborhood containing the following provisions:

(i) A reference to this Covenant, which reference will state the document number or volume and initial page number where this Covenant is Recorded;

(ii) An identification of the Neighborhood applicable to such portion of the Property and a statement that such land will be considered part of such Neighborhood for purposes of this Covenant; and

(iii) A legal description of the designated land.

9.7 Assignment of Declarant's Rights. Notwithstanding any provision in this Covenant to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, reservations and duties under this Covenant to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, reservations and duties hereunder.

9.8 Notice of Plat Recordation. Declarant may, at any time and from time to time, Record a notice of plat recordation (a "Notice of Plat Recordation"). A Notice of Plat Recordation is Recorded for the purpose of more clearly identifying specific Lots subject to the terms and provisions of this Covenant after portions of the Property are made subject to a Plat. Unless otherwise provided in the Notice of Plat Recordation, portions of the Property included in the Plat identified in the Notice of Plat Recordation, but not shown as a residential Lot on such Plat, shall be automatically withdrawn from the terms and provisions of this Covenant (without the necessity of complying with the withdrawal provisions set forth in this Section). Declarant shall have no obligation to Record a Notice of Plat Recordation and failure to Record a Notice of Plat Recordation shall in no event remove any portion of the Property from the terms and provisions of this Covenant.

ARTICLE 10
GENERAL PROVISIONS

10.1 Term. Upon the Recording of a Notice of Applicability pursuant to *Section 9.5*, the terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Covenant shall run with and bind the portion of the Property described in such notice, and shall inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Covenant is Recorded, and continuing through and including January 1, 2089, after which time this Covenant shall be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved by Members entitled to cast at least sixty-seven percent (67%) of the total number of votes of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. The Representative System of Voting is not applicable to a change as contemplated in this *Section 10.1*, it being understood and agreed that any change must be approved by a vote of the Members, with each Member casting their vote individually. Notwithstanding any provision in this *Section 10.1* to the contrary, if any provision of this Covenant would be unlawful, void, or voidable by reason of any Applicable Law restricting the period of time that covenants on land may be enforced, such provision will expire twenty-one (21) years after the death of the last survivor of the now living, descendants of Elizabeth II, Queen of England.

10.2 Eminent Domain. In the event it becomes necessary for any Governmental Entity to acquire all or any part of the Common Area or Special Common Area for any public purpose during the period this Covenant is in effect, the Board is hereby authorized to negotiate with such Governmental Entity for such acquisition and to execute instruments necessary for that purpose. Should acquisitions by eminent domain become necessary, only the Board need be made a party, and in any event the proceeds received will be held by the Association for the benefit of the Owners. In the event any proceeds attributable to acquisition of Common Area are paid to Owners, such payments will be allocated on the basis of Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on the respective Lot or Condominium Unit. In the event any proceeds attributable to acquisition of Special Common Area are paid to Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area, such payment will be allocated on the basis of Assessment Units and paid jointly to such Owners and the holders of first Mortgages or deeds of trust on the respective Lot or Condominium Unit.

10.3 Amendment. This Covenant may be amended or terminated by the Recording of an instrument executed and acknowledged by: (i) Declarant acting alone; or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and Members entitled to cast at least sixty-seven percent (67%) of the total

number of votes of the Association. The foregoing sentence shall in no way be interpreted to mean sixty-seven percent (67%) of a quorum as established pursuant to the Bylaws. The Representative System of Voting is not applicable to an amendment as contemplated in this Section 10.3, it being understood and agreed that any amendment must be approved by a vote of the Members, with each Member casting their vote individually. No amendment will be effective without the written consent of Declarant during the Development Period.

10.4 Enforcement. The Association and the Declarant will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, charges and other terms now or hereafter imposed by the provisions of this Covenant. Failure to enforce any right, provision, covenant, or condition granted by this Covenant will not constitute a waiver of the right to enforce such right, provision, covenants or condition in the future. Failure of the Declarant or the Association to enforce the terms and provisions of the Documents shall in no event give rise to any claim or liability against the Declarant, the Association, or any of their partners, directors, officers, or agents. **EACH OWNER, BY ACCEPTING TITLE TO ALL OR ANY PORTION OF THE DEVELOPMENT, HEREBY RELEASES AND SHALL HOLD HARMLESS EACH OF THE DECLARANT, THE ASSOCIATION, AND THEIR PARTNERS, DIRECTORS, OFFICERS, OR AGENTS FROM AND AGAINST ANY DAMAGES, CLAIMS OR LIABILITY ASSOCIATED WITH THE FAILURE OF THE DECLARANT OR THE ASSOCIATION TO ENFORCE THE TERMS AND PROVISIONS OF THE DOCUMENTS.**

10.5 No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of any restrictive covenants, terms, or provisions contained in the Covenant. Any Owner acquiring a Lot or Condominium Unit in reliance on one or more of such restrictive covenants, terms, or provisions shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot or Condominium Unit, agrees to hold Declarant harmless therefrom.

10.6 Higher Authority. The terms and provisions of this Covenant are subordinate to Applicable Law. Generally, the terms and provisions of this Covenant are enforceable to the extent they do not violate or conflict with Applicable Law.

10.7 Severability. If any provision of this Covenant is held to be invalid by any court of competent jurisdiction, such invalidity shall not affect the validity of any other provision of this Covenant, or, to the extent permitted by Applicable Law, the validity of such provision as applied to any other person or entity.

10.8 Conflicts. If there is any conflict between the provisions of this Covenant, the Articles of Incorporation, the Bylaws, or any Rules adopted pursuant to the terms of such documents, or any Tract Declaration, the provisions of this Covenant shall govern.

10.9 Gender. Whenever the context so requires, all words herein in the male gender shall be deemed to include the female or neuter gender, all singular words shall include the plural, and all plural words shall include the singular.

10.10 Acceptance by Grantees. Each grantee of a Lot, Condominium Unit, or other real property interest in the Development, by the acceptance of a deed of conveyance, and each subsequent purchaser, accepts the same subject to all terms, restrictions, conditions, covenants, reservations, easements, liens and charges, and the jurisdiction rights and powers created or reserved by this Covenant or to whom this Covenant is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared. Furthermore, each grantee agrees that no assignee or successor to Declarant hereunder will have any liability for any act or omission of Declarant which occurred prior to the effective date of any such succession or assignment. All impositions and obligations hereby imposed will constitute covenants running with the land within the Development, and will bind any person having at any time any interest or estate in the Development, and will inure to the benefit of each Owner in like manner as though the provisions of this Covenant were recited and stipulated at length in each and every deed of conveyance.

10.11 Damage and Destruction.

10.11.1 Claims. Promptly after damage or destruction by fire or other casualty to all or any part of the Common Area or Special Common Area covered by insurance, the Board, or its duly authorized agent, shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair of the damage. Repair, as used in this Section 10.11, means repairing or restoring the Common Area or Special Common Area to substantially the same condition as existed prior to the fire or other casualty.

10.11.2 Repair Obligations. Any damage to or destruction of the Common Area or Special Common Area shall be repaired unless a Majority of the Board decides within sixty (60) days after the casualty not to repair. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available.

10.11.3 Restoration. In the event that the Board should determine that the damage or destruction of the Common Area or Special Common Area shall not be repaired and does not authorize alternative Improvements, then the Association shall restore the affected portion of the Common Area or Special Common Area to its natural state and maintain it as an undeveloped portion of the Common Area in a neat and attractive condition.

10.11.4 Special Assessment for Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Common Area, and such proceeds are not sufficient

to defray the cost of such repair or restoration, the Board shall levy a Special Assessment, as provided in *Article 5*, against all Owners. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

10.11.5 Special Assessment for Special Common Area. If insurance proceeds are paid to restore or repair any damaged or destroyed Special Common Area, and such proceeds are not sufficient to defray the cost of such repair or restoration, the Board shall levy a Special Assessment, as provided in *Article 5*, against all Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area. Additional Assessments may be made in like manner at any time during or following the completion of any repair.

10.11.6 Proceeds Payable to Owners. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to any Common Area, such payments shall be allocated based on Assessment Units and paid jointly to the Owners and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

10.11.7 Proceeds Payable to Owners Responsible for Special Common Area. In the event that any proceeds of insurance policies are paid to Owners as a result of any damage or destruction to Special Common Area, such payments shall be allocated based on Assessment Units and shall be paid jointly to the Owners who have been assigned the obligation to pay Special Common Area Assessments attributable to such Special Common Area and the holders of first Mortgages or deeds of trust on their Lots or Condominium Units.

10.12 No Partition. Except as may be permitted in this Covenant or amendments hereto, no physical partition of the Common Area or Special Common Area or any part thereof shall be permitted, nor shall any person acquiring any interest in the Development or any part thereof seek any such judicial partition unless all or the portion of the Development in question has been removed from the provisions of this Covenant pursuant to *Section 9.4* above. This *Section 10.12* shall not be construed to prohibit: (i) the Board from acquiring and disposing of tangible personal property; (ii) the Board from acquiring title to real property that may or may not be subject to this Covenant; nor (iii) or affect the creation of a condominium regime in accordance with the Arizona Condominium Act codified in *Section 33-1201 et seq.* of the Arizona Revised Statutes.

10.13 View Impairment. Neither the Declarant, the [Desert Mountain 19] Reviewer, nor the Association guarantee or represent that any view over and across the Lots, Condominium Units, or any open space within the Development shall be preserved without impairment. The Association (with respect to any Common Area or Special Common Area) shall have the right to add trees and other landscaping from time to time, subject to Applicable Law. There shall be no express or implied easements for view purposes or for the passage of light and air. Any view that exists at any point in time for a Lot or Condominium Unit may be impaired or obstructed by further construction within or outside the Property, including by

construction of Improvements by Declarant or the Club, construction by third parties (including Owners and Occupants) and by the natural growth of landscaping. No third party, including any broker, salesperson or Owner, has any right to bind Declarant, the Association or the Club with respect to preservation of any view from any Lot or Condominium Unit or any view of a Lot or Condominium Unit from any other property. The Declarant, the [Desert Mountain 19] Reviewer and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping.

10.14 Safety and Security. Each Owner and Occupant of a Lot or Condominium Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in the Development. The Association may, but shall not be obligated to, maintain or support certain activities within the Development designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, none of the Association, the Declarant, or any of their Directors, employees, or agents, shall in any way be considered insurers or guarantors of safety or security within the Development, nor shall either be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to the Development, cannot be compromised or circumvented; or that any such system or security measures undertaken shall in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any Occupants of such Owner's Lot or Condominium Unit that the Association, its Board, employees, agents, and committees, and the Declarant are not insurers or guarantors of security or safety and that each person within the Development assumes all risks of personal injury and loss or damage to property, including any residences or Improvements constructed upon any Lot or Condominium Unit and the contents thereof, resulting from acts of third parties.

10.15 Facilities Open to the Public. Certain facilities and areas within the Property shall be open for the use and enjoyment of the public. Such facilities and areas may include, by way of example, greenbelts, trails and paths, parks, roads, sidewalks and medians.

10.16 No Express or Implied Covenants or Restrictions. Nothing in this Covenant shall create, or be deemed to create, any express or implied covenants or restrictions with respect to any real property not added hereto in the manner provided in *Section 9.3*, including but not limited to, the Golf Club Facilities.

10.17 Notices. Any notice permitted or required to be given to any person by this Covenant shall be in writing and shall be considered as properly given if (a) mailed by first class United States mail, postage prepaid; (b) by delivering same in person to the intended

addressee; (c) by delivery to an independent third party commercial delivery service for same day or next day delivery and providing for evidence of receipt at the office of the intended addressee; or (d) by prepaid telegram, telex, electronic mail, or facsimile to the addressee and providing for evidence of receipt at the office of the intended addressee. Notice so mailed shall be effective upon its deposit with the United States Postal Service or any successor thereto; notice sent by such a commercial delivery service shall be effective upon delivery to such commercial delivery service; notice given by personal delivery shall be effective only if and when received by the addressee; and notice given by other means shall be effective when received at the office or designated place or machine/equipment of the intended addressee. For purposes of notice the address of each Owner shall be the address of the Lot or Condominium Unit or such other address as provided by the Owner to the Association, and the address of each Mortgagee shall be the address provided to the Association; provided, however, that any party shall have the right to change its address for notice hereunder to any other location within the continental United States by the giving of thirty (30) days' notice to the Association.

ARTICLE 11 DISPUTE RESOLUTION

11.1 Agreement to Encourage Resolution of Disputes without Litigation.

11.1.1 Bound Parties. Declarant, the Association and its officers, directors, and committee members, Owners and all other parties subject to this Covenant ("**Bound Party**", or collectively, the "**Bound Parties**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Development without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in Section 11.1.2, unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 11.2 in a good faith effort to resolve such Claim.

11.1.2 Claim(s). As used in this Article, the term "**Claim**" or "**Claims**" will refer to any claim, grievance or dispute arising out of or relating to:

- (i) Claim relating to the rights and/or duties of Declarant under the Documents; or
- (ii) Claims against the Declarant relating to the design or construction of Improvements on the Common Areas or Lots.

11.2 Claims Process. In the event the Association or an Owner asserts a Claim, as a precondition to providing the Notice defined in Section 11.3, initiating the mandatory dispute resolution procedures set forth in this Article 11, or taking any other action to prosecute a Claim, the Association or an Owner, as applicable, must:

11.2.1 Independent Report on the Condition. Obtain an independent third-party report (the "**Condition Report**") from a licensed professional engineer which: (a) identifies the Improvements subject to the Claim including the present physical condition of the Improvements; (b) describes any modification, maintenance, or repairs to the Improvements performed by the Owner(s) and/or the Association; (c) provides specific and detailed recommendations regarding remediation and/or repair of the Improvements subject to the Claim. For the purposes of this *Section 11.2.1*, an independent third-party report is a report obtained directly by the Association or an Owner and paid for by the Association or an Owner, as applicable, and not prepared by a person employed by or otherwise affiliated with the attorney or law firm that represents or will represent the Association or an Owner in the Claim. As a precondition to providing the Notice described in *Section 11.3*, the Association or Owner must provide at least ten (10) days prior written notice of the inspection to each party subject to a Claim which notice shall identify the independent third-party engaged to prepare the Condition Report, the specific Improvements to be inspected, and the date and time the inspection will occur. Each party subject to a Claim may attend the inspection, personally or through an agent. Upon completion, the Condition Report shall be provided to each party subject to a Claim. In addition, before providing the Notice described in *Section 11.3*, the Association or Owner, as applicable, shall have permitted each party subject to a Claim the right, for a period of ninety (90) days, to inspect and correct, any condition identified in the Condition Report.

11.2.2 Claims by Association – Owner Meeting and Approval. If the Claim is brought by the Association, obtain approval from Members holding sixty-seven percent (67%) of the votes in the Association to provide the Notice described in *Section 11.3*, initiate the mandatory dispute resolution procedures set forth in this *Article 11*, or take any other action to prosecute a Claim, which approval from Members must be obtained at a special meeting of Members called in accordance with the Bylaws. The notice of meeting required hereunder will be provided pursuant to the Bylaws but the notice must also include: (a) the nature of the Claim, the relief sought, the anticipated duration of prosecuting the Claim, and the likelihood of success; (b) a copy of the Condition Report; (c) a copy of any proposed engagement letter, with the terms of such engagement between the Association and an attorney to be engaged by the Association to assert or provide assistance with the claim (the "**Engagement Letter**"); (d) a description of the attorney fees, consultant fees, expert witness fees, and court costs, whether incurred by the Association directly or for which it may be liable or that the Association will be required, pursuant to the Engagement Letter or otherwise, to pay if the Association elects to not to proceed with the Claim; (e) a summary of the steps previously taken, and proposed to be taken, to resolve the Claim; (f) an estimate of the impact on the value of each Lot and Improvements if the Claim is prosecuted and an estimate of the impact on the value of each Lot and Improvements after resolution of the Claim; (g) an estimate of the impact on the marketability of each Lot and Improvements if the Claim is prosecuted and during prosecution of the Claim, and an estimate of the impact on the value of each Lot and Improvements during and after resolution of the Claim; (h) the manner in which the Association proposes to fund the

cost of prosecuting the Claim; (i) the impact on the finances of the Association, including the impact on present and projected reserves; and (j) any demands, notices, offers to settle or responses to offers to settle made either by the Association or a Respondent. The notice required by this paragraph must be prepared and signed by a person other than, and not employed by or otherwise affiliated with, the attorney or law firm that represents or will represent the Association in the Claim. In the event Members approve providing the Notice described in *Section 11.3*, or taking any other action to prosecute a Claim, the Members holding a Majority of the votes in the Association, at special meeting called in accordance with the Bylaws, may elect to discontinue prosecution or pursuit of the Claim.

