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VIRLYNA TINNELL  
SUPERIOR COURT CLERK

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2 1803 E. Lipan Circle  
3 Fort Mohave, AZ 86426  
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6 Plaintiff Pro Per

7 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**  
8 **IN AND FOR THE COUNTY OF MOHAVE**

9 NANCY KNIGHT,

10 Plaintiff,

11 vs.

12 GLEN LUDWIG AND PEARL LUDWIG,  
13 TRUSTEES OF THE LUDWIG FAMILY  
14 TRUST; FAIRWAY CONSTRUCTORS, INC.;  
15 MEHDI AZARMI; JAMES B. ROBERTS  
16 AND DONNA M. ROBERTS, HUSBAND  
17 AND WIFE; JOHN DOES 1-10; JANE DOES  
18 1-10; ABC CORPORATIONS 1-10; AND XYZ  
19 PARTNERSHIPS 1-10.

20 Defendants.

CASE NO.: CV 2018-04003

21 **MOTION FOR COURT**  
22 **CLARIFICATION OF RATIONALE**  
23 **FOR DISMISSAL OF COUNT ONE**

24 **Assigned to the Hon. Judge Jantzen**

25 COMES NOW Nancy Knight, Plaintiff Pro Per, requesting the Court to clarify the  
26 logic for dismissal of all of Count One of her January 2018 Complaint. On August 12,  
27 2020 the Plaintiff expected to assist the Court with understanding her pleadings and  
28 accompanying authorities that the Court didn't have time to review. Instead, the Court  
had already made the decision that he was not going to change his ruling on the issue  
of the Count One dismissal. Count One involves violations in Tract 4076-A, threatened  
and attempted violations in Tract 4076-A, threatened and attempted violations in  
Tract 4076-B, and threatened and attempted violations in Tract 4076-C. Courts rule on



1 law, language, and intent in CC&R cases. They do not rule on assumption. For this  
2 reason, this court's logic will be different than the logic of Court's past. Plaintiff is  
3  
4 at a loss as to how to proceed to Appeal in the absence of the current Court's rationale for  
5 dismissal of the entire Count One of her Complaint.

6 Plaintiff respectfully requests clear and specific language for the Court's ruling  
7  
8 demonstrating his decision is based on real evidence in the file, the rule of law, the  
9 language in the CC&Rs for Subdivision Tract 4076, and the language in the Complaint  
10 for Count One that includes the attempted violation in Tract 4076-B where the Court had  
11 adjudicated Plaintiff's right to prosecution and yet has taken that right away without  
12  
13 logic.

14 **MEMORANDUM OF POINTS AND AUTHORITIES**

15 Count One involves two prosecutorial rights for setbacks. Actual setback  
16  
17 violations in Tract 4076-A and the threatened and attempted setback violations  
18 orchestrated by Defendant Azarmi through BOS Res. 2016-125 for all lots in Subdivision  
19 Tract 4076 including those lots in Tract 4076-B. Plaintiff has been granted rights to  
20 prosecute violations, threatened and attempted violations in Tract 4076-B. Plaintiff's  
21 January 2018 Complaint included the attempted violation in Tract B and yet the prior  
22 court dismissed Count One entirely thereby prejudicing the case in favor of the  
23  
24 defendants.

25  
26 Judge Carlisle's transcript language is conflicting. First he rules that the dismissal  
27 of Count One was only for the home owned by the Roberts. Then he rules that the  
28

1 dismissal is for all of Count One. He repeatedly avoided the Plaintiff's questions on her  
2 ability to prosecute the attempted violation in Count One. Judge Carlisle's words on April  
3 2, 2018 as taken from the Reporter's Partial Transcript of Proceedings together with the  
4 language from the Plaintiff's ALLEGATIONS COMMON TO ALL COUNTS and  
5 paragraphs from COUNT ONE for these ALLEGATIONS as found in the Complaint  
6 filed on January 22, 2018 follows below:  
7

8  
9 ALLEGATION Paragraph 35.

10 "... Had it not been for the plan to try to reduce setbacks in the  
11 entire Desert Lakes Community, Azarmi and Ludwig would most likely  
12 have gone about their business of violating the CC&Rs one home at a  
13 time..." Emphasis supplied.

14 Count One paragraph 53.

15 "Over one hundred property owners signed up with the County for  
16 setback reductions through a proposed BOS Resolution Amendment  
17 as raised by Azarmi ..." Emphasis supplied.

18 This threatened and attempted setback reduction attack was a violation of  
19 Covenant 20 for Tract 4076-B (Feb. 2 supra exhibit 3) and Covenant 19 for A and C  
20 (Exhibit 2 attached for Tracts A and C). The language in Plaintiff's ALLEGATIONS and  
21 COUNT ONE refers to the threatened and attempted violation by Defendant Azarmi who  
22 has been proven to be the proponent of BOS Res. 2016-125. Dismissal of the threatened  
23 and attempted violation in Count One prejudices a significant issue in the case against the  
24 Plaintiff's rights.

25 ALLEGATION Paragraph 36

26 "A postmark of June 16, 2016 shows that after the May 18, 2016  
27 BOA meeting where Azarmi had raised the issue of bundling the  
28 Desert Lakes properties for a BOS Resolution Amendment, the  
County began the very expensive process of petitioning every

1 property owner in Desert Lakes asking for a signed Waiver to  
2 release the County of any liability for diminished property values  
3 as a result of requesting setback reductions for their parcel. ..”