11.3 Notice. The Bound Party asserting a Claim ("**Claimant**") against another Bound Party ("**Respondent**") must notify Respondent in writing of the Claim (the "**Notice**"), stating plainly and concisely: (a) the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim; (b) the basis of the Claim (i.e., the provision of the Restrictions or other authority out of which the Claim arises); (c) what Claimant wants Respondent to do or not do to resolve the Claim; and (d) that the Notice is given pursuant to this *Section 11.3*. For Claims governed by Title, 33, Chapter 18 of the Arizona Revised Statutes, the time period for negotiation in *Section 11.4* below, is equivalent to the sixty (60) day period under Section 12-363 of the Arizona Revised Statutes. Failure to comply with the time periods or actions specified in Section 12-363 of the Arizona Revised Statutes could affect a Claim if the Claim is subject to Title 33, Chapter 18 of the Arizona Revised Statutes. The one hundred and twenty (120) day period for mediation set forth in *Section 11.5* below, is intended to provide the Claimant and Respondent with sufficient time to resolve the Claim in the event resolution is not accomplished during negotiation. If the Claim is not resolved during negotiation, mediation pursuant to *Section 11.5* is required without regard to the monetary amount of the Claim.

If the Claimant is the Association, the Notice will also include: (a) a true and correct copy of the Condition Report; (b) a copy of the Engagement Letter; (c) copies of all reports, studies, analyses, and recommendations obtained by the Association related to the Improvements which form the basis of the Claim; (d) a true and correct copy of the special meeting notice provided to Members in accordance with *Section 11.2.2* above; and (e) and reasonable and credible evidence confirming that Members holding sixty-seven percent (67%) of the votes in the Association approved providing the Notice.

11.4 Negotiation. Claimant and Respondent will make every reasonable effort to meet in person to resolve the Claim by good faith negotiation. Within 60 days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually acceptable place and time to discuss the Claim. If the Claim involves all or any portion of the Property, then at such meeting or at some other mutually-agreeable time, Respondent and Respondent's representatives will have full access to the Property that is subject to the Claim for the purposes of inspecting the Property. If Respondent elects to take corrective action, Claimant will provide Respondent and Respondent's representatives and agents with full access to the Property to take and complete corrective action.

11.5 Mediation. If the parties negotiate, but do not resolve the Claim through negotiation within one-hundred twenty (120) days from the date of the Notice (or within such other period as may be agreed on by the parties), Claimant will have thirty (30) additional days within which to submit the Claim to mediation under the auspices of a mediation center or individual mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and must have technical knowledge or expertise appropriate to the subject matter of the Claim. If Claimant does not submit the Claim to mediation within the 30-day period, Respondent will submit the Claim to mediation in accordance with this *Section 11.5*.

11.6 Termination of Mediation. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, or within a time deemed reasonable by the mediator, the mediator will issue a notice of termination of the mediation proceedings indicating that the Parties are at an impasse and the date that mediation was terminated. Thereafter, Claimant may file suit or initiate arbitration proceedings on the Claim, as appropriate and permitted by this Article.

11.7 Binding Arbitration-Claims. All Claims must be settled by binding arbitration. Claimant or Respondent may, by summary proceedings (e.g., a plea in abatement or motion to stay further proceedings), bring an action in court to compel arbitration of any Claim not referred to arbitration as required by this *Section 11.7*.

11.7.1 Governing Rules. If a Claim has not been resolved after Mediation as required by *Section 11.5*, the Claim will be resolved by binding arbitration in accordance with the terms of this *Section 11.7* and the rules and procedures of the American Arbitration Association ("AAA") or, if the AAA is unable or unwilling to act as the arbitrator, then the arbitration shall be conducted by another neutral reputable arbitration service selected by Respondent in Maricopa County, Arizona. Regardless of what entity or person is acting as the arbitrator, the arbitration shall be conducted in accordance with the AAA's "Construction Industry Dispute Resolution Procedures" and, if they apply to the disagreement, the rules contained in the Supplementary Procedures for Consumer-Related Disputes. If such Rules have changed or been renamed by the time a disagreement arises, then the successor rules will apply. Also, despite the choice of rules governing the arbitration of any Claim, if the AAA has, by the time of Claim, identified different rules that would specifically apply to the Claim, then those rules will apply instead of the rules identified above. In the event of any inconsistency between any such applicable rules and this *Section 11.7*, this *Section 11.7* will control. Judgment upon the award rendered by the arbitrator shall be binding and not subject to appeal, but may be reduced to judgment in any court having jurisdiction. Notwithstanding any provision to the contrary or any applicable rules for arbitration, any arbitration with respect to Claims arising hereunder shall be conducted by a panel of three (3) arbitrators, to be chosen as follows:

- (i) one arbitrator shall be selected by Respondent, in its sole and absolute discretion;

(ii) one arbitrator shall be selected by the Claimant, in its sole and absolute discretion; and

(iii) one arbitrator shall be selected by mutual agreement of the arbitrators having been selected by Respondent and the Claimant, in their sole and absolute discretion.

11.7.2 Exceptions to Arbitration; Preservation of Remedies. No provision of, nor the exercise of any rights under, this *Section 11.7* will limit the right of Claimant or Respondent, and Claimant and the Respondent will have the right during any Claim, to seek, use, and employ ancillary or preliminary remedies, judicial or otherwise, for the purposes of realizing upon, preserving, or protecting upon any property, real or personal, that is involved in a Claim, including, without limitation, rights and remedies relating to: (a) exercising self-help remedies (including set-off rights); or (b) obtaining provisions or ancillary remedies such as injunctive relief, sequestration, attachment, garnishment, or the appointment of a receiver from a court having jurisdiction before, during, or after the pendency of any arbitration. The institution and maintenance of an action for judicial relief or pursuit of provisional or ancillary remedies or exercise of self-help remedies shall not constitute a waiver of the right of any party to submit the Claim to arbitration nor render inapplicable the compulsory arbitration provisions hereof.

11.7.3 Statute of Limitations. All statutes of limitation that would otherwise be applicable shall apply to any arbitration proceeding under this *Section 11.7*.

11.7.4 Scope of Award; Modification or Vacation of Award. The arbitrator shall resolve all Claims in accordance with the applicable substantive law. The arbitrator may grant any remedy or relief that the arbitrator deem just and equitable and within the scope of this *Section 11.7* but subject to *Section 11.8* below. The arbitrator may also grant such ancillary relief as is necessary to make effective the award. In all arbitration proceedings the arbitrator shall make specific, written findings of fact and conclusions of law. In all arbitration proceedings the parties shall have the right to seek vacation or modification of any award that is based in whole, or in part, on (a) factual findings that have no legally or factually sufficient evidence, as those terms are defined in Arizona law; (b) conclusions of law that are erroneous; (c) an error of federal or state law; or (d) a cause of action or remedy not expressly provided under existing state or federal law. In no event may an arbitrator award speculative, consequential or punitive damages for any Claim.

11.7.5 Other Matters. To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days of the filing of the Claim for arbitration by notice from either party to the other. Arbitration proceedings hereunder shall be conducted in Maricopa County, Arizona. The arbitrator shall be empowered to impose sanctions and to take such other actions as the arbitrator deems necessary to the same extent a judge could pursuant to the Federal Rules of Civil Procedure, the Arizona Rules of Civil Procedure and Applicable Law. Each party agrees to keep all Claims

and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by Applicable Law or regulation. In no event shall any party discuss with the news media or grant any interviews with the news media regarding a Claim or issue any press release regarding any Claim without the written consent of the other parties to the Claim.

11.8 Allocation of Costs. Notwithstanding any provision in this Covenant on the contrary, each Party bears all of its own costs incurred prior to and during the proceedings described in the Notice, Negotiation, Mediation, and Arbitration sections above, including its attorney's fees. Respondent and Claimant will equally divide all expenses and fees charged by the mediator and arbitrator.

11.9 General Provisions. A release or discharge of Respondent from liability to Claimant on account of the Claim does not release Respondent from liability to persons who are not party to Claimant's Claim.

11.10 Approval & Settlement. The Association must levy a Special Assessment to fund the estimated costs of arbitration, including estimated attorney's fees, conducted pursuant to this *Article 11* or any judicial action initiated by the Association. The Association may not use its annual operating income or reserve funds or savings to fund arbitration or litigation, unless the Association's annual budget or a savings account was established and funded from its inception as an arbitration and litigation reserve fund.

11.11 Use of Proceeds. Notwithstanding any provision in this Covenant to the contrary, the Association shall disclose in writing to the Members a plan that describes the manner in which the proceeds of any Claim, whether obtained by way of judgment, settlement or other means, have been or will be allocated (the "Use of Proceeds Plan"). The Use of Proceeds Plan shall be disclosed within thirty (30) days after the Association receives such proceeds. The Use of Proceeds Plan is not binding on the Association, but the Board or its authorized representative must disclose any material changes to the Use of Proceeds Plan to the Members of the Association within thirty (30) days of making such changes.

11.12 Records. The Association shall prepare and preserve for a period of five (5) years records that are adequate to demonstrate compliance with this Section and Title 33, Chapter 18 of the Arizona Revised Statutes.

[SIGNATURE PAGE FOLLOWS]

EXECUTED to be effective on the date this instrument is Recorded.

DECLARANT:

DM19, LLC, an Arizona limited liability company

By: _____

Name: [_____]

Title: [_____]

THE STATE OF ARIZONA §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 2017, by _____, a _____ of DM19, LLC, an Arizona limited liability company, on behalf of said limited liability company.

Notary Public, State of Arizona

(seal) _____

DRAFT

EXHIBIT "A"

DESCRIPTION OF PROPERTY

[INSERT PROPERTY DESCRIPTION]

DRAFT

EXHIBIT "B"

DESCRIPTION OF GOLF CLUB FACILITIES

[INSERT PROPERTY DESCRIPTION]

DRAFT

**BYLAWS
OF
[DESERT MOUNTAIN 19] COMMUNITY ASSOCIATION, INC.**

**ARTICLE I
INTRODUCTION**

Section 1.1. Association; Name. The name of the corporation is [Desert Mountain 19] Community Association, Inc., an Arizona nonprofit corporation hereinafter referred to as the "Association."

Section 1.2. Principal Office. The principal office of the Association shall be located in Maricopa County, Arizona, but may have such other offices, either within or outside of Maricopa County, Arizona as determined by the Board of Directors of the Association (the "Board") or as required by the affairs of the Association.

Section 1.3. Covenant. Notwithstanding anything to the contrary in these Bylaws, a number of provisions may be modified by those certain reservations made in favor of DM19, LLC, an Arizona limited liability company (the "Declarant") under that certain [Desert Mountain 19] Master Covenant, recorded at Document No. _____ in the Official Records of Maricopa County, Arizona (the "Covenant"), including the number, qualification, appointment, removal, and replacement of Directors.

**ARTICLE II
DEFINITIONS**

Capitalized terms used but not defined in these Bylaws shall have the meanings ascribed such terms in the Covenant.

**ARTICLE III
MEMBERSHIP, MEETINGS, QUORUM, VOTING, PROXIES**

Section 3.1. Membership. Each Owner of a Lot or Condominium Unit is a mandatory Member of the Association, as more fully set forth in the Covenant.

Section 3.2. Place of Meetings. Meetings of the Association shall be held at the Association's principal office or such other suitable place as designated by the Board, either within the Subject Property or as convenient as possible and practical.

Section 3.3. Annual Meetings. There shall be an annual meeting of the Members of the Association for the purposes of Association-wide elections or votes and for such other Association business at such reasonable place, date and time as set by the Board.

Section 3.4. Special Meetings. Special meetings of Members may be called in accordance with Arizona Revised Statutes § 10-3702, § 10-3705 and § 33-1804, or any successor statute.

Section 3.5. Notice of Meetings. Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than ten (10) nor more than fifty (50) days before the date of such meeting, by or at the direction of the President, the Secretary, or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these Bylaws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice of a meeting shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the records of the Association, with postage prepaid. The failure of any Member to receive actual notice of a meeting of the Members does not affect the validity of any action taken at that meeting.

Section 3.6. Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting by a Member shall be deemed a waiver of notice of all business transacted at such meeting unless an objection by a Member on the basis of lack of proper notice is raised before the business is put to a vote.

Section 3.7. Quorum. Except as provided in these Bylaws or in the Covenant, the presence of the Members representing ten (10%) of the total votes in the Association shall constitute a quorum at all Association meetings. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Members to leave less than a quorum, provided that Members representing at least ten percent (10%) of the total votes in the Association remain in attendance, and provided that any action taken is approved by at least a Majority of the votes present at such adjourned meeting, unless otherwise provided in the Covenant.

Section 3.8. Conduct of Meetings. The President or any other person appointed by the Board shall preside over all Association meetings, and the Secretary, or the Secretary's designee, shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting as well as a record of all transactions occurring at the meeting. All Members or any person designated by a Member in writing as the Member's representative so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The Board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a Member or Member's designated representative to speak once after the

discussion of a specific agenda item but before any formal action on that item is taken in addition to any other opportunities to speak. The Board shall provide for a reasonable number of persons to speak on each side of an issue. Persons attending may tape record or videotape those portions of the meetings that are open. The Board may adopt reasonable rules governing the taping of open portions of the meetings, but such rules shall not preclude such tape recording or videotaping by those attending.

Section 3.9. Voting. The voting rights of the Members shall be as set forth in the Covenant, and such voting rights provisions are specifically incorporated by reference. Except as otherwise provided in the Covenant, action may be taken at any legally convened meeting of the Members upon the affirmative vote of the Members having a Majority of the total votes present at such meeting in person or proxy or by absentee ballot or electronic voting, if such votes are considered present at the meeting as further set forth herein. Cumulative voting shall not be allowed. The person holding legal title to a Lot or Condominium Unit shall be entitled to cast the vote allocated to such Lot or Condominium Unit and not the person merely holding beneficial title to the same unless such right is expressly delegated to the beneficial Owner thereof in writing.

Section 3.10. Methods of Voting: In Person. The voting rights of an Owner may be cast or given in person at a meeting of the Association. Any vote cast in an election or vote by a Member of the Association must be in writing and signed by the member. Any Member may attend a meeting and cast the Member's vote(s) in person.

Section 3.11. Action Without a Meeting. Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting if the action is approved by written consent by Members holding at least a majority of the voting power. The action shall be evidenced by one or more written consents describing the action taken, signed by a majority of the Members, and delivered to the Association for inclusion in the minutes or filing with the corporate records. Within ten (10) days after receiving authorization for any action by written consent, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action. The effective date of the action shall be the date prescribed by Arizona Revised Statutes §10-3704. A member may revoke his or her consent by delivering a signed revocation of the consent to the President or the Secretary of the Association before the date that the consent or consents are signed by the last member whose signature results in the requisite amount of voting power.

ARTICLE IV BOARD OF DIRECTORS

Section 4.1. Authority; Number of Directors.

(a) The affairs of the Association shall be governed by the Board. The number of Directors shall be fixed by the Board from time to time. The initial Directors shall be three (3) in

number and shall be those Directors named in the Articles. The initial Directors shall serve until their successors are elected and qualified.

(b) In accordance with *Section 3.4* of the Covenant, until expiration or termination of the Development Period, Declarant will be entitled to appoint and remove all members of the Board.

(c) At the expiration or termination of the Development Period, the Declarant will thereupon call a meeting of the Members of the Association where the Declarant appointed Directors will resign and the Members, including Declarant, will elect three (3) new Directors (the "**Member Election Meeting**"), one (1) Director for a three (3) year term, one (1) Director for a two (2) year term, and one (1) Director for a one (1) year term (with the individual receiving the highest number of votes to serve the three (3) year term, the individual receiving the next highest number of votes to serve the two (2) year term, and the individual receiving the third highest number of votes to serve a one (1) year term). Upon expiration of the term of a Director elected by the Members pursuant to this *Section 4.1(c)*, his or her successor will be elected for a term of two (2) years.

(d) A Director takes office upon the adjournment of the meeting or balloting at which he is elected or appointed and, absent death, ineligibility, resignation, or removal, will hold office until his successor is elected or appointed.

(e) Each Director, other than Directors appointed by Declarant, shall be a Member, or in the case of corporate or partnership ownership of a Lot or Condominium Unit, a duly authorized agent or representative of the corporate or partnership Owner. The corporate, or partnership Owner shall be designated as the Director in all correspondence or other documentation setting forth the names of the Directors.

Section 4.2. Compensation. The Directors shall serve without compensation for such service.

Section 4.3. Nominations to Board of Directors. Members may be nominated for election to the Board in either of the following ways:

(a) A Member who is not a Director and who desires to run for election to that position shall be deemed to have been nominated for election upon his filing with the Board a written petition of nomination; or

(b) A Director who is eligible to be re-elected shall be deemed to have been nominated for re-election to the position he holds by signifying his intention to seek reelection in a writing addressed to the Board.

Section 4.4. Vacancies on Board of Directors. At such time as Declarant's right to appoint and remove Directors has expired or been terminated, if the office of any elected

Director shall become vacant by reason of death, resignation, or disability, the remaining Directors, at a special meeting duly called for this purpose, shall choose a successor who shall fill the unexpired term of the directorship being vacated. If there is a deadlock in the voting for a successor by the remaining Directors, the one Director with the longest continuous term on the Board shall select the successor. At the expiration of the term of his position on the Board, the successor Director shall be re-elected or his successor shall be elected in accordance with these Bylaws. Except with respect to Directors appointed by the Declarant, any Board Member whose term has expired or who has been removed from the Board must be elected by the Members.

Section 4.5. Removal of Directors by Members. Subject to the right of Declarant to nominate and appoint Directors as set forth in *Section 4.1* of these Bylaws, an elected Director may be removed by the Members pursuant to the terms set forth in Arizona Revised Statutes § 33-1813.

ARTICLE V MEETINGS OF DIRECTORS

Section 5.1. Regular Meetings. Regular meetings of the Board shall be held annually or such other frequency as determined by the Board, at such place and hour as may be fixed from time to time by resolution of the Board.

Section 5.2. Special Meetings. Special meetings of the Board shall be held when called by the President of the Association, or by any two Directors, after not less than forty-eight (48) hours' notice of the date, time and place of the meeting to each Director.

Section 5.3. Quorum. A Majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a Majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 5.4. Open Board Meetings. All regular and special Board meetings must be open to all Members of the Association or any person designated by a Member in writing as the Member's representative and all Members or designated representatives so desiring shall be permitted to attend and speak at an appropriate time during the deliberations and proceedings. The Board may place reasonable time restrictions on those persons speaking during the meeting but shall permit a Member or Member's designated representative to speak once after the Board has discussed a specific agenda item but before the Board takes formal action on that item in addition to any other opportunities to speak. The Board shall provide for a reasonable number of persons to speak on each side of an issue. Persons attending may tape record or videotape those portions of the meetings of the Board that are open. The Board may adopt reasonable rules governing the taping of open portions of the meetings of the Board, but such rules shall not preclude such tape recording or videotaping by those attending.

Section 5.5. Executive Session. Notwithstanding the open meeting provisions set forth in *Section 5.4* above, the Board has the right to adjourn a meeting and reconvene in closed executive session to consider actions involving: (a) legal advice from an attorney for the board or the association; provided however, that on final resolution of any matter for which the Board received legal advice or that concerned pending or contemplated litigation, the Board may disclose information about that matter in an open meeting except for matters that are required to remain confidential by the terms of a settlement agreement or judgment; (b) pending or contemplated litigation; (c) personal, health or financial information about an individual member of the Association, an individual employee of the Association or an individual employee of a contractor for the Association, including records of the Association directly related to the personal, health or financial information about an individual Member of the Association, an individual employee of the Association or an individual employee of a contractor for the Association; (d) matters relating to the job performance of, compensation of, health records of or specific complaints against an individual employee of the Association or an individual employee of a contractor of the Association who works under the direction of the Association; and (e) discussion of a Member's appeal of any violation cited or penalty imposed by the Association except on request of the affected member that the meeting be held in an open session.

Section 5.6. Record: Minutes. The Board shall keep a record of each regular or special Board meeting in the form of written minutes of the meeting. The Board shall make meeting records, including approved minutes, available to a Member for inspection and copying on the Member's written request to the Association's managing agent at the address appearing on the most recently filed management certificate or, if there is not a managing agent, to the Board.

Section 5.7. Meetings after the End of the Development Period.

(a) **Notice.** After the end of the Development Period, notice to Members of meetings of the Board shall be given at least forty-eight (48) hours in advance of a meeting via: (i) newsletter; (ii) posting the notice in a conspicuous manner reasonably designed to provide notice to Members; or (iii) any other reasonable means as determined by the Board. An affidavit of notice by an officer of the Association shall be considered prima facie evidence that notice of the meeting was given, as prescribed in Arizona Revised Statutes § 33-1804. In the event of emergency, if circumstances require action by the Board before notice of a meeting of the Board can be given, such notice is not required. The failure of any member to receive actual notice of a meeting of the Board does not affect the validity of any action taken at that meeting.

(b) **Meeting Requirements.** After the end of the Development Period, the following Board meeting requirements shall apply: (i) the agenda shall be available to all Members attending; (ii) an emergency meeting of the Board may be called to discuss business or take action that cannot be delayed until the next regularly scheduled board meeting, in which case, the minutes of the emergency meeting shall state the reason that

the emergency meeting was necessary, and such minutes shall be read and approved at the next regularly scheduled meeting of the Board; (iii) a quorum of the Board may meet by means of a telephonic conference if a speaker phone is available in the meeting room that allows board members and association members to hear all parties speaking during the meeting; and (iv) any quorum of the Board that meets informally to discuss Association business shall be required to comply with the open meeting and notice provisions of Arizona Revised Statutes § 33-1804, without regard to whether the Board votes or takes any action on any matter at that informal meeting.

Section 5.8. Telephone and Electronic Meetings. Any action permitted to be taken by the Board without prior notice to Members may be taken by telephone conference call or similar audio or video communication equipment or other electronic methods by means of which all persons participating in the meeting can hear each other at the same time. Participation in such a meeting constitutes presence in person at the meeting, except where a person participates in the meeting for the express purpose of objecting to the transaction of any business on the ground that the meeting is not lawfully called or convened.

Section 5.9. Consent in Writing. Any action permitted to be taken by the Board may be taken without a meeting if all Directors individually or collectively consent in writing to such action. The written consent must describe the action taken, be signed by each Director, and be included in the minutes of Board meetings or filed with the corporate records. Action by written consent has the same force and effect as a unanimous vote of the Directors, and is effective when the last Director signs the consent, unless the consent specifies a different date. Any Director may revoke their consent by delivering a signed revocation of the consent to the President or the Secretary before the date the last Director signs the consent or consents.

ARTICLE VI POWERS AND DUTIES OF THE BOARD

Section 6.1. Powers. The Board shall have power and duty to undertake any of the following actions, in addition to those actions to which the Association is authorized to take in accordance with the Covenant:

- (a) Adopt and publish the Rules;
- (b) Suspend (i) the voting rights of, and (ii) the right of any Member to use the Common Area, during any period in which such Member shall be in default in the payment of any Assessment levied by the Association. Such voting and use rights may also be suspended by the Board after notice and hearing, for a period not to exceed sixty (60) days, for any period during which an infraction of the Documents by such Member exists;
- (c) Exercise for the Association all powers, duties and authority vested in or related to the Association and not reserved to the membership by other provisions of the Documents;

(d) To enter into any contract or agreement with a municipal agency or utility company to provide electric utility service to all or any portion of the Subject Property;

(e) Declare the office of a member of the Board to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board;

(f) Employ such employees as they deem necessary, and to prescribe their duties;

(g) As more fully provided in the Covenant, to:

(i) Fix the amount of the Assessments against each Lot and Condominium Unit in advance of each annual assessment period and any other assessments provided by the Covenant; and

(ii) Foreclose the lien against any property for which Assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same;

(h) Issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any Assessment has been paid and to levy a reasonable charge for the issuance of these certificates (it being understood that if a certificate states that an Assessment has been paid, such certificate shall be conclusive evidence of such payment);

(i) Procure and maintain adequate liability and property insurance on all property owned by the Association;

(j) Cause all officers or employees having fiscal responsibilities to be bonded or to be covered by appropriate fidelity insurance, as the Board may deem appropriate; and

(k) Exercise such other and further powers or duties as provided in the Covenant or by law.

ARTICLE VII OFFICERS AND THEIR DUTIES

Section 7.1. Enumeration of Offices. The officers of the Association shall be a President and a Vice-President, who shall at all times be members of the Board, a Secretary and a Treasurer, and such other officers as the Board may from time to time create by resolution.

Section 7.2. Election of Officers. The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

Section 7.3. Term. The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year unless he resigns sooner, or shall be removed or otherwise disqualified to serve.

Section 7.4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 7.5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 7.6. Vacancies. A vacancy in any office may be filled through appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7.7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to *Section 7.4.*

Section 7.8. Duties. The duties of the officers are as follows:

(a) **President.** The President shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall co-sign all checks and promissory notes.

(b) **Vice President.** The Vice President, if any, shall generally assist the President and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to him by the President or the Board.

(c) **Secretary.** The Secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and shall perform such other duties as required by the Board.

(d) **Assistant Secretaries.** Each Assistant Secretary shall generally assist the Secretary and shall have such powers and perform such duties and services as shall from time to time be prescribed or delegated to him or her by the Secretary, the President, the Board or any committee established by the Board.

(e) **Treasurer.** The Treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account in appropriate form such that they could be audited by a public accountant whenever ordered by the Board or the membership; and shall prepare an annual budget and a statement

of income and expenditures to be presented to the membership at its regular meeting, and deliver a copy of each to the Members.

Section 7.9. Execution of Instruments. Except when the Documents require execution of certain instruments by certain individuals, the Board may authorize any person to execute instruments on behalf of the Association, including without limitation checks from the Association's bank account. In the absence of Board designation, and unless otherwise provided herein, the President and the Secretary are the only persons authorized to execute instruments on behalf of the Association.

Section 7.10. Annual Audit. Pursuant to Arizona Revised Statutes § 33-1810, the Board shall provide for an annual financial audit, review, or compilation of the Association. The audit, review, or compilation shall be completed no later than one hundred eighty (180) days after the end of the Association's fiscal year and shall be made available upon request to the Members within thirty (30) days after its compilation.

Section 7.11. Conflicts of Interest. If any contract, decision, or other action for compensation taken by or on behalf of the Board would benefit any member of the Board or any person who is a parent, grandparent, spouse, child, or sibling of a member of the Board or a parent or spouse of any of those persons, that member of the Board shall declare a conflict of interest for that issue. The Member shall declare the conflict in an open meeting for the Board before the Board discusses or takes action on that issue and that Member may then vote on that issue. Any contract entered into in violation of this Section is void and unenforceable.

ARTICLE VIII OTHER COMMITTEES OF THE BOARD OF DIRECTORS

The Board may, but is not required, to adopt a resolution to create a committee or committees for any purpose; provided, however, that any such other committee or committees shall serve solely in an advisory capacity and discharge only those functions expressly identified in the resolution establishing such committee or committees, which resolution shall be subject to the approval of Declarant until expiration or termination of the Development Period. Any committee or committees of the Board shall have those rights set forth in Arizona Revised Statutes § 10-3825.

ARTICLE IX BOOKS AND RECORDS

Pursuant to Arizona Revised Statutes § 33-1805, the books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Documents shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at a fee of no more than fifteen cents per page.

ARTICLE X ASSESSMENTS

As more fully provided in the Covenant, each Member is obligated to pay to the Association Assessments which are the personal obligation of the Member as well as secured by a continuing lien upon the Lot or Condominium Unit against which the Assessments are made. Assessments shall be due and payable in accordance with the Covenant.

ARTICLE XI CORPORATE SEAL

The Association may, but shall have no obligation to, have a seal in a form adopted by the Board.

ARTICLE XII AMENDMENTS

Section 12.1. These Bylaws may be amended by: (i) the Declarant until expiration or termination of the Development Period; or (ii) a Majority vote of the Board with the advance written consent of the Declarant until expiration or termination of the Development Period.

Section 12.2. In the case of any conflict between the Articles and these Bylaws, the Articles shall control; and in the case of any conflict between the Covenant and these Bylaws, the Covenant shall control.

ARTICLE XIII INDEMNIFICATION OF DIRECTORS AND OFFICERS

Pursuant to Arizona Revised Statutes § 10-3851, the Association may indemnify an individual made party to a proceeding because (1) the individual is or was a Director at the time the liability was incurred, if all the following conditions exist: (a) the individual's conduct was in good faith; (b) the individual reasonably believed that (i) in the case of conduct in an official capacity with the Association, that the conduct was in the Association's best interest, and (ii) in all other cases, that the conduct was at least not opposed to the Association's best interests; and (c) in the case of any criminal proceedings, that the individual had no reasonable cause to believe that the conduct was unlawful, or (2) the Director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the Articles of Incorporation. However, no Director shall be indemnified, (a) in connection with a proceeding by or in the right of the Association in which the Director was adjudged liable to the Association; or b) in connection with a proceeding charging improper personal benefit to the Director, whether or not the charges involve action done in the Director's official capacity, in

which the Director was adjudged liable on the basis that personal benefit was improperly received by the Director.

**ARTICLE XIV
MISCELLANEOUS**

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

DRAFT

CERTIFICATE OF ADOPTION

The undersigned Secretary hereby certifies that the foregoing Bylaws were adopted by the Board of Directors of [Desert Mountain 19] Community Association, Inc. on _____, 20__.

[DESERT MOUNTAIN 19] COMMUNITY ASSOCIATION, INC., an Arizona nonprofit corporation

By: _____
Secretary

DRAFT

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**ARTICLES OF INCORPORATION
OF
[DESERT MOUNTAIN 19] COMMUNITY ASSOCIATION, INC.**

**ARTICLE I
ENTITY NAME**

The name of the corporation is the [Desert Mountain 19] Community Association, Inc. (hereinafter called the "Association").

**ARTICLE II
DEFINITIONS**

Terms used but not defined in these Articles shall have the meanings ascribed such terms in that certain [Desert Mountain 19] Master Covenant, recorded in the Official Records of Maricopa County, Arizona, as the same may be amended from time to time (the "Covenant").

**ARTICLE III
NONPROFIT CORPORATION**

The Association is formed as a non-stock, nonprofit corporation under the laws of the State of Arizona.

**ARTICLE IV
PRINCIPAL OFFICE**

The mailing address of the initial principal office of the Association is [_____, _____], [_____, _____], Arizona [_____].

**ARTICLE V
PURPOSE AND POWERS OF THE ASSOCIATION**

The Association is organized in accordance with, and shall operate for nonprofit purposes pursuant to Arizona law. The Association is formed for the purpose of exercising all of the powers and privileges, and performing all of the duties and obligations, of the Association as set forth in the Covenant. Without limiting the generality of the foregoing, the Association is organized for the following general purposes:

- (a) to fix, levy, collect, and enforce payment by any lawful means all charges or assessments arising pursuant to the terms of the Covenant;
- (b) to pay all expenses incident to the conduct of the business of the Association, including all licenses, taxes, or governmental charges levied or imposed against the Association's property; and

(c) to have and to exercise any and all powers, rights, and privileges which a corporation organized under Arizona law may now, or later, have or exercise; provided, however, that the Association shall not have the power to institute, defend, intervene in, settle or compromise proceedings in the name of any Owner or Member.