4 Plaintiff submits Exhibit 2 that is a copy of the June 16, 2016 envelope proving  
5 this offer to opt-in was addressed to the Plaintiff’s home in Tract 4076-B. The attempted  
6 violation therefore occurred in Tract B. Supra exhibit 2b of email correspondence  
7 regarding evaluation of her lot for an RV garage had she opted-in is found in her Dec. 6,  
8 2019 MSJ Response. Had Plaintiff opted-in and built the RV garage she would have been  
9 at risk of a law suit for violating servitude 6 (Book 1641, Page 897) for a twenty-foot  
10 front yard setback (Supra exhibit 3 found in her Feb. 2, 2018 Response to MSJ).

11  
12  
13 Supra exhibit 1a is the Reporter’s Partial Transcript of Proceedings that is found in  
14 the Dec. 6, 2019 Response to MSJ for the Court’s review that demonstrates the Plaintiff  
15 repeatedly inquired of Judge Carlisle of her right to prosecute the attempted violation.  
16  
17 The judge kept avoiding an answer to the issue.

18 From lines 5 and 6 on page 4 of the Transcript, Judge Carlisle  
19 reiterates language from the CC&Rs

20 “...it says the violation or threatened or attempted violation...”.

21 From line 14 on page 7 of the Transcript the judge says:

22  
23 “I am granting the Motion to Dismiss with respect to count 1  
24 which deals with a particular lot, apparently the lot owned by the  
25 Roberts at this point in time... she has the authority to assert  
26 violations or signage or other violations in Tract 4076-B.” Emphasis  
27 supplied.

28 Clearly the Court recognized the Plaintiff’s authority to assert the threatened and  
attempted violations as a part of Count One of the Complaint which is proven to include

1 Tract B. It is also common sense that if BOS Res. 2016-125 applied to the entire  
2 Subdivision Tract 4076, then it applied to the lots in Tract B.

3  
4 ALLEGATIONS Paragraph 37.

5 “Those one hundred eighty (180) parcel numbers were published,  
6 signage was posted at each lot, and scheduling began for public  
7 hearings before the County Planning Commission. The final vote  
8 before the BOS was scheduled for October 3, 2016.” Emphasis supplied.

9  
10 ALLEGATIONS Paragraph 42.

11 Plaintiff, in an effort to protect her own property value, and all  
12 property owner’s values in the Desert Lakes Golf Course and  
13 Estates subdivision from a change in setback restrictions, suffered  
14 time and expenses of investigation of the proposed BOS Resolution  
15 Amendment. Upon a clear understanding of the impact the BOS  
16 Resolution would have on property values and views for adjacent  
17 lots, plus the lack of full-disclosure of the legal risk for property  
18 owners who unknowingly took advantage of the setback reduction,  
19 the Plaintiff composed a letter to the BOS and read it to the BOS in  
20 Kingman on October 3, 2016.” Emphasis supplied.

21  
22 Count One paragraph 56.

23 “As a result of Defendants CC&R setback violations, Plaintiff  
24 is entitled to injunctive relief, compensation for her expenses in  
25 this matter, and for any costs as a result of retaliation from  
26 Defendants or their political allies in bringing forth this Complaint.  
27 Azarmi’s egregious acts caused substantial emotional and physical  
28 distress to the Plaintiff who found herself having to spend hours of  
sleepless nights conducting research, writing letters and emails,  
and making a presentation before the Mohave County Board of  
Supervisors in Kingman, Arizona ...” Emphasis supplied.

It is clear that in Count One, the Plaintiff fully intended to be compensated for her  
efforts in the denial of the threatened and attempted setback reduction that was  
orchestrated by Defendant Azarmi.

Transcript page 8 lines 1-9 Plaintiff says:

“So the attempt -- may I, Your Honor? So the attempt to  
violate that happened under the BOS Resolutions that Mehdi --

1 I mean, he gave presentations and everything, that -- that is still  
2 -- I have authority for that, right? I think that's what you just said."  
3 Emphasis supplied.

4 THE COURT: "All I'm saying is I granted with respect to count 1,  
5 I'm denying with respect to count 2 because you do have the  
6 authority I am finding to -- limited to things that happen in 4076-B."

7 It is clear the Carlisle Court did not answer the Plaintiff. The attempted setback  
8 violation occurred in Tract 4076-B as well as in A and C. The entire Count One should  
9 not have been dismissed with prejudice.

10 Transcript page 10, lines 6 to the end of the hearing demonstrates  
11 the Plaintiff is clearly attempting to understand her rights.  
12 The judge says, "Anything else, Ms. Knight?"

13 Plaintiff replies, "Probably, but I just -- can I confirm what  
14 I think the understanding is? In the CC&R's it says "attempted  
15 or threatened violation," and that's what Mehdi did when he went  
16 before the planning commission and then the Board of Supervisors  
17 to try to get anybody who wanted the setback reduction in the  
18 whole project, the whole Desert Lake Golf Course and Estates  
19 subdivision. I can proceed with that part of my complaint?  
20 I think that's what you said."

21 Again, the Court avoids answering the Plaintiff. The court answers,

22 "All I said is that count 1 is dismissed... Count 1 is the setback  
23 with respect to the house."