The above statement of purposes shall be construed as a statement of both purposes and powers. The purposes and powers stated in each of the clauses above shall not be limited or restricted by reference to, or inference from, the terms and provisions of any other such clause, but shall be broadly construed as independent purposes and powers.

Notwithstanding any provision in Article XIII to the contrary, any proposed amendment to the provisions of this Article V shall be adopted only upon an affirmative vote of Members holding one-hundred percent (100%) of the total number of votes of the Association and the Declarant.

Terms used but not defined in this Articles of Formation, shall have the meanings ascribed to such terms in the Covenant.

ARTICLE VI STATUTORY AGENT

The Association hereby appoints [_____], whose address is [_____], as its lawful statutory agent upon whom all notices and processes, including service of summons may be served, and which, when served, shall be lawful, personal service upon the Association. The Association may, at any time, appoint another statutory agent and the filing of each appointment shall revoke this or any other previous appointment of a statutory agent.

ARTICLE VII MEMBERS

Membership in the Association shall be dependent upon ownership of a qualifying property interest as defined and set forth in the Covenant. Any person or entity acquiring such a qualifying property interest shall automatically become a member of the Association, and such membership shall be appurtenant to, and shall run with, the property interest. The foregoing shall not be deemed or construed to include persons or entities holding an interest merely as security for performance of an obligation. Membership may not be severed from or in any way transferred, pledged, mortgaged, or alienated except together with the title to the qualifying property interest, and then only to the transferee of title to said property interest. Any attempt to make a prohibited severance, transfer, pledge, mortgage, or alienation shall be void.

ARTICLE VIII VOTING RIGHTS

Voting rights of the members of the Association shall be determined as set forth in the Covenant.

**ARTICLE IX
INCORPORATOR**

The name and street address of the incorporator is Robert D. Burton, whose address is 401 Congress Ave., Suite 2100, Austin, Texas 78701 (the "Incorporator"). All powers and duties of the Incorporator shall cease at the time these Articles of Incorporation are delivered to the Arizona Corporation Commission. To the fullest extent permitted by Arizona law, the Incorporator shall in no event be liable to the Association or its members for any action or failure to act taken by the Incorporator. No amendment or repeal of this Article shall apply to or have any effect on the liability or entitlement to indemnification or defense of the Incorporator with respect to any act or omission of the Incorporator occurring prior to any such amendment or repeal.

**ARTICLE X
BOARD OF DIRECTORS**

The affairs of the Association shall be managed by an initial Board of Directors consisting of three (3) individuals, who need not be Members of the Association. The Board shall fulfill all of the functions of, and possess all powers granted to, Boards of Directors of nonprofit corporations pursuant to Arizona law. The number of Directors of the Association may be changed by amendment of the Bylaws of the Association. The names and addresses of the persons who are to act in the capacity of initial Directors until the selection of their successors are:

NAME

ADDRESS

[_____]

[_____]

[_____]

[_____]

[_____]

[_____]

[_____]

[_____]

[_____]

Each of the foregoing persons has consented to serve as a Director. The Board may delegate its operating authority to such corporations, individuals, and committees as it, in its sole discretion, may determine, as set forth in the Covenant.

**ARTICLE XI
LIMITATION OF DIRECTOR LIABILITY**

A Director of the Association shall not be personally liable to the Association for monetary damages for any act or omission in his capacity as a Director, except to the extent otherwise expressly provided by Arizona law. Any repeal or modification of this Article shall be prospective only, and shall not adversely affect any limitation of the personal liability of a Director of the Association existing at the time of the repeal or modification.

ARTICLE XII INDEMNIFICATION

Pursuant to Arizona Revised Statutes § 10-3851, the Association may indemnify an individual made party to a proceeding because (1) the individual is or was a Director at the time the liability was incurred, if all the following conditions exist: (a) the individual's conduct was in good faith; (b) the individual reasonably believed that (i) in the case of conduct in an official capacity with the Association, that the conduct was in the Association's best interest, and (ii) in all other cases, that the conduct was at least not opposed to the Association's best interests; and (c) in the case of any criminal proceedings, that the individual had no reasonable cause to believe that the conduct was unlawful, or (2) the Director engaged in conduct for which broader indemnification has been made permissible or obligatory under a provision of the Articles of Incorporation. However, no Director shall be indemnified, (a) in connection with a proceeding by or in the right of the Association in which the Director was adjudged liable to the Association; or b) in connection with a proceeding charging improper personal benefit to the Director, whether or not the charges involve action done in the Director's official capacity, in which the Director was adjudged liable on the basis that personal benefit was improperly received by the Director.

ARTICLE XIII AMENDMENT

These Articles may be amended only upon a resolution duly adopted by the Board of Directors and approved by a vote of the Members holding at least two-thirds of the total number of votes in the Association; provided, however, that until expiration or termination of the Development Period, the written consent of the Declarant shall also be required; provided further that such vote of Members is not required with respect to any amendment to these Articles adopted for the sole purpose of complying with the requirements of any governmental or regulatory agency, or any institutional lender authorized to fund, insure, or guarantee mortgages on Lots or Condominium Units, which amendments may be adopted by the Board of Directors without a vote of the Members, but otherwise approved by the Declarant until expiration or termination of the Development Period.

By the signature appearing below, the person named in Article IX (Incorporator) above acknowledges under penalty of perjury that this document, together with any attachments, is submitted in accordance with Arizona law.

EXECUTED this ____ day of _____, 2017.

INCORPORATOR:

By: _____

Printed Name: Robert D. Burton

DRAFT

AFTER RECORDING RETURN TO:

Robert D. Burton, Esq.
WINSTEAD, PC
401 Congress Ave., Suite 2100
Austin, Texas 78701
Email: rburton@winstead.com



[DESERT MOUNTAIN 19]

TRACT DECLARATION

Maricopa County, Arizona

DECLARANT: DM19, LLC, an Arizona limited liability company

Cross reference to [Desert Mountain 19] Master Covenant, recorded as Document No. _____ in the Official Records of Maricopa County, Arizona.

Error! Unknown document property name.

[DESERT MOUNTAIN 19]
TRACT DECLARATION

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[DESERT MOUNTAIN 19]

TRACT DECLARATION

This Tract Declaration for [Desert Mountain 19] (this "Tract Declaration") is made by [_____] a [_____] (the "Declarant"), and is as follows:

RECITALS

A. Declarant previously Recorded that certain [Desert Mountain 19] Master Covenant, recorded as Document No. _____ in the Official Records of Maricopa County, Arizona (the "Covenant").

B. Pursuant to the Covenant, Declarant served notice that portions of the Property may be made subject to one or more Tract Declarations upon the Recording of one or more Notices of Applicability in accordance with *Section 9.5* of the Covenant, and once such Notices of Applicability have been Recorded, the portions of the Property described therein will constitute the Tract and will be governed by and fully subject to this Tract Declaration in addition to the Covenant.

C. Upon the further Recording of one or more Notices of Applicability, portions of the Property identified in such notice or notices will be subject to the terms and provisions of this Tract Declaration. The Property made subject to the terms and provisions of this Tract Declaration will be referred to herein as the "Tract."

A Tract is a portion of [Desert Mountain 19] which is subject to the terms and provisions of the Covenant. A Tract Declaration includes specific restrictions which apply to the Tract, in addition to the terms and provisions of the Covenant.

NOW, THEREFORE, it is hereby declared: (i) those portions of the Property as and when made subject to this Tract Declaration by the filing of a Notice of Applicability will be held, sold, conveyed, and occupied subject to the following covenants, conditions and restrictions which will run with such portions of the Property and will be binding upon all parties having right, title, or interest in or to such portions of the Property or any part thereof, their heirs, successors, and assigns and will inure to the benefit of each Owner thereof; and (ii) each contract or deed conveying those portions of the Property which are made subject to this Tract Declaration will conclusively be held to have been executed, delivered, and accepted subject to the following covenants, conditions and restrictions, regardless of whether or not the same are set out in full or by reference in said contract or deed; and (iii) that this Tract Declaration will supplement and be in addition to the covenants, conditions, and restrictions of the Covenant.

[DESERT MOUNTAIN 19]
TRACT DECLARATION

Error! Unknown document property name.

ARTICLE 1 DEFINITIONS

Capitalized terms used but not defined in this Tract Declaration shall have the meanings ascribed such terms in the Covenant.

ARTICLE 2 USE RESTRICTIONS

All of the Tract will be owned, held, encumbered, leased, used, occupied, and enjoyed subject to the following limitations and restrictions:

2.1 Use Restrictions. The Tract shall be used solely for single-family residential purposes. The Tract may not be used for any other purposes without the prior written consent of the Declarant during the Development Period, which consent may be withheld by the Declarant in its sole and absolute discretion. No professional, business, or commercial activity to which the general public is invited shall be conducted on any portion of the Tract, except that an Owner or Occupant may conduct business activities within a residence so long as: (i) such activity complies with Applicable Law; (ii) participation in the business activity is limited to the Owner(s) or Occupant(s) of a residence; (iii) the existence or operation of the business activity is not apparent or detectable by sight (*i.e.*, no sign may be erected advertising the business within the Tract), sound, or smell from outside the residence; (iv) the business activity does not involve door-to-door solicitation of residents within the Tract; (v) the business does not, in the Board's judgment, generate a level of vehicular or pedestrian traffic or a number of vehicles parked within the Tract which is noticeably greater than that which is typical of residences in which no business activity is being conducted; (vi) the business activity is consistent with the residential character of the Tract and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Tract as may be determined by a Majority of the Board; and (vii) the business does not require the installation of any machinery other than that customary to normal household operations. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than an Owner or Occupant and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (x) such activity is engaged in full or part-time; (y) such activity is intended to or does generate a profit; or (z) a license is required.

2.2 Rentals. No portion of the Tract may be used as an apartment house, flat, lodging house, hotel, bed and breakfast lodge, or any similar purpose, but the primary residence constructed on a Lot may be leased for residential purposes for a lease term of at least six (6) months. All leases will be in writing. The Owner must provide to its lessee copies of the Documents. Notice of any lease, together with such additional information as may be required by the Board, must be remitted to the Association by the Owner on or before the expiration of

ten (10) days after the effective date of the lease. All leases must be for the entire residence. If, by separate membership agreement, an Owner has acquired the right to use all or any portion of the Golf Club Facilities, such Owner may not, by virtue of leasing his or her Lot, confer upon such lessee any privileges with respect to the Golf Club Facilities. Such privileges, if any, are available only pursuant to the rules, policies and procedures of the Club governing bona fide accompanied guests of Club members.

2.3 Trash Containers. Except when permitted to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection or for such amount of time as otherwise designated by the Board, trash containers and recycling bins must be stored in one of the following locations:

- (i) inside the garage of the residence; or
- (ii) on the side of a residence in such a manner that the trash container and recycling bin is not visible from any street, alley, or adjacent residence.

2.4 Unsightly Articles; Vehicles. No article deemed to be unsightly by the Board will be permitted to remain on any Lot so long as it is visible from adjoining property, the Golf Club Facilities, or from public or private thoroughfares. Without limiting the generality of the foregoing, all commercial vehicles, including passenger automobiles or pick-up trucks with commercial signage or other commercial advertising displayed thereon, other commercial vans, delivery trucks or other commercial vehicles, and all recreational vehicles and equipment, including recreational vehicles, inoperable vehicles, trailers, graders, boats, tractors, campers, wagons, buses, motorcycles, motor scooters, all-terrain vehicles, golf carts, machinery and garden maintenance equipment, must be kept at all times except when in actual use, concealed in enclosed structures or screened from view and no repair or maintenance work may be done on any of the foregoing (other than minor emergency repairs), except in enclosed garages or other structures; provided however, that non-commercial passenger automobiles and passenger pick-up trucks may be parked in the driveway. Commercial delivery vehicles are permitted for the period of time reasonably necessary to make deliveries to a Lot. Service areas, storage areas, compost piles and facilities for hanging, drying or airing clothing or household fabrics must be kept at all times concealed or screened from view, and no lumber, grass, plant waste, shrub or tree clippings, metals, bulk materials, scrap, refuse or trash must be kept, stored, or allowed to accumulate on any portion of the Tract except within enclosed structures or appropriately screened from view. No (i) racing vehicles, or (ii) other vehicles (including, without limitation, motorcycles or motor scooters) which are inoperable or do not have a current license tag will be permitted to remain visible on any Lot or to be parked on any roadway within the Tract. Motorcycles shall be operated in a quiet manner. Recreational vehicles, including but not limited to boats, trailers and motor homes, may be temporarily loaded and unloaded in the Tract for a time period not to exceed twenty-four (24) hours. Any vehicle or other equipment stored, parked, or maintained in violation of this Section 2.04 shall be subject to towing or

removal at the sole cost and expense of the owner of the vehicle or equipment (or, if the owner of the vehicle or equipment is a guest, invitee or licensee of an Owner, then at the sole cost and expense of such Owner). Any expense incurred by the Board in connection with towing or removal shall be paid to the Board upon demand by the owner of the vehicle or equipment or, if applicable, the Owner. If the vehicle or equipment is the property of an Owner or an Owner's guest, invitee or licensee, any cost or expense incurred by the Board to effect towing or removal may be assessed, collected and enforced by the Board in the same manner as Assessments.

Mobile homes are prohibited.

2.5 Animals - Household Pets. No animals, including pigs, hogs, swine, poultry, fowl, wild animals, horses, cattle, sheep, goats, or any other type of animal not considered to be a domestic household pet within the ordinary meaning and interpretation of such words may be kept, maintained, or cared for on a Lot (as used in this paragraph, the term "domestic household pet" shall not mean or include non-traditional pets such as pot-bellied pigs, miniature horses, exotic snakes or lizards, ferrets, monkeys or other exotic animals). The Board may conclusively determine, in its sole discretion, whether a particular pet is a domestic household pet within the ordinary meaning and interpretation of such words. No Owner or Occupant may keep on a Lot more than three (3) cats and dogs in the aggregate. No animal may be allowed to make an unreasonable amount of noise, or to become a nuisance, and no domestic household pets will be allowed on the Tract other than within the residence, or the fenced yard space associated therewith, unless confined to a leash. The Board may restrict pets to certain areas within the Tract. No animal may be stabled, maintained, kept, cared for, or boarded for hire or remuneration on a Lot, and no kennels or breeding operation will be allowed. No animal may be allowed to run at large, and all animals must be kept within enclosed areas which must be clean, sanitary, and reasonably free of refuse, insects, and waste at all times. No pet may be left unattended in yards, porches or other outside area. All pet waste will be removed and appropriately disposed of by the owner of the pet. All pets must be registered, licensed and inoculated as required by Applicable Law. All pets not confined to a residence must wear collars with appropriate identification tags. If, in the opinion of the Board, any pet becomes a source of unreasonable annoyance to others, or the owner of the pet fails or refuses to comply with these restrictions, the Owner or Occupant, upon written notice, may be required to remove the pet from the Tract.

2.6 Wildlife. Capturing, killing or trapping wildlife is prohibited within the Tract unless performed by a government official or licensed professional acting in his or her official capacity, except in any circumstance in which there is an imminent threat to the health or safety of persons or domestic household pets, as determined by a Majority of the Board.

2.7 Garages. Garages shall be used only for the parking of vehicles and shall not be permanently enclosed or be used or converted for living or recreational activities. Notwithstanding the foregoing, garages may be used for the storage of material so long as the storage of material does not restrict the use of the garage for the parking of motor vehicles.