24 Transcript page 12, line 6 the Court changes his ruling  
25 "I have dismissed all of Count 1".

26 The Court erred on many levels. He rushed the Oral Arguments. He did not follow  
27 the language of the Complaint. He prejudiced his ruling to favor Mr. Oehler's clients.

28 Judge Carlisle also erred in his ruling regarding the definition of subdivision that  
did not follow Arizona Law. He erred in failing to read and understand the differentiated

1 language of subdivision, said tract, and neighborhood used in the Declarations of the  
2 Covenants, Conditions and Restrictions. Legal definitions for subdivision and  
3 neighborhood as used in the CC&Rs applied to all said tracts A, B, and C.  
4

5 The Arizona Revised Statute Title 9 definitions for cities and towns are the most  
6 clear and concise statute definitions for subdivisions in Arizona Law. These are the  
7 definitions that were followed by Mohave County Planning and Zoning and the Board of  
8 Supervisors as we can see from the evidence already submitted of the 1988 Preliminary  
9 Plat that created Subdivision Tract 4076 with four phases of planned development for the  
10 300+ acre master planned community.  
11

### 12 **Subdivision Definitions from Arizona Law**

#### 13 **Cities and Towns § 9-463 Definitions**

#### 14 6. "Plat" means a map of a subdivision:

15 (a) "Preliminary plat" means a preliminary map, including  
16 supporting data, indicating a proposed subdivision design  
17 prepared in accordance with the provisions of this article and  
18 those of any local applicable ordinance.

19 (b) "Final plat" means a map of all or part of a subdivision  
20 essentially conforming to an approved preliminary plat, prepared  
21 in accordance with the provision of this article, those of any local  
22 applicable ordinance and other state statute.

23 (c) "Recorded plat" means a final plat bearing all of the  
24 certificates of approval required by this article, any local  
25 applicable ordinance and other state statute.

#### 26 **Arizona Law §11-831. Review of land divisions; definitions**

27 A. The board of supervisors ...of each county may adopt  
28 ordinances and regulations pursuant to this section...

G. For any subdivision that consists of ten or fewer lots, tracts  
or parcels, each of which is of a size as prescribed by the board

1 of supervisors, the board of supervisors of each county may  
2 waive the requirement to prepare, submit and receive approval  
3 of a preliminary plat as a condition precedent to submitting a  
4 final plat ... Emphasis supplied.

5 **Mohave County Land Division Regulation page 37 section 3.8**  
6 **Final Plat (Text below underscored for emphasis)**

7 A. Purpose.

8 The final plat serves as the legal document that, upon recordation,  
9 establishes the official survey and platting of a subdivision. The  
10 final plat shall include all detail necessary to accurately and  
11 completely establish the lots, parcels, rights-of-way, easements,  
12 common areas, street names and numbering, dimensions, bearings,  
13 and monumentation of all elements included in the subdivision design,  
14 and shall also effect the dedication of any public roadways or parcels,  
15 any private roadways or parcels, and the granting of any easements.

16 B. Final Plat Processing.

- 17 1. The initial submittal of a Final Plat of a subdivision, or Final Plats  
18 for phases thereof, and corrected Final Plats, must be submitted for  
19 processing within six (6) years following the approval of a preliminary  
20 plat by the Board of Supervisors. Additional extensions of time to  
21 submit the initial or corrected Final Plats will be based on the  
22 Approved Preliminary Plat period of approval, as it may be extended.  
23 This Paragraph does not apply to Type II, Condominium or  
24 Commercial subdivisions.
- 25 2. Final Plats shall be prepared by or under the direction and supervision  
26 of the project surveyor and project engineer, and shall be issued under  
27 their seals and signatures.
- 28 3. The layout and design of the subdivision final plat shall substantially  
conform to the approved preliminary plat. These may include the  
correction of dimensions, bearings, and other technical information;  
the addition to or the deletion from the plat of minor easements; or  
other similar minor adjustments, which in the determination of the  
Director do not adversely impact or materially affect the  
subdivision design.
4. For each proposed phase in an approved preliminary plat (tract), a  
separate final plat must be submitted for review and processing.
5. A final plat shall be submitted for each proposed phase. Each  
subdivision phase must be able to function independently when  
constructed according to the Land Division Regulations. Each



1 subdivision phase shall be identified by an alphabetical suffix starting  
2 with the letter “A,” and with each final plat using the basic, assigned  
3 tract number. Sub-phasing of subdivisions (and any submittal  
4 component thereof), e.g., “Tract 1234-A1,” is prohibited by these  
5 regulations.

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6. The final plat shall be prepared in accordance with these regulations and any other applicable regulation, ordinance, state, or federal law.

**Neighborhood refers to the region near some place.**

In *Commonwealth v. Turner*, 2 Va. Cir. 267 (Va. Cir. Ct. 1954), the court held that “neighborhood means the neighborhood in which the party resides, which includes where he moves and circulates and transacts his business, and attends church, stores, mill and mixes generally with the people in the usual calls of life, and is best known, not extending to any great number of miles, and not extending beyond the same immediate section of his residence, and such acquaintances must be within that limit”.