2.8 Antennae.

2.8.1 Prohibited Antennas; Permitted Antennas. Except as expressly provided below, no exterior radio or television antennae or aerial or satellite dish or disc, nor any solar energy system, may be erected, maintained or placed on a Lot without the prior written approval of the [Desert Mountain 19] Reviewer; provided, however, that:

(i) an antenna designed to receive direct broadcast services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, (i) through (iii) are referred to herein as the "Permitted Antennas") will be permitted subject to reasonable requirements as to location and screening as may be set forth in rules adopted by the [Desert Mountain 19] Reviewer, consistent with Applicable Law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Declarant and/or the Board will have the right, but not the obligation, to erect an aerial, satellite dish, or other apparatus for a master antenna, cable, or other communication system for the benefit of all or any portion of the Tract.

2.8.2 Location of Permitted Antennas. A Permitted Antenna may be installed solely on the Owner's Lot and may not encroach upon any street, Common Area, Special Common Area, or any other portion of the Tract. A Permitted Antenna may be installed in a location on the Lot from which an acceptable quality signal can be obtained and where least visible from the street and the Tract, other than the Lot. In order of preference, the locations of a Permitted Antenna which will be considered least visible by the [Desert Mountain 19] Reviewer are as follows:

(i) attached to the back of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street; then

(ii) attached to the side of the principal single-family residence constructed on the Lot, with no part of the Permitted Antenna any higher than the lowest point of the roofline and screened from view of adjacent Lots and the street.

The [Desert Mountain 19] Reviewer may, from time to time, modify, amend, or supplement the rules regarding installation and placement of Permitted Antennas.

2.9 Signs. Unless otherwise prohibited by Applicable Law, no sign of any kind may be displayed to the public view on any Lot without the prior written approval of the [Desert Mountain 19] Reviewer, except for:

(i) signs which are permitted pursuant to the Design Guidelines or Rules;

(ii) signs installed by the Declarant or installed with the advance written consent of the Declarant (including in connection with the operations of the Golf Club Facilities);

(iii) one (1) "For Sale" sign and sign rider placed on the Lot, subject to approval by the [Desert Mountain 19] Reviewer. The design and content of the sign and sign rider must be approved by the [Desert Mountain 19] Reviewer, and the size will be limited to industry standard sizes, not to exceed eighteen by twenty four inches for the sign and six by twenty-four inches for the rider. The Board may require the use of a specific sign and sign rider, which must be obtained from the Board for placement on the Lot. The sign must be removed within two (2) business days following the sale of the Lot;

(iv) one small security service sign per Lot, provided that the sign has a maximum face area of two square feet (2' x 1') and is located no more than five feet (5') from the front elevation of the principal residence constructed upon the Lot;

(v) one "no soliciting" and one "security warning" sign near or on the front door to their residence, provided, that the sign may not exceed twenty-five square inches (5" x 5");

(vi) signs or permits as may be required by Applicable Law;

(vii) permits as may be required by legal proceedings; and

(viii) permits as may be required by any governmental entity.

(ix) political signs may be placed on a Lot provided the sign is erected no earlier than the 71st day before the date of the election to which the sign relates, is removed from the Lot no later than the 3rd day after the date of the election to which the sign relates, is ground-mounted, and the maximum aggregate total dimensions of all political signs erected on a Lot shall not exceed nine square feet (3' x 3');

(x) a temporary cautionary sign regarding children playing provided the sign is removed within one hour of children ceasing to play, is displayed only when children are actually present within fifty feet (50') of the sign, is no taller than three feet (3') in height, and is professionally manufactured or produced.

2.10 Solar Energy Device. A Solar Energy Device may be installed with the advance written approval of the [Desert Mountain 19] Reviewer. A "Solar Energy Device" means a system or series of mechanisms designed primarily to provide heating, to provide cooling, to produce electrical power, to produce mechanical power, to provide solar daylighting or to provide any combination of the foregoing by means of collecting and transferring solar generated energy into such uses either by active or passive means, and may also have the capability of storing such energy for future utilization, ~~and provided that~~ passive systems shall clearly be designed as a Solar Energy Device such as a trombe wall and not merely a part of a normal structure such as a window.

2.10.1 Application. To obtain the [Desert Mountain 19] Reviewer approval of a Solar Energy Device, the Owner shall provide the [Desert Mountain 19] Reviewer with the following information: (i) the proposed installation location of the Solar Energy Device; and (ii) a description of the Solar Energy Device, including the dimensions, manufacturer, and photograph or other accurate depiction (the "Solar Application"). A Solar Application may only be submitted by an Owner. The Solar Application shall be submitted in accordance with the provisions of *Article 7* of the Covenant.

2.10.2 Approval Process. The [Desert Mountain 19] Reviewer will review the Solar Application in accordance with the terms and the provisions of *Article 7* of the Covenant; provided, however, that nothing herein should be construed to effectively prohibit the installation of the Solar Energy Device.

2.10.3 Approval Conditions. Unless otherwise approved in advance and in writing by the [Desert Mountain 19] Reviewer, each Solar Application and each Solar Energy Device to be installed in accordance therewith must comply with the following:

(i) The Solar Energy Device must be located on the roof of the residence located on the Owner's Lot, entirely within a fenced area of the Owner's Lot, or entirely within a fenced patio located on the Owner's Lot.

(ii) If the Solar Energy Device will be located in the fenced area of the Owner's Lot or patio, no portion of the Solar Energy Device may extend above the fence line.

(iii) If the Solar Energy Device will be located on the roof of the principal residence located on the Owner's Lot, then unless otherwise approved

in writing by the [Desert Mountain 19] Reviewer: (A) the Solar Energy Device may not extend higher than or beyond the roofline; (B) the Solar Energy Device must conform to the slope of the roof and the top edge of the Solar Device must be parallel to the roofline; and (C) the frame, support brackets, or visible piping or wiring associated with the Solar Energy Device must be bronze or black.

2.11 Flags.

2.11.1 Approval Requirements. An Owner is permitted to display the flag of the United States of America, the flag of the State of Arizona, an official or replica flag of any branch of the United States army, navy, air force, marine corps or coast guard, the POW/MIA flag, an Arizona Indian nations flag, and the Gadsden flag ("**Permitted Flag**"). An Owner is also permitted to install no more than one flagpole on the Owner's Lot (a "**Permitted Flagpole**"). A Permitted Flagpole installed which is no more than five feet (5') in length affixed to the front of a residence near the principal entry or affixed to the rear of the residence does not need to be approved in advance by the [Desert Mountain 19] Reviewer. Advance approval by the [Desert Mountain 19] Reviewer as to the location, dimensions, and materials is required prior to installing any vertical freestanding flagpole, which may be no taller than sixteen feet (16') tall ("**Freestanding Flagpole**").

2.11.2 Installation and Display. Unless otherwise approved in advance and in writing by the [Desert Mountain 19] Reviewer, Permitted Flags and Permitted Flagpoles must comply with the following:

- (i) only one (1) Permitted Flag may be displayed at once and only one (1) Permitted Flagpole is permitted per Lot, on which only Permitted Flags may be displayed;
- (ii) any Permitted Flagpole may not be any taller than sixteen (16) feet tall;
- (iii) any Permitted Flag displayed on any Permitted Flagpole may not be more than three feet in height by five feet in width;
- (iv) the flag of the United States of America and any permitted military flag must be displayed in accordance with the federal flag code (P.L. 94-344; 90 Stat. 810; 4 U.S. Code §§ 4-10);
- (v) the display of a Permitted Flag, or the location and construction of a Permitted Flagpole must comply with Applicable Law, easements and setbacks of record;

(vi) Each Permitted Flagpole must be constructed of permanent, long-lasting materials, with a finish appropriate to the materials used in the construction of the flagpole and harmonious with the residence;

(vii) Permitted Flags and Permitted Flagpoles must be maintained in good condition and any deteriorated flag or deteriorated or structurally unsafe flagpoles must be repaired, replaced or removed; and

(viii) any external halyard of a Permitted Flagpole must be secured so as to reduce or eliminate noise from flapping against the Permitted Flagpole.

(ix) Permitted Flags may be illuminated by no more than one (1) halogen landscaping light of low beam intensity which shall not be aimed towards or directly affect any neighboring property.

2.12 Temporary Structures. No tent, shack, or other temporary building, Improvement, or structure shall be placed within or upon the Tract without the prior written approval of the [Desert Mountain 19] Reviewer. Sales and construction trailers or other temporary structures associated with the sale and/or construction of residences and Improvements associated therewith are permitted if approved in advance by the Declarant.

2.13 Compliance with Documents. Each Owner and Occupant of a Lot and their guests and invitees shall comply strictly with the Documents as the same may be amended from time to time. Failure to comply with any of the Documents shall constitute a violation of the Documents and may result in a fine against the Owner in accordance with *Section 5.14* of the Covenant, and shall give rise to a cause of action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the Board, or by an aggrieved Owner. The Board may (but shall not be obligated to) remedy or attempt to remedy any violation of any of the Documents, and the Owner whose violation has been so remedied shall be personally liable to the Board for all costs and expenses of effecting (or attempting to effect) such remedy. If such Owner fails to pay such costs and expenses upon demand by the Board, such costs and expenses (plus interest from the date of demand until paid at the maximum lawful rate, or if there is no such maximum lawful rate, at the rate of one and one-half percent (1½%) per month) shall be assessed against and chargeable to the Owner's Lot(s). Any such amounts assessed and chargeable against a Lot shall be secured by the liens reserved in the Covenant for Assessments and may be collected by any means provided in the Covenant for the collection of Assessments, including, but not limited to, foreclosure of such liens against the Owner's Lot(s). EACH SUCH OWNER AND OCCUPANT SHALL RELEASE AND HOLD HARMLESS THE BOARD AND ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS FROM ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION INCURRED OR THAT MAY ARISE BY REASON OF THE BOARD'S ACTS OR ACTIVITIES UNDER THIS SECTION 2.13 (INCLUDING ANY COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING OUT OF THE BOARD'S NEGLIGENCE IN CONNECTION

THEREWITH), EXCEPT FOR SUCH COST, LOSS, DAMAGE, EXPENSE, LIABILITY, CLAIM OR CAUSE OF ACTION ARISING BY REASON OF THE BOARD'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. "GROSS NEGLIGENCE" AS USED HEREIN DOES NOT INCLUDE SIMPLE NEGLIGENCE, CONTRIBUTORY NEGLIGENCE OR SIMILAR NEGLIGENCE SHORT OF ACTUAL GROSS NEGLIGENCE.

2.14 Liability of Owners for Damage to Common Area. No Owner shall in any way alter, modify, add to or otherwise perform any work upon the Common Area without the prior written approval of the Board. Each Owner shall be liable to the Board for any and all damages to: (i) the Common Area and any Improvements constructed thereon; or (ii) any Improvements constructed on any Lot, the maintenance of which has been assumed by the Board, which damages were caused by the neglect, misuse or negligence of such Owner or Occupant, or their guests or invitees. The full cost of all repairs of such damage shall be an Individual Assessment against such Owner's Lot, secured by a lien against such Owner's Lot and collectable in the same manner as provided in *Section 5.12* of the Covenant.

2.15 Party Wall Fences. A wrought iron fence located on or near the dividing line between two (2) Lots or between a Lot and Common Area, Special Common Area, or any other portion of the Tract and intended to benefit both Lots or both the Lot and the Common Area, Special Common Area, or any other portion of the Tract constitutes a "Party Fence." A fence located completely on an Owner's Lot constitutes a "Non-Party Fence." A wall located on or near the dividing line between a Lot and the Common Area, Special Common Area, or any other portion of the Tract and intended to benefit both the Lot and the Common Area, Special Common Area, or any other portion of the Tract, constitutes a "Party Wall." To the extent not inconsistent with the provisions of this *Section 2.15*, Party Fences, Non-Party Fences, and Party Walls are subject to the general rules of law regarding party walls and liability for property damage due to negligence, willful acts, or omissions.

2.15.1 Encroachments & Easement. If the Party Wall or Party Fence is on one Lot due to an error in construction, the Party Wall or Party Fence is nevertheless deemed to be on the dividing line for purposes of this *Section 2.15*. Each Lot sharing a Party Wall or Party Fence is subject to an easement for the existence and continuance of any encroachment by the Party Wall or Party Fence as a result of construction, repair, shifting, settlement, or movement in any portion of the Party Wall or Party Fence, so that the encroachment may remain undisturbed as long as the Party Wall or Party Fence stands. Each Lot is subject to a reciprocal easement for the maintenance, repair, replacement, or reconstruction of the Party Wall, Non-Party Fence or Party Fence.

2.15.2 Right to Repair. If a Party Wall is damaged or destroyed from any cause, the Board may repair or rebuild the Party Wall to its previous condition, and the Declarant, the Board, the Owner of the Lot, and their successors and assigns, have the right to the full use of the repaired or rebuilt Party Wall. If a Party Fence is damaged or destroyed from any cause, the Owner of the Lot or the Owner of either Lot may repair or rebuild the Party Fence to its

previous condition, and the Owners and their successors and assigns, have the right to the full use of the repaired or rebuilt Party Fence.

2.15.3 Maintenance Costs. The costs for repair and maintenance of Party Walls, Non-Party Fences, and/or Party Fences shall be as follows:

(i) The Lot Owner shall be solely responsible for the costs to repair, reconstruct or replace the Non-Party Fence.

(ii) In the event that an Owner shares a Party Fence with the Owner of another adjoining Lot, the Owners shall be responsible for determining the division of the costs to repair, reconstruct or replace the Party Fence. If an Owner fails or refuses to pay his share of costs of repair or replacement of the Party Fence, the Owner advancing monies has a right to file a claim of lien for the monies advanced in the Official Records of Maricopa County, Arizona, and has the right to foreclose the lien as if it were a mechanic's lien. The right of an Owner to require contribution from another Owner under this Section 2.15 is appurtenant to the Lot and passes to the Owner's successors in title.

If an Owner is responsible for damage to or destruction of the Party Wall, Non-Party Fence or Party Fence, that Owner will bear the entire cost of repair, reconstruction, or replacement for such Party Wall, Non-Party Fence or Party Fence. If an Owner fails or refuses to pay his share of costs of repair or replacement of a Party Wall, Non-Party Fence or Party Fence for which such Owner is responsible, the Association has the right to maintain and repair the Party Wall, Non-Party Fence or Party Fence, and the costs incurred by the Association for such purpose shall be charged back to the Owner as an Individual Assessment.

2.15.4 Alterations. The Owner of a Lot sharing a Party Wall or Party Fence may not cut openings in the Party Wall or Party Fence or alter or change the Party Wall or Party Fence in any manner that affects the use, condition, or appearance of the Party Wall or Party Fence to the adjoining Lot or portion of the Tract. The Party Wall or Party Fence will always remain in the same location as when erected unless otherwise approved by the Owner of each Lot sharing the Party Wall or Party Fence and the [Desert Mountain 19] Reviewer.

2.16 Subdividing. No Lot shall be further divided or subdivided, nor may any easements or other interests therein less than the whole be conveyed by the Owner thereof without the prior written approval of the [Desert Mountain 19] Reviewer; provided, however, that when Declarant is the Owner thereof, Declarant may further divide and subdivide any Lot and convey any easements or other interests less than the whole, all without the approval of the [Desert Mountain 19] Reviewer.

2.17 Hazardous Activities. No activities may be conducted on or within the Tract and no Improvements constructed on any portion of the Tract which, as determined by a Majority of the Board, are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms or fireworks may be discharged upon any portion of the Tract unless discharged in conjunction with an event approved in advance by the Board. There shall be no open fires, except that barbecues, outside fireplaces, braziers and incinerator fires contained within facilities or receptacles and in areas designated and approved by the [Desert Mountain 19] Reviewer shall be permitted. No Owner will permit any condition upon its portion of the Tract which creates a fire hazard or otherwise violates Applicable Law. Unless otherwise approved by the Declarant, no portion of the Tract may be used for the takeoff, storage, or landing of aircraft (including, without limitation, helicopters) except for medical emergencies.

2.18 Mining and Drilling. No portion of the Tract may be used for the purpose of mining, quarrying, drilling, boring, or exploring for or removing water, oil, gas, or other hydrocarbons, minerals of any kind, rocks, stones, sand, gravel, aggregate, or earth. This provision will not be construed to prevent the excavation of rocks, stones, sand, gravel, aggregate, or earth or the storage of such material for use as fill provided that such activities are conducted or approved by the Declarant.

2.19 Noise. No noise which constitutes a nuisance, as determined by a Majority of the Board, shall be permitted to exist or operate upon any portion of the Tract so as to be offensive or detrimental to any other portion of the Tract, Owners or Occupants thereof.

2.20 Rubbish and Debris. As determined by a Majority of the Board, no rubbish or debris of any kind may be placed or permitted to accumulate on or within the Tract, and no odors will be permitted to arise therefrom so as to render all or any portion of the Tract unsanitary, unsightly, offensive, or detrimental to any other property or Occupants. Refuse, garbage, and trash must be kept at all times in covered containers, and such containers must be kept within enclosed structures or appropriately screened from view. Each Owner will contract with an independent disposal service to collect all garbage or other wastes, if such service is not provided by a governmental entity or the Association.

2.21 Diseases and Insects. No Owner or Occupant shall permit anything or condition to exist upon any Lot or other property which shall induce, breed or harbor infectious plant diseases or noxious insects.

2.22 Maintenance. The Owners of each Lot shall jointly and severally have the duty and responsibility, at their sole cost and expense, to keep their Lot and all Improvements thereon in good condition and repair and in a well-maintained, safe, clean and attractive condition at all times. A Majority of the Board shall determine whether a violation of the maintenance obligations set forth in this Section 2.22 has occurred. Such maintenance includes, but is not limited to the following, which shall be performed in a timely manner:

- (i) Prompt removal of all litter, trash, refuse, and wastes.
- (ii) Lawn mowing, tree and shrub pruning, landscape irrigation facilities, and maintaining the lawn and garden areas alive, free of weeds, and attractive.
- (iii) Keeping mechanical facilities in working order.
- (iv) Keeping sidewalks and driveways in good condition and repair.
- (v) Repainting of Improvements.
- (vi) Repair of exterior damage, and wear and tear to Improvements.
- (vii) Complying with Applicable Law.

2.23 Street Landscape Area – Owner’s Obligation to Maintain Landscaping. Each Owner will be responsible, at such Owner’s sole cost and expense, for maintaining mowing, replacing, pruning, and irrigating the landscaping between the boundary of such Owner’s Lot and the curb of any adjacent right-of-way, street or alley, if such area (the “**ST Landscape Area**”) exists, unless the responsibility for maintaining the ST Landscape Area is undertaken by the Association in a Recorded written instrument.

2.24 Tennis Courts. Tennis Courts and other racquet, paddle and handball courts and similar facilities will not be permitted on the Lots.

2.25 Backyards. No unsightly object may be located in the backyard of a Lot if such object is readily visible from Common Area, Special Common Area or the Golf Club Facilities. No backyard of any Lot may be used for storage if such backyard is readily visible from Common Area, Special Common Area or the Golf Club Facilities. The Association reserves the right to determine whether the backyard of a Lot is unsightly or cluttered and may, in their sole discretion, request the removal of certain items. An Owner who does not remove such items in a reasonably timely manner shall be subject to a fine or other penalty pursuant to the Documents and/or to the disposal, and any applicable cost of disposal, of such items by the Association. The Association shall not be liable for the cost or value of any item disposed of in accordance with this Section 2.25.

2.26 Golf Carts. The Association may regulate the use of golf carts and similar vehicles within the Development (including requiring the registration thereof). Such rules may be subject to the approval of the Club.

ARTICLE 3 DEVELOPMENT

3.1 Notice of Applicability. Upon Recording, this Tract Declaration serves to provide notice that at any time, and from time to time, Declarant, and Declarant only, may subject all or any portion of the Property to the terms, covenants, conditions, restrictions and obligations of this Tract Declaration. This Tract Declaration will apply to and burden a portion or portions of the Property upon the filing of a Notice of Applicability in accordance with *Section 9.5* of the Covenant describing such Property by a legally sufficient description and expressly providing that such Property will be subject to the terms, covenants conditions, restrictions and obligations of this Tract Declaration. To add land to the Tract, Declarant will be required only to Record a Notice of Applicability filed pursuant to *Section 9.5* of the Covenant containing the following provisions:

- (i) A reference to this Tract Declaration, which will include the recordation information thereof;
- (ii) A statement that such land will be considered a part of the Tract for purposes of this Tract Declaration, and that all of the terms, covenants, conditions, restrictions and obligations of this Tract Declaration will apply to the added land; and
- (iii) A legal description of the added land.

3.2 Withdrawal of Land. Declarant may, at any time and from time to time, reduce or withdraw land from the terms and provisions of this Tract Declaration. Upon any such withdrawal this Tract Declaration and the covenants, conditions, restrictions and obligations set forth herein will no longer apply to the portion of the land withdrawn. To withdraw lands from the Tract hereunder, Declarant will be required only to Record a notice of withdrawal of land containing the following provisions:

- (i) A reference to this Tract Declaration, which will include the Recording information thereof;
- (ii) A statement that the provisions of this Tract Declaration will no longer apply to the withdrawn land; and
- (iii) A legal description of the withdrawn land.

3.3 Construction of Improvements. No Improvements of any kind shall hereafter be placed, maintained, erected or constructed upon any portion of the Tract unless approved in advance and in writing by the [Desert Mountain 19] Reviewer in accordance with the Covenant. Pursuant to *Section 6.4.2* of the Covenant, the [Desert Mountain 19] Reviewer has adopted Design Guidelines applicable to the Tract. All Improvements must strictly comply with the requirements of the Design Guidelines unless a variance is obtained pursuant to the Covenant.

3.4 Construction Activities. This Tract Declaration will not be construed or applied so as to interfere with or prevent normal construction activities related to the completion of the residences and associated Improvements. Such construction may, from time to time, produce certain conditions on the Tract, including, without limitation: (i) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (ii) smoke; (iii) fumes or gases; (iv) obnoxious odors; (v) dust, dirt or flying ash; (vi) temporary interruption of utilities; and/or (vii) other conditions customarily experienced during development and construction activities. Such conditions resulting from construction and development activities shall not be deemed a nuisance or violation of the terms and provisions of this Tract Declaration.

ARTICLE 4 GENERAL PROVISIONS

4.1 Term. The terms, covenants, conditions, restrictions, easements, charges, and liens set out in this Tract Declaration will run with and bind the Tract, and will inure to the benefit of and be enforceable by the Association, and every Owner, including Declarant, and their respective legal representatives, heirs, successors, and assigns, for a term beginning on the date this Tract Declaration is Recorded, and continuing through and including January 1, 2064, after which time this Tract Declaration will be automatically extended for successive periods of ten (10) years unless a change (the word "change" meaning a termination, or change of term or renewal term) is approved by the Owners of at least sixty-seven percent (67%) of the total number of votes held by all Lots and/or Condominium Units within the Tract. The foregoing sentence shall in no way be interpreted to mean sixty seven percent (67%) of a quorum as established pursuant to the Bylaws.

4.2 Amendment. This Tract Declaration may be amended at any time by the Recording of an instrument setting forth the amendment executed and acknowledged by (i) the Declarant, acting alone; or (ii) by the president and secretary of the Association setting forth the amendment and certifying that such amendment has been approved by Declarant (until expiration or termination of the Development Period) and the Owners of at least sixty-seven percent (67%) of the total number of votes held by all Lots and/or Condominium Units within the Tract. The foregoing sentence shall in no way be interpreted to mean sixty seven percent (67%) of a quorum as established pursuant to the Bylaws.

4.3 Notices. Any notice permitted or required to be given by this Tract Declaration must be in writing and may be delivered either personally or by mail, or as otherwise required by Applicable Law. If delivery is made by mail, it will be deemed to have been delivered on the third (3rd) day (other than a Sunday or legal holiday) after a copy of the same has been deposited in the United States mail, postage prepaid, addressed to the person at the address given by such person in writing to the Association for the purpose of service of notices. Such address may be changed from time to time by notice in writing given by such person to the Association.

4.4 Interpretation. The provisions of this Tract Declaration will be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of the Tract, provided, however, that the provisions of this Tract Declaration will not be held to impose any restriction, condition or covenant whatsoever on any land owned by Declarant other than the Tract. This Tract Declaration will be construed and governed under the laws of the State of Arizona.

4.5 Gender. Whenever the context so requires, all words herein in the male gender will be deemed to include the female or neuter gender, all singular words will include the plural, and all plural words will include the singular.

4.6 Assignment of Declarant's Rights. Notwithstanding any provision in this Tract Declaration to the contrary, Declarant may, by written instrument, assign, in whole or in part, any of its privileges, exemptions, rights, and duties under this Tract Declaration to any person or entity and may permit the participation, in whole, in part, exclusively, or non-exclusively, by any other person or entity in any of its privileges, exemptions, rights, and duties hereunder.

4.7 No Warranty of Enforceability. Declarant makes no warranty or representation as to the present or future validity or enforceability of the Documents. Any Owner acquiring a Lot in reliance on one or more of the Documents shall assume all risks of the validity and enforceability thereof and, by acquiring the Lot, agrees to hold Declarant harmless therefrom.

4.8 Enforcement and Nonwaiver. Except as otherwise provided herein, any Owner of Lot, at such Owner's own expense, Declarant and the Association will have the right to enforce all of the provisions of this Tract Declaration. The Association and/or the Declarant may initiate, defend or intervene in any action brought to enforce any provision of this Tract Declaration. Such right of enforcement will include both damages for and injunctive relief against the breach of any provision hereof. Every act or omission whereby any provision of the Documents is violated, in whole or in part, is hereby declared to be a nuisance and may be enjoined or abated by any Owner of a Lot (at such Owner's own expense), Declarant or the Association. Any violation of any Applicable Law pertaining to the ownership, occupancy, or use of any portion of the Tract is hereby declared to be a violation of this Tract Declaration and subject to all of the enforcement procedures set forth herein. The failure to enforce any provision of the Documents at any time will not constitute a waiver of the right thereafter to enforce any such provision or any other provision of the Documents.

4.9 Construction. The provisions of this Tract Declaration will be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof will not affect the validity or enforceability of any other provision. Unless the context requires a contrary construction, the singular will include the plural and the plural the singular. All captions and titles used in this Tract Declaration are intended solely for convenience of reference and will not enlarge, limit, or otherwise affect that which is set forth in any of the paragraphs, sections, or articles hereof.

[SIGNATURE PAGE FOLLOWS]

DRAFT

EXECUTED to be effective on the date this instrument is Recorded.

DECLARANT:

DM19, LLC , an Arizona limited liability company

By: _____

Name: [_____]

Title: [_____]

THE STATE OF ARIZONA §

§

COUNTY OF _____ §

This instrument was acknowledged before me on this ____ day of _____, 2017, by _____ of DM19, LLC, an Arizona limited liability company, on behalf of said limited liability company.

Notary Public, State of Arizona

(seal) _____

DRAFT

INFORMATION

The Title Insurance Commitment is a legal contract between you and the company. It is issued to show the basis on which we will issue a Title Insurance Policy to you. The Policy will insure you against certain risks to the land title, subject to the limitations shown in the Policy

The Company will give you a sample of the Policy form, if you ask.

The Commitment is based on the land title as of the Commitment Date. Any changes in the land title or the transaction may affect the Commitment and the Policy.

The Commitment is subject to its Requirements, Exceptions and Conditions.

THIS INFORMATION IS NOT PART OF THE TITLE INSURANCE COMMITMENT.



COMMITMENT FOR TITLE INSURANCE

ISSUED BY

First American Title Insurance Company
through its Division

First American Title Insurance Company

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YOU SHOULD READ THE COMMITMENT VERY CAREFULLY

If you have any questions about the Commitment, contact:

***First American Title Insurance Company National Commercial Services
2425 E. Camelback Road, Suite 300, Phoenix, AZ 85016***

AGREEMENT TO ISSUE POLICY

We agree to issue a policy to you according to the terms of this Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

Our obligation under the Commitment is limited by the following:

**The Provisions in Schedule A
The Requirements
The Exceptions in Schedule B - Parts 1 and 2
The Conditions**

This Commitment is not valid without SCHEDULE A and Parts 1 and 2 of SCHEDULE B.

SCHEDULE B - EXCEPTIONS

Any Policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

Part One: (for use with 2006 ALTA policies)

1. (a) Taxes or assessments that are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the Public Records; (b) proceedings by a public agency that may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the Public Records.
2. Any facts, rights, interests or claims that are not shown by the Public Records but which could be ascertained by an inspection of the Land or that may be asserted by persons in possession of the Land.
3. Easements, liens or encumbrances, or claims thereof, not shown by the Public Records.
4. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the Title that would be disclosed by an accurate and complete land survey of the Land and not shown by the Public Records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water, whether or not the matters excepted under (a), (b), or (c) are shown by the Public Records.

Part One: (for use with 1992 and prior ALTA policies)

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.

Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by the public records.

2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water; whether or not the aforementioned matters excepted are shown by the public records.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.

Part One of Schedule B will be eliminated from any A.L.T.A. Extended Coverage Policy, A.L.T.A. Plain Language Policy and policies with EAGLE Protection added. However, the same or similar exception may be made in Schedule B of those policies in conformity with Schedule B, Part Two of this Commitment.

**REQUIREMENTS
(Standard)**

The following requirements must be met:

- (a) Pay the agreed amounts for the interest in the land and/or the mortgage to be insured.
- (b) Pay us the premiums, fees and charges for the policy.
- (c) Documents satisfactory to us creating the interest in the land and/or the mortgage to be insured must be signed, delivered and recorded.
- (d) You must tell us in writing the name of anyone not referred to in this commitment who will get interest in the land or who will make a loan on the land. We may then make additional requirements or exceptions.

(Continued on Requirements Page)

CONDITIONS

1. **DEFINITIONS**

- (a) "Mortgage" means mortgage, deed of trust or other security instrument.
- (b) "Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

2. **LATER DEFECTS**

The Exceptions in Schedule B may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements are met. We shall have no liability to you because of this amendment.

3. **EXISTING DEFECTS**

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

4. **LIMITATION OF OUR LIABILITY**

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements

or

eliminate with our written consent any Exceptions shown in Schedule B

We shall not be liable for more than the Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

5. **CLAIMS MUST BE BASED ON THIS COMMITMENT**

Any claims, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms

**First American Title
Insurance Company
National Commercial
Services**



**The First American
Corporation**

PRIVACY POLICY

We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from public records or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our web site at www.firstam.com.

Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial services providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply.

Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products and services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

**First American Title Insurance Company
National Commercial Services**

SCHEDULE A

Tenth Amended

ESCROW/CLOSING INQUIRIES should be directed to your Escrow Officer: **Angelique Sizemore at (602)567-8100**

Effective Date: **March 3, 2017** at 7:30 a.m.

1. Policy or (Policies) to be issued:

ALTA 2006 Extended Owner's Policy for \$24,000,000.00

Proposed Insured:

DM19, LLC, an Arizona limited liability company

2. The estate or interest in the land described or referred to in this commitment and covered herein is fee simple and title thereto is at the effective date hereof vested in:

DM Real Estate Holdings, LLC, an Arizona limited liability company

3. Title to the estate or interest in the land upon issuance of the policy shall be vested in:

DM19, LLC, an Arizona limited liability company

4. The land referred to in this Commitment is located in Maricopa County, AZ and is described as:

SEE EXHIBIT "A " ATTACHED HEREIN

Title officer: Daniel Figueroa @ (602)567-8100/dfigueroa@firstam.com.

Pages 1 through 5 of this document consist of the Title Insurance Commitment contract and our Privacy Policy.