The differentiated language between subdivision (Tract 4076), neighborhood, and said tract for the alphabetical suffix appended to Tract 4076 are consistent in the three relevant Tract 4076 Declarations of Covenants, Conditions and Restrictions (CC&Rs) for the four phases of development displayed on the 1988 approved Preliminary Plat (supra exhibit 2 in Motion for Reconsideration May 2020). Tract 4076-A is from phase I of the approved Preliminary Plat for Subdivision Tract 4076. Tract 4076-B is the combined phase II and III of the approved Preliminary Plat for Subdivision Tract 4076. Tract 4076-C is phase IV of the approved Preliminary Plat for Subdivision Tract 4076. All in accordance with the Land Division Regulation 3.8 for Final Plats.

On March 20, 2020, Plaintiff filed a Motion to set aside Dismissal of Count One for Fraud Upon the Court. For over two years the Defendants, developers themselves, withheld knowledge and disclosure that the alphabetically suffixed names were not

1 the names of separate Desert Lakes Golf Course and Estates subdivisions. Desert Lakes  
2 Golf Course and Estates is one subdivision in accordance with Arizona Law. The  
3 Defendants' own Fairway Estates Subdivision Tract 4097 was built in phases with  
4 alphabetically suffixed tract names and has an HOA for the entire subdivision: Phase I  
5 Tract 4097-A, Phase II Tract 4097-B, Phase III Tract 4097-C, Phase IV Tract 4097-D. 2<sup>nd</sup>  
6 Amended Tract 4097-E, Phase I Amended Tract 4148A, Phase II Tract 4148B, and Tract  
7  
8 4157. Whether the Court moves to prosecute the Defendants for Fraud Upon the Court or  
9  
10 not, Plaintiff fully expects the Court to consider this evidence as support for Plaintiff's  
11  
12 claim that Desert Lakes Golf Course and Estates is one subdivision as he reviews the  
13  
14 differentiated language used in the Declaration, Article I and Article II of the CC&Rs.

15 The logic of Judge Carlisle in ruling that the language of subdivision in the  
16  
17 covenant for prosecution rights referred to said tract A for the Robert's home is a patently  
18  
19 false premise and not consistent with the rule of law for defining a subdivision. Desert  
20  
21 Lakes Development L.P., who developed Desert Lakes Golf Course and Estates, knew  
22  
23 the preliminary plat created the subdivision as Tract 4076. They knew the Final Plat with  
24  
25 an alphabetical suffix only identified a phase of development from within the  
26  
27 subdivision. They differentiated the language of subdivision, said tract, and neighborhood  
28  
29 in the CC&Rs accordingly in the Declaration section and in Article I for the Architectural  
30  
31 Committee and in Article II for Land Use.

32 Transcript page 3 excerpts from lines 17-24 the judge says,  
33 "The basis for Mrs. Knight having the authority to bring a  
34 claim... the authority to file this suit against somebody who

1 lives in ...I think, everybody agrees in a different tract at least".  
2 Emphasis supplied.

3 To be clear, everyone does NOT agree that the Plaintiff lives in a different tract  
4 from the Roberts. The Board of Supervisors and Development Services identify the  
5 Plaintiff's tract as Desert Lakes Golf Course and Estates Subdivision Tract 4076. See the  
6 Board of Supervisors Denial of the attempted violation in Res. 2016-125 for Desert Lakes  
7 Golf Course and Estates Subdivision Tract 4076 (supra exhibit 2d from the Dec. 6, 2019  
8 Response to MSJ). BOS Res. 93-122 clarified that all lots in Subdivision Tract 4076 had  
9 Special Development Zoning for twenty-foot setbacks front and rear. (supra exhibit 2c  
10 from the Dec. 6 file). See the 1988 approved Preliminary Plat assigning the tract name as  
11 Desert Lakes Golf Course and Estates Subdivision Tract 4076 in accordance with  
12 Arizona Law (supra exhibit 2 May 2020 Reconsideration). The Subdivision is Tract 4076  
13 and all property owners have prosecution rights in this entire subdivision pursuant to  
14 consistent language in the three CC&Rs (A, B, and C) regardless of the timing of the  
15 Final Plat for a phase of development within the Subdivision where their home is  
16 situated.

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19  
20  
21 Alphabetically suffixed Tract 4076-A, Tract 4076-B, Tract 4076-C, Tract 4076-D,  
22 Tract 4076-E, and Tracts 4132 and 4163 are separate identifiers only for the purpose of  
23 identifying the lots in Subdivision Tract 4076. They are not separate subdivisions from  
24 Subdivision Tract 4076. Monuments identifying the subdivision do not display an  
25 alphabetical suffix. Monuments of carved stone display Desert Lakes Golf Course and  
26 Estates. The entire 300+ acres is one subdivision and is a master planned community. A  
27  
28

1 photograph of the monument is in the court's file as taken at the entrance to the Plaintiff's  
2 street (supra exhibit 7 May 2020 Reconsideration).

3  
4 Transcript page 4 from lines 9-12 the judge says, "...any person  
5 or persons owning real property located within the subdivision to  
6 prosecute proceedings at law or in equity against all persons  
violating or attempting to violate." Emphasis supplied.

7  
8 Transcript page 4 excerpt from lines 13-18. The judge says, "So  
9 basically it's limited to all persons who -- or any person owning  
10 real property located within the subdivision. And within the  
CC&R's ...It doesn't necessarily define subdivision, what is  
meant by subdivision. Emphasis supplied.