EXHIBIT "A"

PARCEL NO. 1:

PARCEL 8, OF MAP OF DEDICATION AND PARCEL MAP NORTH SCOTTSDALE AQUIFER STORAGE & RECOVERY PROJECT, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 754 OF MAPS, PAGE 30;

EXCEPT THAT PORTION DEEDED TO THE CITY OF SCOTTSDALE IN DOCUMENT NO. 92-0116951 OF OFFICIAL RECORDS, AND AS SHOWN ON SAID PLAT; AND

FURTHER EXCEPT A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 31, TOWNSHIP 6 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA AND BEING A PART OF PARCEL 8 OF MAP OF DEDICATION AND PARCEL MAP NORTH SCOTTSDALE AQUIFER STORAGE & RECOVERY PROJECT, ACCORDING TO THE PLAT RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA AT BOOK 754 OF MAPS, PAGE 30, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERN-MOST CORNER OF PARCEL 4 OF SAID BOOK 754 OF MAPS, PAGE 30, FROM WHICH THE SOUTHEASTERLY LINE OF SAID PARCEL 4 BEARS SOUTH 15 DEGREES 52 MINUTES 58 SECONDS WEST, (BASIS OF BEARING) TO AN ANGLE POINT AT A DISTANCE OF 238.96 FEET;

THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 8, TRAVERSING THE FOLLOWING COURSES AND DISTANCES;

SOUTH 39 DEGREES 48 MINUTES 15 SECONDS EAST, 42.87 FEET;

SOUTH 77 DEGREES 35 MINUTES 34 SECONDS EAST, 158.02 FEET TO THE NORTHERN-MOST CORNER OF PARCEL 6 OF SAID BOOK 754 OF MAPS, PAGE 30;

THENCE CONTINUING ALONG THE NORTHEASTERLY BOUNDARY OF SAID PARCEL 8, CONTIGUOUS TO THE SOUTHWESTERLY BOUNDARY OF SAID PARCEL 6, TRAVERSING THE FOLLOWING COURSES AND DISTANCES;

SOUTH 61 DEGREES 44 MINUTES 03 SECONDS WEST, 70.00 FEET;

SOUTH 16 DEGREES 41 MINUTES 37 SECONDS WEST, 42.43 FEET;

SOUTH 28 DEGREES 17 MINUTES 56 SECONDS EAST, 65.43 FEET;

SOUTH 73 DEGREES 08 MINUTES 08 SECONDS EAST, 35.36 FEET;

NORTH 61 DEGREES 44 MINUTES 03 SECONDS EAST, 75.00 FEET;

THENCE LEAVING SAID PARCEL 6 BOUNDARY CONTINUING ALONG SAID PARCEL 8 BOUNDARY, SOUTH 45 DEGREES 58 MINUTES 57 SECONDS EAST A DISTANCE OF 195.38 FEET TO A POINT ON THE CURVED NORTHWESTERLY RIGHT OF WAY LINE OF CAVE CREEK ROAD, A PUBLIC RIGHT OF WAY, SAID CURVE BEING CONCAVE SOUTHEASTERLY AND HAVING A RADIUS POINT WHICH BEARS SOUTH 31 DEGREES 05 MINUTES 25 SECONDS EAST AT A DISTANCE OF 1498.40 FEET;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVED RIGHT OF WAY, THROUGH A CENTRAL ANGLE OF 03 DEGREES 56 MINUTES 00 SECONDS, A DISTANCE OF 102.86 FEET TO THE EASTERN-MOST CORNER OF PARCEL 5 OF SAID BOOK 754 OF MAPS, PAGE 30;

THENCE LEAVING SAID RIGHT OF WAY LINE OF CAVE CREEK ROAD, ALONG THE NORTHEASTERN, NORTHWESTERN AND SOUTHWESTERN BOUNDARIES OF SAID PARCEL 5, ALL BEING CONTIGUOUS TO THE BOUNDARY OF SAID PARCEL 8, TRAVERSING THE FOLLOWING COURSES AND DISTANCES;

NORTH 30 DEGREES 23 MINUTES 22 SECONDS WEST, 129.68 FEET;

NORTH 82 DEGREES 18 MINUTES 17 SECONDS WEST, 82.98 FEET;

SOUTH 07 DEGREES 41 MINUTES 43 SECONDS WEST, 113.25 FEET;

NORTH 82 DEGREES 18 MINUTES 17 SECONDS WEST, 20.00 FEET;

SOUTH 07 DEGREES 41 MINUTES 43 SECONDS WEST, 22.20 FEET;

SOUTH 82 DEGREES 18 MINUTES 17 SECONDS EAST, 10.47 FEET;

SOUTH 07 DEGREES 41 MINUTES 43 SECONDS WEST, 19.39 FEET;

SOUTH 43 DEGREES 11 MINUTES 44 SECONDS EAST, 86.68 FEET TO A POINT ON SAID CURVED NORTHWESTERLY RIGHT OF WAY LINE OF CAVE CREEK ROAD, SAID CURVE BEING CONCAVE SOUTHEASTERLY AND HAVING A RADIUS POINT WHICH BEARS SOUTH 40 DEGREES 46 MINUTES 38 SECONDS EAST AT A DISTANCE OF 1498.40 FEET;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVED RIGHT OF WAY, THROUGH A CENTRAL ANGLE OF 09 DEGREES 00 MINUTES 30 SECONDS, A DISTANCE OF 235.59 FEET;

THENCE LEAVING SAID RIGHT OF WAY LINE, ALONG THE SOUTHWESTERLY LINE OF A WATER LINE EASEMENT, 20.00 FEET IN WIDTH AS SHOWN AND DEDICATED ON SAID BOOK 754 OF MAPS, PAGE 30, NORTH 47 DEGREES 08 MINUTES 34 SECONDS WEST A DISTANCE OF 378.16 FEET TO A POINT ON THE SOUTHEASTERLY BOUNDARY OF SAID PARCEL 4 OF BOOK 754 OF MAPS, PAGE 30;

THENCE ALONG SAID SOUTHEASTERLY BOUNDARY OF PARCEL 4, ALSO BEING THE NORTHWESTERLY BOUNDARY OF SAID PARCEL 8, TRAVERSING THE FOLLOWING COURSES AND DISTANCES;

NORTH 42 DEGREES 59 MINUTES 46 SECONDS EAST, 92.69 FEET;

SOUTH 47 DEGREES 21 MINUTES 25 SECONDS EAST, 54.29 FEET;

NORTH 43 DEGREES 09 MINUTES 11 SECONDS EAST, 145.91 FEET;

NORTH 15 DEGREES 52 MINUTES 58 SECONDS EAST, 238.96 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 2:

DELETED INTENTIONALLY.

PARCEL NO. 3:

LOTS 127 AND 128, OF VELVET SHADOWS UNIT III, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 121 OF MAPS, PAGE 49.

**First American Title Insurance Company
National Commercial Services**

**SCHEDULE B
Tenth Amended**

PART TWO:

1. Taxes for the fiscal year of 2017, a lien not yet due or payable. All taxes currently due and payable have been paid in full.
2. This item has been intentionally deleted.
3. Any charge upon said land by reason of its inclusion in Carefree Improvement Association. (All assessments due and payable are paid.)

(Affects Parcel No. 3)
4. Any charge upon said land by reason of its inclusion in Velvet Shadows Improvement Association. (All assessments due and payable are paid.)

(Affects Parcel No. 3)
5. Any charge upon said land by reason of its inclusion in Carefree Shadows Association. (All assessments due and payable are paid.)

(Affects Parcel No. 3)
6. Reservations or Exceptions in Patents, or in Acts authorizing the issuance thereof.
7. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of Velvet Shadows Unit III, as recorded in Book 121 of Maps, Page 49, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

(Affects Parcel No. 3)
8. Restrictions, dedications, conditions, reservations, easements and other matters shown on the plat of Map of Dedication and Parcel Map North Scottsdale Aquifer Storage & Recovery Project, as recorded in Book 754 of Maps, Page 30, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

Release of Easement recorded as 2007-1123589 of Official Records.

(Affects Parcel No. 1)

9. Covenants, Conditions and Restrictions as set forth in Declaration of Restrictions recorded in Docket 7471, Page 54 and Amendment recorded as Docket 10890, Page 398 and re-recorded as Docket 11724, Page 147, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

(Affects Parcel No. 3)

10. Covenants, Conditions and Restrictions as set forth in Declaration of Restrictions recorded in Docket 10836, Page 999; Amendment recorded as Docket 10970, Page 157; Revised Declaration of Covenants, Conditions and Restrictions recorded as Docket 13555, Page 1 and Declaration of Covenants, Conditions and Restrictions recorded as Docket 13667, Page 229, but deleting any covenant, condition or restriction indicating a preference, limitation or discrimination based on race, color, religion, sex, handicap, familial status or national origin to the extent such covenants, conditions or restrictions violate 42 USC 3604(c).

(Affects Parcel No. 3)

11. This item has been intentionally deleted.

12. This item has been intentionally deleted.

13. This item has been intentionally deleted.

14. An easement for vehicular and pedestrian ingress and egress, pipeline and general utilities and incidental purposes in the document recorded as 92-0116948 of Official Records.

(Affects Parcel No. 1)

15. This item has been intentionally deleted.

16. This item has been intentionally deleted.

17. This item has been intentionally deleted.

18. This item has been intentionally deleted.

19. An easement for public utilities and incidental purposes in the document recorded as 2004-0267450 of Official Records.

(Affects Parcel No. 1)

20. An easement for underground sewer line and incidental purposes in the document recorded as 2007-0271788 of Official Records.

(Affects Parcel No. 1)

21. An easement for underground water line and incidental purposes in the document recorded as 2007-0271789 of Official Records.

(Affects Parcel No. 1)

22. This item has been intentionally deleted.
23. This item has been intentionally deleted.
24. The terms and provisions contained in the document entitled "Declaration Limiting Total Development" recorded January 26, 2000 as 00-0062296 of Official Records.

(Affects all parcels)
25. This item has been intentionally deleted.
26. This item has been intentionally deleted.
27. This item has been intentionally deleted.
28. This item has been intentionally deleted.
29. Water rights, claims or title to water, whether or not shown by the public records.
30. This item has been intentionally deleted.
31. The terms and provisions contained in the document entitled "Agreement For The Waiver Of Claims For Diminution In Value of Property" recorded December 8, 2016 as 2016-0905111 and in 2016-0905113 of Official Records.

(Affects Parcel No. 1)

End of Schedule B

**First American Title Insurance Company
National Commercial Services**

Tenth Amended

REQUIREMENTS:

1. Compliance with A.R.S. 11-480 relative to all documents to be recorded in connection herewith. See note at end of this section for details.

NOTE to proposed insured lender only: No Private transfer fee covenant, as defined in Federal Housing Finance Agency Final Rule 12 CFR Part 1228, that was created and first appears in the Public Records on or after February 8, 2011, encumbers the Title except as follows: None

(Affects Parcel No. 3)

2. All of 2016 taxes are paid in full.

NOTE: Taxes are assessed in the total amount of \$112,690.48 for the year 2016 under Assessor's Parcel No. 219-13-244 1.

(Covers More Property)

(Affects Parcel No. 1)

NOTE: Taxes are assessed in the total amount of \$382.84 for the year 2016 under Assessor's Parcel No. 219-11-145 4.

(Affects Lot No. 127 of Parcel No. 3)

NOTE: Taxes are assessed in the total amount of \$286.18 for the year 2016 under Assessor's Parcel No. 219-11-146 1.

(Affects Lot No. 128 of Parcel No. 3)

3. **DELETED INTENTIONALLY**

4. Pay all of 2016 taxes.

5. Proper evidence showing that all assessments due and payable, levied by Carefree Improvement Association, have been paid to and including the closing date of this transaction.

(Affects Parcel No. 3)

6. Proper evidence showing that all assessments due and payable, levied by Velvet Shadows Improvement Association, have been paid to and including the closing date of this transaction.

(Affects Parcel No. 3)

7. Proper evidence showing that all assessments due and payable, levied by Carefree Shadows Association, have been paid to and including the closing date of this transaction.

(Affects Parcel No. 3)

8. Record partial release and reconveyance of a Deed of Trust securing an original indebtedness in the amount of \$52,000,000.00, recorded August 18, 2011 as 2011-0690698 of Official Records.
 Dated: August 18, 2011
 Trustor: DM Real Estate Holdings, LLC, an Arizona limited liability company
 Trustee: National Bank of Arizona, a national banking association
 Beneficiary: National Bank of Arizona, a national banking association

(Covers More Property)

9. Furnish Plat of Survey of the subject property by a Registered Land Surveyor in accordance with the "Minimum Standard Detail Requirements for ALTA/ACSM Land Title Surveys" which became effective February 23, 2011. Said Plat of survey shall include the required certification and, at a minimum, also have shown thereon Items 1, 8, 11(b), 16, 17, 20(a), and 20(b) from Table A thereof. If zoning assurances are requested, Items 7(a), 7(b), 7(c) and 9 from Table A and information regarding the usage of the property must be included.

NOTE: If a Zoning Endorsement is requested, Items 7(a), 7(b) and 7(c) of Table A will also be required. If "parking" is to be added to the endorsement, the number and type of parking spaces must be shown on the survey. Property use information must also be provided to First American Title Insurance Company.

REQUIREMENT SATISFIED

10. Furnish copies of any existing leases affecting the within described property and insertion of said leases in Schedule B of the Policy of Title Insurance.
11. Approval by all parties to this transaction of the description used herein.
12. Furnish a copy of the Articles of Organization, stamped "filed" by the Arizona Corporation Commission; a fully executed copy of the Operating Agreement, and any amendments thereto; and a list of the current members of DM Real Estate Holdings, LLC, a limited liability company.
13. Record Warranty Deed from DM Real Estate, LLC, an Arizona limited liability company and Desert Mountain Club, Inc., an Arizona non-profit corporation to Buyer(s).

 NOTE: If this will be other than a Cash Transaction, notify the title department prior to close and additional requirements will be made.
14. Such further requirements as may be necessary after completion of the above.
15. Return to title department for final recheck before recording.

NOTE: In connection with Arizona Revised Statutes 11-480, as of January 1, 1991, the County Recorder may not accept documents for recording that do not comply with the following:

- a. Print must be ten-point type or larger.

- b. A margin of two inches at the top of the first page for recording and return address information and margins of one-half inch along other borders of every page.
- c. Each instrument shall be no larger than 8-1/2 inches in width and 14 inches in length.

DISCLOSURE NOTE: In the event any Affidavit required pursuant to A.R.S. ¹ 33-422 has been, or will be, recorded pertaining to the land, such Affidavit is not reflected in this Commitment nor will it be shown in any policy to be issued in connection with this Commitment. The statute applies only to unsubdivided land in an unincorporated area of a county.

NOTE: The policy to be issued may contain an arbitration clause. When the Amount of Insurance is less than the certain dollar amount set forth in any applicable arbitration clause, all arbitrable matters shall be arbitrated at the option of either the Company or the Insured as the exclusive remedy of the parties. If you desire to review the terms of the policy, including any arbitration clause that may be included, contact the office that issued this Commitment or Report to obtain a sample of the policy jacket for the policy that is to be issued in connection with your transaction.

End of Requirements

APPEALS OF DEDICATIONS, EXACTIONS, OR ZONING REGULATIONS

POLICY OF THE CITY OF SCOTTSDALE ON APPEALS OF DEDICATIONS, EXACTIONS, OR ZONING REGULATIONS

RIGHTS OF PROPERTY OWNER

In addition to other rights granted to you by the U.S. and Arizona Constitution, federal and state law and city ordinances or regulations, you are hereby notified of your right to appeal the following City actions relating to your property:

- 1) Any dedication or exaction which is required of you by an administrative agency or official of the city as a condition of granting approval of your request to use, improve or develop your real property. This appeal right does not apply to a dedication or exaction required as part of a city legislative act (for example a zoning ordinance) where an administrative agency or official has no discretion to determine the dedication or exaction.
- 2) The adoption or amendment of a zoning regulation that creates a taking of property in violation of Arizona and federal court decisions.

APPEAL PROCEDURE

The appeal must be in writing and specify the City action appealed and the date final action was taken, and it must be filed with or mailed to the hearing officer designated by the city within 30 days after the final action is taken. Address the appeal as follows:

Hearing Officer, C/O City Clerk
3939 Drinkwater Blvd.
Scottsdale, AZ 85251

- ❖ No fee will be charged for filing
- ❖ The City Attorney's Office will review the appeal for compliance with the above requirements, and will notify you if your appeal does not comply.
- ❖ Eligible appeals will be forwarded to the hearing officer, and a hearing will be scheduled within 30 days of receipt by the hearing officer of your request. Ten days notice will be given to you of the date, time and place of the hearing unless you indicate that less notice is acceptable to you.
- ❖ The city will submit a takings impact report to the hearing officer.
- ❖ In an appeal from a dedication or exaction, the City will bear the burden of proving that the dedication or exaction to be imposed on your property bears an essential nexus between the requirement and a legitimate governmental interest and that the proposed dedication or exaction is roughly proportional to the impact of the use, improvement or development you proposed.
- ❖ In an appeal from the adoption or amendment of a zoning regulation, the City will bear the burden of proving that any dedication or exaction requirement in the zoning regulation is roughly proportional to the impact of the proposed use, improvement, or development, and that the zoning regulation does not create a taking of property in violation of Arizona and federal court cases.
- ❖ The hearing officer must render his decision within five working days after the appeal is heard.
- ❖ The hearing officer can modify or delete a dedication or exaction or, in the case of an appeal from a zoning regulation, transmit a recommendation to the City Council.
- ❖ If you are dissatisfied with the decision of the hearing officer, you may file a complaint for a trial de novo with the Superior Court within 30 days of the hearing officer's decision.

If you have questions about this appeal process, you may contact:

City Attorney's Office
3939 Drinkwater Blvd.
Scottsdale, AZ 85251
(480) 312-2405

Please be aware that City staff cannot give you legal advice. You may wish, but are not required, to hire an attorney to represent you in an appeal.

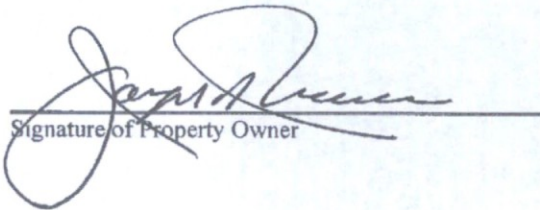
**Owner Certification
Acknowledging Receipt
Of
Notice Of Right To Appeal
Exactions And Dedications**

I hereby certify that I am the owner of property located at:

37080 N Cave Creek Rd, Scottsdale, AZ 85262

(address where development approval, building permits, or city required improvements and dedications are being required)

and hereby certify that I have received a notice that explains my right to appeal all exactions and/or dedications required by the City of Scottsdale as part of my property development on the parcel listed in the above address.



Signature of Property Owner

4/25/16
Date

Affidavit of Authorization to Act for Property Owner



1. This affidavit concerns the following parcel of land:

- a. Street Address: 37080 N Cave Creek Road, Scottsdale 85262
- b. County Tax Assessor's Parcel Number: 219-13-244
- c. General Location: North of NE Corner of N. Pima Road and N. Cave Creek Road
- d. Parcel Size: Approximately 91 acres
- e. Legal Description: See Attached

(If the land is a platted lot, then write the lot number, subdivision name, and the plat's recording number and date. Otherwise, write "see attached legal description" and attach a legal description.)

- 2. I am the owner of the land or I am the duly and lawfully appointed agent of the owner of the land and have authority from the owner to sign this affidavit on the owner's behalf. If the land has more than one owner, then I am the agent for all of the owners, and the word "owner" in this affidavit refers to all of them.
- 3. I have authority from the owner to act for the owner before the City of Scottsdale with regard to any and all reviews, zoning map amendments, general plan amendments, development variances, abandonments, plats, lot splits, lot ties, use permits, building permits and other land use regulatory or related matters of every description involving the land, or involving adjacent or nearby lands in which the owner has (or may acquire) an interest, and all applications, dedications, payments, assurances, decisions, agreements, legal documents, commitments, waivers and other matters relating to any of them.
- 4. The City of Scottsdale is authorized to rely on my authority as described in this affidavit until three work days after the day the owner delivers to the Director of the Scottsdale Planning & Development Services Department a written statement revoking my authority.
- 5. I will immediately deliver to the Director of the City of Scottsdale Planning & Development Services Department written notice of any change in the ownership of the land or in my authority to act for the owner.
- 6. If more than one person signs this affidavit, each of them, acting alone, shall have the authority described in this affidavit, and each of them warrant to the City of Scottsdale the authority of the others.
- 7. Under penalty of perjury, I warrant and represent to the City of Scottsdale that this affidavit is true and complete. I understand that any error or incomplete information in this affidavit or any applications may invalidate approvals or other actions taken by the City of Scottsdale, may otherwise delay or prevent development of the land, and may expose me and the owner to other liability. I understand that people who have not signed this form may be prohibited from speaking for the owner at public meetings or in other city processes.

Name (printed)

Date

Signature

Thomas H. Warley

March 3, 2017

_____, 20__

_____, 20__

_____, 20__

Planning and Development Services

7447 E Indian School Road, Suite 105, Scottsdale, AZ 85251 • Phone: 480-312-7000 • Fax: 480-312-7088

THENCE LEAVING SAID RIGHT OF WAY LINE OF CAVE CREEK ROAD, ALONG THE NORTHEASTERN, NORTHWESTERN AND SOUTHWESTERN BOUNDARIES OF SAID PARCEL 5, ALL BEING CONTIGUOUS TO THE BOUNDARY OF SAID PARCEL 8, TRAVERSING THE FOLLOWING COURSES AND DISTANCES;

NORTH 30 DEGREES 23 MINUTES 22 SECONDS WEST, 129.68 FEET;

NORTH 82 DEGREES 18 MINUTES 17 SECONDS WEST, 82.98 FEET;

SOUTH 07 DEGREES 41 MINUTES 43 SECONDS WEST, 113.25 FEET;

NORTH 82 DEGREES 18 MINUTES 17 SECONDS WEST, 20.00 FEET;

SOUTH 07 DEGREES 41 MINUTES 43 SECONDS WEST, 22.20 FEET;

SOUTH 82 DEGREES 18 MINUTES 17 SECONDS EAST, 10.47 FEET;

SOUTH 07 DEGREES 41 MINUTES 43 SECONDS WEST, 19.39 FEET;

SOUTH 43 DEGREES 11 MINUTES 44 SECONDS EAST, 86.68 FEET TO A POINT ON SAID CURVED NORTHWESTERLY RIGHT OF WAY LINE OF CAVE CREEK ROAD, SAID CURVE BEING CONCAVE SOUTHEASTERLY AND HAVING A RADIUS POINT WHICH BEARS SOUTH 40 DEGREES 46 MINUTES 38 SECONDS EAST AT A DISTANCE OF 1498.40 FEET;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVED RIGHT OF WAY, THROUGH A CENTRAL ANGLE OF 09 DEGREES 00 MINUTES 30 SECONDS, A DISTANCE OF 235.59 FEET;

THENCE LEAVING SAID RIGHT OF WAY LINE, ALONG THE SOUTHWESTERLY LINE OF A WATER LINE EASEMENT, 20.00 FEET IN WIDTH AS SHOWN AND DEDICATED ON SAID BOOK 754 OF MAPS, PAGE 30, NORTH 47 DEGREES 08 MINUTES 34 SECONDS WEST A DISTANCE OF 378.16 FEET TO A POINT ON THE SOUTHEASTERLY BOUNDARY OF SAID PARCEL 4 OF BOOK 754 OF MAPS, PAGE 30;

THENCE ALONG SAID SOUTHEASTERLY BOUNDARY OF PARCEL 4, ALSO BEING THE NORTHWESTERLY BOUNDARY OF SAID PARCEL 8, TRAVERSING THE FOLLOWING COURSES AND DISTANCES;

NORTH 42 DEGREES 59 MINUTES 46 SECONDS EAST, 92.69 FEET;

SOUTH 47 DEGREES 21 MINUTES 25 SECONDS EAST, 54.29 FEET;

NORTH 43 DEGREES 09 MINUTES 11 SECONDS EAST, 145.91 FEET;

NORTH 15 DEGREES 52 MINUTES 58 SECONDS EAST, 238.96 FEET TO THE POINT OF BEGINNING.

PARCEL NO. 2:

DELETED INTENTIONALLY.

PARCEL NO. 3:

LOTS 127 AND 128, OF VELVET SHADOWS UNIT III, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 121 OF MAPS, PAGE 49.

PARCEL NO. 1:

PARCEL 8, OF MAP OF DEDICATION AND PARCEL MAP NORTH SCOTTSDALE AQUIFER STORAGE & RECOVERY PROJECT, ACCORDING TO THE PLAT OF RECORD IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA, RECORDED IN BOOK 754 OF MAPS, PAGE 30;

EXCEPT THAT PORTION DEEDED TO THE CITY OF SCOTTSDALE IN DOCUMENT NO. 92-0116951 OF OFFICIAL RECORDS, AND AS SHOWN ON SAID PLAT; AND

FURTHER EXCEPT A PARCEL OF LAND LOCATED IN THE NORTH HALF OF SECTION 31, TOWNSHIP 6 NORTH, RANGE 5 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA AND BEING A PART OF PARCEL 8 OF MAP OF DEDICATION AND PARCEL MAP NORTH SCOTTSDALE AQUIFER STORAGE & RECOVERY PROJECT, ACCORDING TO THE PLAT RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF MARICOPA COUNTY, ARIZONA AT BOOK 754 OF MAPS, PAGE 30, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE EASTERN-MOST CORNER OF PARCEL 4 OF SAID BOOK 754 OF MAPS, PAGE 30, FROM WHICH THE SOUTHEASTERLY LINE OF SAID PARCEL 4 BEARS SOUTH 15 DEGREES 52 MINUTES 58 SECONDS WEST, (BASIS OF BEARING) TO AN ANGLE POINT AT A DISTANCE OF 238.96 FEET;

THENCE ALONG THE NORTHEASTERLY LINE OF SAID PARCEL 8, TRAVERSING THE FOLLOWING COURSES AND DISTANCES;

SOUTH 39 DEGREES 48 MINUTES 15 SECONDS EAST, 42.87 FEET;

SOUTH 77 DEGREES 35 MINUTES 34 SECONDS EAST, 158.02 FEET TO THE NORTHERN-MOST CORNER OF PARCEL 6 OF SAID BOOK 754 OF MAPS, PAGE 30;

THENCE CONTINUING ALONG THE NORTHEASTERLY BOUNDARY OF SAID PARCEL 8, CONTIGUOUS TO THE SOUTHWESTERLY BOUNDARY OF SAID PARCEL 6, TRAVERSING THE FOLLOWING COURSES AND DISTANCES;

SOUTH 61 DEGREES 44 MINUTES 03 SECONDS WEST, 70.00 FEET;

SOUTH 16 DEGREES 41 MINUTES 37 SECONDS WEST, 42.43 FEET;

SOUTH 28 DEGREES 17 MINUTES 56 SECONDS EAST, 65.43 FEET;

SOUTH 73 DEGREES 08 MINUTES 08 SECONDS EAST, 35.36 FEET;

NORTH 61 DEGREES 44 MINUTES 03 SECONDS EAST, 75.00 FEET;

THENCE LEAVING SAID PARCEL 6 BOUNDARY CONTINUING ALONG SAID PARCEL 8 BOUNDARY, SOUTH 45 DEGREES 58 MINUTES 57 SECONDS EAST A DISTANCE OF 195.38 FEET TO A POINT ON THE CURVED NORTHWESTERLY RIGHT OF WAY LINE OF CAVE CREEK ROAD, A PUBLIC RIGHT OF WAY, SAID CURVE BEING CONCAVE SOUTHEASTERLY AND HAVING A RADIUS POINT WHICH BEARS SOUTH 31 DEGREES 05 MINUTES 25 SECONDS EAST AT A DISTANCE OF 1498.40 FEET;

THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVED RIGHT OF WAY, THROUGH A CENTRAL ANGLE OF 03 DEGREES 56 MINUTES 00 SECONDS, A DISTANCE OF 102.86 FEET TO THE EASTERN-MOST CORNER OF PARCEL 5 OF SAID BOOK 754 OF MAPS, PAGE 30;

April 21, 2016

Via Hand-Delivery, to:

City of Scottsdale
Planning & Development Services Department
7447 East Indian School Road, Suite 105
Scottsdale, Arizona 85251

Re: Letter of Authorization – 279-PA-2016 (Desert Mountain – Parcel 19)

To Whom It May Concern:

This letter authorizes the firms and companies of The M3 Companies, Berry Riddell, Greey Pickett, Wood Patel, Land Development Services, Technical Solutions, and Stanley Consultants to represent and act on behalf of DM Real Estate LLC in connection with the General Plan Amendment, Zoning, Use Permit, Development Review Board, Preliminary Plat applications and related City matters for the 89+/- acre property located north of the northeast corner of Pima and Cave Creek Roads (Desert Mountain Parcel 19) the City of Scottsdale, Maricopa County, Arizona.

DM Real Estate Holdings, LLC

By: 
Its: PRESIDENT

AFFIDAVIT OF AUTHORITY TO ACT FOR PROPERTY OWNER

1. This affidavit concerns the following parcel of land:

- a. Street Address: 37080 N Cave Creek Rd, Scottsdale, AZ 85262
- b. County Tax Assessor's Parcel Number 219-13-244
- c. General Location N Pima Rd and E Cave Creek Rd
- d. Parcel Size: Approx 89 acres
- e. Legal Description: See Attached
(If the land is a platted lot, then write the lot number, subdivision, name, and the plat's recording number and date. Otherwise, write "see attached legal description" and attach a legal description.)

2. I am the owner of the land or I am the duly and lawfully appointed agent of the owner of the land and have authority from the owner to sign this affidavit on the owner's behalf. If the land has more than one owner, then I am the agent for all of the owners, and the word "owner" in this affidavit refers to all of them.

3. I have authority from the owner to act for the owner before the City of Scottsdale with regard to any and all reviews, zoning map amendments, general plan amendments, development variances, abandonments, plats, lot splits, lot ties, use permits, building permits and other land use regulatory or related matters of every description involving the land, or involving adjacent or nearby lands in which the owner has (or may acquire) an interest and all applications, dedications, payments, assurances, decisions, agreements, legal documents, commitments, waivers and other matters relating to any of them.

4. The City of Scottsdale is authorized to rely on my authority as described in this affidavit until three work days after the day the owner delivers to the general manager of the Scottsdale Planning and Development Services Department a written statement revoking my authority.

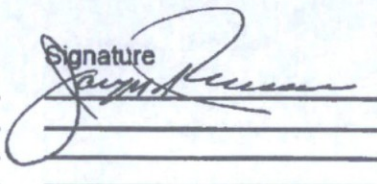
5. I will immediately deliver to the general manager of the City of Scottsdale Planning and Development Services Department written notice of any change in the ownership of the land or in my authority to act for the owner.

6. If more than one person signs this affidavit, each of them, acting alone, shall have the authority described in this affidavit, and each of them warrant to the City of Scottsdale the authority of the others.

7. Under penalty of perjury, I warrant and represent to the City of Scottsdale that this affidavit is true and complete. I understand that any error or incomplete information in this affidavit or any applications may invalidate approvals or other actions taken by the City of Scottsdale, may otherwise delay or prevent development of the land and may expose me or the owner to other liability. I understand that people who have not signed this form may be prohibited from speaking for the owner at public meetings or in other city processes.

Name (printed)
JOE MASLICK

Date
4/22, 2016
_____, 20____
_____, 20____
_____, 20____

Signature


April 21, 2016

Via Hand-Delivery, to:

City of Scottsdale
Planning & Development Services Department
7447 East Indian School Road, Suite 105
Scottsdale, Arizona 85251

Re: Letter of Authorization – 279-PA-2016 (Desert Mountain – Parcel 19)

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