11 Arizona Law defines subdivision as being created by an approved Preliminary  
12 Plat. The partners of Desert Lakes Development L.P. knew what was meant by  
13 subdivision. In the CC&Rs, they used differentiated language for the subdivision from  
14 the language describing the lots within the phases of development for A, B, and C.  
15 Neighborhood was used to define unacceptable behaviors that were to extend even  
16 beyond the subdivision boundaries (Article II, 2.) Specific use of the word subdivision in  
17 all three CC&Rs was used in Article I for the possible election of three property owners  
18 in the subdivision to replace the three specifically named members of the Architectural  
19 Committee, for property owners to form a corporation for the subdivision, for property  
20 owners to prosecute violations, to protect the CC&Rs through a the non-waiver provision,  
21 and to prohibit private wells in the subdivision. For the majority of the covenants,  
22 subdivision is inferred by consistent use of the language in all three CC&Rs as for lot size  
23 that is also specified by BOS Resolution for the entire subdivision, fences, animals,  
24 weeds, signs, indoor toilets, storage, water flow, forbidden multifamily dwellings, strictly  
25  
26  
27  
28

1 residential use, life of the CC&Rs, invalidation by court order, conflicts with zoning or  
2 current law, and the grammatical change provision. Only in minor cases was it necessary  
3 to call out an alphabetical suffix and refer to it as the said tract such as in the five opening  
4 paragraphs of the Declaration for each Tract 4076-A, B, and C, and in Article I for who  
5 shall serve on the Architectural Committee and their term of service, and in Article II for  
6 building specifications and to call out the blocks and lot numbers associated with each  
7 specific phase of development.  
8  
9

10 Transcript page 5 line 12 and 14-18 the judge says, "...it  
11 seems clear to me that the intent of the Codes, Covenants, and  
12 Restrictions is to define a subdivision as a tract...So a tract  
13 4076-A is a subdivision, Tract 4076-B is a subdivision for  
14 purposes of the CC&R's. And, again, that is what I am focused  
on in my analysis is are the tracts the subdivision or is the whole  
community a subdivision. Emphasis supplied.

15 Judge Carlisle should have followed Arizona Law for the definition of subdivision  
16 and focused his attention on the covenant language as described above. Instead he  
17 focused his ruling on the irrelevant language of the short-term life of the Architectural  
18 Committee rather than the possibility of the long-term possibility of elected property  
19 owners in the subdivision to take over for those assigned by the Declarant or for the  
20 possibility of property owners in the subdivision to form a corporation. In Judge  
21 Carlisle's view it would have been possible to have three or four separate Architectural  
22 Committees with varying subjective variance authority depending on an area defined as a  
23 phase of development. This view is not appropriate as varying opinions in three or four  
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1 said tracts would not result in development that was consistent for the intent of the master  
2 plan.

3  
4 Most precedent setting cases in Arizona, if not all of these cases, involve an HOA.  
5 Desert Lakes Subdivision Tract 4076 never had an HOA and the Architectural  
6 Committee did not have prosecutorial rights. In the eyes of the law, unless property is  
7 held in the name of a committee, they do not have rights to prosecute violations.  
8

9 In CC&R matters, courts look to the Restatement (Third) of Property.

10 In *Powell v Washburn*, Arizona 2006, the Supreme Court  
11 adopted the approach of Restatement (Third) of Property.

12 In *Duffy v. Sunburst Farms E. Mut.*, Arizona 1979, “Words  
13 in a restrictive covenant must be given their ordinary meaning,  
14 and the use of the words within a restrictive covenant gives  
15 strong evidence of the intended meaning”.

16 Restatement (Third) of Property: “[a] servitude should be  
17 interpreted to give effect to the intention of the parties  
18 ascertained from the language used in the instrument, or the  
19 circumstances surrounding creation of the servitude, and to carry  
20 out the purpose for which it was created.”

21 The setback servitudes are consistent for all lots in the subdivision and the intent  
22 for setbacks to apply to the entire Subdivision Tract 4076 is clear from CEO Passantino’s  
23 unrelenting clarification for Special Development Zoning for a twenty-foot setbacks,  
24 front and rear, in the 1993 Res. 93-122 (supra exhibit 2c Dec. 6, 2019). He clarified for  
25 Development Services that all lots in Desert Lakes Golf Course and Estates Tract 4076  
26 were to have these setback restrictions after he was approved for a 23 lot split for Parcel  
27 VV as Tract 4076-E in 1991 (supra exhibit 4 from the May 2020 Reconsideration).  
28

1 The language in the CC&Rs and conduct of CEO Frank Passantino of Desert  
2 Lakes Development supports a Court ruling favoring the Plaintiff for reversal of  
3 the dismissal of Count One. A preponderance of evidence exists for the Court to allow  
4 the Plaintiff to pursue litigation for Count One for the one home in Tract 4076-A with  
5 setback violations and for the attempted setback violation by Defendant Azarmi.  
6

7  
8 If the Court disagrees and believes Plaintiff's research and case precedents do not  
9 apply, then Plaintiff respectfully requests the Court's rationale for dismissal of the  
10 Robert's home and dismissal of the attempted and threatened violations.  
11

12 Plaintiff also requests clarification of why none of the Defendants' three attempts  
13 at dismissal did not require them to notice indispensable parties. In the first motion to  
14 dismiss, which predicated the dismissal of Plaintiff's Count One, Mr. Oehler presented an  
15 argument that Plaintiff had no standing because Parcel VV was abandoned from the  
16 subdivision, which it was not. At a minimum, 23 other Parcel VV lot split property  
17 owners were to be affected by Judge Carlisle's decision and yet indispensable parties  
18 were not required to be noticed by the Defendants. Today, Plaintiff's dismissal argument  
19 presented to this court affects over 600 indispensable parties in the subdivision and this  
20 Court has ruled that indispensable parties are not required to be noticed. Plaintiff  
21 respectfully asks, "Why not"?  
22  
23  
24

25 RESPECTFULLY SUBMITTED this 17th day of August, 2020.

26   
27 NANCY KNIGHT  
28 Plaintiff Pro Per

1 **List of References Attached**

2 Exhibit 1: CC&R Tract 4076-A (7 pages) and CC&R Tract 4076-C (7 pages)

3 Note: Above CC&Rs provided to Mr. Oehler in Plaintiff's 1<sup>st</sup> Supplemental Disclosure

4 Exhibit 2: Copy of the envelope postmarked June 16, 2016 for the attempted setback  
5 reduction offer packet - Res. 2016-125 Note: PDF Emailed to Mr. Oehler

6 **Supra Exhibits: Where found with Exhibit number in parentheses**

7 Complaint – filed January 22, 2018

8 Plaintiff's Response to Defendant's MSJ Feb. 2, 2018

9 (3) CC&R Tract 4076-B (7 pages)

10 Response to Defendant's Dec. 6, 2019 MSJ

11 (1a) Reporter's Partial Transcript of Proceedings held on April 2, 2018

12 (2b) Emails RV garage inquiry

13 (2c) Res. 93-122

14 (2d) BOS Res.2016-125 Denial

15 Motion for Reconsideration May 2020

16 (2) 1988 Preliminary Plat – 2 pages

17 (4) Tract 4076-E – Resolutions and plat

18 (7) Photo of Carved Stone Monument of the Subdivision –

19  
20  
21 COPY of the foregoing emailed on this 17th day of August 2020 to:

22 [djolaw@frontiernet.net](mailto:djolaw@frontiernet.net)

23  
24 Attorney for Defendants

25 Daniel J. Oehler, Esq.

26 Law Offices of Daniel J. Oehler

27 2001 Highway 95, Suite 15

28 Bullhead City, Arizona 86442



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**Exhibit 1**  
**CC&Rs for Tracts A and C**



PROOFED

RECORDED IN OFFICIAL RECORDS OF MOHAVE COUNTY, ARIZONA

JUN 2 '89 - 8 00 AM

Jane McCull County Recorder FEE 11.00 PGS 10/7

447

1

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

DESERT LAKES GOLF COURSE & ESTATES 4076-A

MOHAVE COUNTY, ARIZONA

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION made and entered into this 15th day of May, 19 89, by LAWYERS TITLE AGENCY, INC., an Arizona corporation, as Trustee, under Trust No. 1033 hereinafter designated "The Declarant" which holds the lands hereinafter referred to as the Trustee for the benefit of DESERT LAKES DEVELOPMENT L. P., a Delaware Limited Partnership.

WHEREAS, the Declarant is the owner of DESERT LAKES GOLF COURSE & ESTATES, TRACT 4076-A, County of Mohave, State of Arizona, as per plat thereof recorded on the 2 day of JUNE 2008 19 89 at Fee No. 89 26062, and

WHEREAS, the Declarant intends to sell, dispose of or convey from time to time all or a portion thereof the lots in said Tract 4076-A and desires to subject the same to certain protective reservations, covenants, conditions and restrictions between it and the acquirers and/or users of the lots in said tract.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Declarant hereby certifies and declares that it has established and does hereby establish a general plan for the protection, maintenance, development and improvement of said tract, and that this declaration is designed for the mutual benefit of the lots in said tract and Declarant has fixed and does hereby fix the protective conditions upon and subject to which all lots, parcels and portions of said tract and all interest therein shall be held, leased or sold and/or conveyed by the owners or users thereof, each and all of which is and are for the mutual benefit of the lots in said tract and of each owner thereof, and shall run with the land, and shall inure to and pass with each lot and parcel of land in said tract, and shall apply to and bind the respective successors in interest thereof, and further are and each thereof is imposed upon each and every lot, parcel or individual portion of said tract as a mutual equitable servitude in favor of each and every other lot, parcel or individual portion of land therein as the dominant tenement.

Every conveyance of any of said property or portion thereof in Tract 4076-A, shall be and is subject to the said Covenants, Conditions and Restrictions as follows:

ARTICLE I

COMMITTEE OF ARCHITECTURE

Declarant shall appoint a Committee of Architecture, hereinafter sometimes called "Committee", consisting of three (3) persons. Declarant shall have the further power to create and fill vacancies on the Committee. At such time that ninety percent (90%) of the lots within the subdivision have been sold by Declarant, or within one year of the issuance of the original public report, whichever occurs first, the owners of such lots upon request to the Committee may elect three members therefrom to consist of and serve on the Committee of Architecture.

UNPROVED

Nothing herein contained shall prevent Declarant from assigning all rights, duties and obligations of the Architecture Committee to a corporation organized and formed for and whose members consist of the owners of lots within this subdivision.

Notwithstanding anything hereinbefore stated, architectural review and control shall be vested in the initial Architecture Committee composed of ANGELO RINALDI, FRANK PASSANTINO AND STERLING VARNER until such time as ninety percent (90%) of the lots in Tract 4076-A have been sold by Declarant, or within one year of the issuance of the original public report, whichever occurs first. The initial address of said Committee shall be P.O. BOX 6396 Mohave Valley, AZ 86440. Any and all vacancies during such period shall be filled on designation by DESERT LAKES DEVELOPMENT L. P.

No building, porch, fence, patio, ramada, awning or other structure shall be erected, altered, added to, placed upon or permitted to remain upon the lots in Tract 4076-A, or any part of any such lot, until and unless the plan showing floor areas, external designs and the ground location of the intended structure, along with a plot plan and a fee in the amount set by the Committee but not less than TEN DOLLARS AND NO/100 (\$10.00) nor more than ONE HUNDRED DOLLARS AND NO/100 (\$100.00) have been first delivered to and approved in writing by the Committee of Architecture.

It shall be the general purpose of this Committee to provide for maintenance of a high standard of architecture and construction in such manner as to enhance the aesthetic properties and structural soundness of the developed subdivision.

The Committee shall be guided by, and, except when in their sole discretion good planning would dictate to the contrary, controlled by this Declaration. Notwithstanding any other provision of this Declaration, it shall remain the prerogative within the jurisdiction of the Committee to review applications and grant approvals for exceptions or variances to this Declaration. Variations from these requirements and in general other forms of deviations from these restrictions imposed by this Declaration may be made when and only when such exceptions, variances and deviations do not in any way detract from the appearance of the premises, and are not in any way detrimental to the public welfare or to the property of other persons located within the tract, all in the sole opinion of the Committee.

Said Committee, in order to carry out its duties, may adopt reasonable rules and regulations for the conduct of its proceedings and may fix the time and place for its regular meetings and for such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for inspection to any lot owners upon the consent of any one of the members of said Committee. Said Committee shall by a majority vote elect one of its members as chairman and one of its members as secretary and the duties of such chairman and secretary appertain to such offices. Any and all rules or regulations adopted by said Committee regulating its procedure may be changed by said Committee from time to time by a majority vote and none of said rules and regulations shall be deemed to be any part or portion of this Declaration or the conditions herein contained.

The Committee shall determine whether the conditions contained in this Declaration are being complied with.

ARTICLE II

LAND USE

A. General

1. All buildings erected upon the lots within the subdivision shall be of new construction. All such buildings must be completed within twelve (12) months from the commencement of construction. Mobile homes and all structures built, constructed or prefabricated off the premises are expressly prohibited, including but not limited to modular or manufactured structures and existing structures.

2. No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

3. No lot shall be conveyed or subdivided smaller than that shown or delineated upon the original plat map, but nothing herein contained shall be so construed as to prevent the use of one lot and all or a fraction of an adjoining lot as one building site, after which time such whole lot and adjacent part of the other lot shall be considered as one lot for the purposes of these restrictions.

4. All buildings on lots not adjacent to the golf course being Lots 12 and 79, Block A, Lots 12, 17, 18, 19, 20, 21, 32, 46, 47, 48, 49, 50, 51, and 55, Block B, Lots 1 thru 14 Block C, Lots 1 & 2 Block D, and Lots 2, 18, 21, 24, 25, 26, and 27, Block E, shall have a minimum of one thousand two hundred (1,200) square feet of living space, exclusive of garages, porches, patios and basements. Buildings on all other lots, being those lots adjacent to the golf course, in Tract 4076-A shall have a minimum of one thousand four hundred (1,400) square feet of living space, exclusive of garages, porches, patios and basements. No construction shed, basement, garage, tent, shack, travel trailer, recreational vehicle, camper or other temporary structure shall at any time be used as a residence.

5. All buildings shall have: (i) a maximum building height of Thirty (30) feet from the surface of the lot to the peak of the highest projection thereof; (ii) no more than two stories; (iii) no exposed radio, radio-telephone, television or microwave receiving or transmitting antennas, masts or dishes; (iv) a closed garage with interior dimensions of no less than twenty (20) feet; (v) on any roof visible from ground level at any point within Tract 4076-A as its exposed visible surface, clay, concrete or ceramic tile, slate, or equal as may be approved by the Committee on Architecture.

6. All buildings and projections thereof on lots not adjacent to the golf course being Lots 12 and 79, Block A, Lots 12, 17, 18, 19, 20, 21, 32, 46, 47, 48, 49, 50, 51, and 55, Block B, Lots 1 thru 14 Block C, Lots 1 and 2 Block D, and Lots 2, 18, 21, 24, 25, 26, and 27 Block E, shall be constructed not less than twenty feet (20') back from the front and rear property lines and five feet (5') from side property lines. All buildings and projections thereof on all other lots of Tract 4076-A, being those lots adjacent to the golf course shall be constructed not less than twenty feet (20') from the front and rear property lines and five feet (5') from the side property lines.

7. Fences and walls shall not exceed six (6) feet in height and shall not be constructed in the street set back area (being twenty feet (20') from the front property line). Fences and walls visible from the street must be decorative and shall not be of wire or chain link, or topped with barbed wire, except that on all lots adjacent to fairway lots the rear fences shall

be of wrought iron construction for a total fence height of five feet (5') black in color which shall continue along the side lot line for a distance of twenty feet (20'). Access to the golf course from lots adjacent to the golf course is prohibited.

8. No individual water supply system (private well) shall be permitted on any lot in the subdivision.

9. No animals, livestock, birds or poultry of any kind shall be raised, bred or kept on any lot, provided, however, that personal pets such as dogs, cats or other household pets may be kept, but shall be fenced or leashed at all times.

10. No lot shall be used or allowed to become in such condition as to depreciate the value of adjacent property. No weeds, underbrush, unsightly growth, refuse piles, junk piles or other unsightly objects shall be permitted to be placed or to remain upon said lot. In the event of any owner not complying with the above provisions, the corporation whose members are the lot owners, Declarant, or its successor and assigns, shall have the right to enter upon the land and remove the offending objects at the expense of the owner, who shall repay the same upon demand, and such entry shall not be deemed a trespass.

11. No sign, advertisement, billboard or advertising structure of any kind shall be erected or allowed on any of the unimproved lots, and no signs shall be erected or allowed to remain on any lots, improved or otherwise, provided, however, that an owner may place on his lot "For Sale" signs, "For Lease" signs or "For Rent" signs so long as they are of reasonable dimensions.

12. All dwellings shall install water flush toilets, and all bathrooms, toilets or sanitary conveniences shall be inside the buildings constructed on said property. All bathrooms, toilets or sanitary conveniences shall be connected to central sewer. Septic tanks, cesspools and other individual sewage systems are expressly prohibited.

13. The storage of inoperative, damaged or junk motor vehicles and appliances and of tools, landscaping instruments, household effects, machinery or machinery parts, boats, trailers, empty or filled containers, boxes or bags, trash, materials, including used construction materials, or other items that shall in appearance detract from the aesthetic values of the property shall be so placed and stored to be concealed from the view of the public right-of-way and adjacent landowners. Trash for collection may be placed at the street right-of-way line on regular collection days for a period not to exceed twelve hours prior to pickup.

14. Under no circumstances shall any owner of any lot or parcel of land be permitted to deliberately alter the topographic conditions of his lot or parcel of land in any way that would permit additional quantities of water from any source other than what nature originally intended to flow from his property onto any adjoining property or public right-of-way, or redirect the flow.

15. No person shall use any premise in any land use area, which is designed, arranged or intended to be occupied or used for any purpose other than expressly permitted in this Declaration as set forth herein and in part "B" hereof. Multiple family dwellings, including apartments, condominiums, town houses and patio homes are expressly forbidden.

16. None of the premises shall be used for other than residential purposes or for any of the following: storage yard; circuses; carnivals; manufacturing or industrial purposes; produce packing; slaughtering or eviscerating of animals, fowl,

fish or other creatures; abattoirs or fat rendering; livery stables, kennels or horse or cattle or other livestock pens or boarding; cotton ginning; milling; rock crushing; or any use or purpose whatsoever which shall increase the fire hazard to any other of the said structures located upon the premises or which shall generate, give off, discharge or emit any obnoxious or excessive odors, fumes, gasses, noises, vibrations or glare or in any manner constitute a health menace or public or private nuisance to the detriment of the owner or occupant of any structure located within the premises or violate any applicable law.

17. These covenants, restrictions, reservations and conditions shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty-five (25) years from the date hereof. Thereafter, they shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked or amended by an instrument in writing, executed and acknowledged by the then owners of not less than seventy-five percent (75%) of the lots on all of the property then subject to these conditions. Notwithstanding anything herein to the contrary, prior to the Declarant having sold a lot that is subject to this instrument, Declarant may make any reasonable, necessary or convenient amendments in these restrictions and said amendments shall supercede or add to the provisions set forth in this instrument from and after the date the duly executed document setting forth such amendment is recorded in the Mohave County Recorder's Office.

18. Invalidation of any of the restrictions, covenants or conditions above by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

19. If there shall be a violation or threatened or attempted violation of any of the foregoing covenants, conditions or restrictions it shall be lawful for Declarant, its successors or assigns, the corporation whose members are the lot owners or any person or persons owning real property located within the subdivision to prosecute proceedings at law or in equity against all persons violating or attempting to or threatening to violate any such covenants, restrictions or conditions and prevent such violating party from so doing or to recover damages or other dues for such violations. (In addition to any other relief obtained from a court of competent jurisdiction, the prevailing party may recover a reasonable attorney fee as set by the court. No failure of the Trustee or any other person or party to enforce any of the restrictions, covenants or conditions contained herein shall, in any event, be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof. The violation of any of the restrictions, covenants or conditions as set forth herein, or any one or more of them, shall not affect the lien of any mortgage or deed of trust now on record, or which may hereafter be placed on record.

20. In the event that any of the provisions of this Declaration conflict with any other of the sections herein, or with any applicable zoning ordinance, the more restrictive shall govern. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained therein should be invalid or should operate to render this agreement invalid, this agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, or section or sections had not been inserted. In the event that any provision or provisions of this instrument appear to be violative of the Rule against Perpetuities, such provision



STATE OF ARIZONA )  
 ) SS  
COUNTY OF MOHAVE )

On this, the 15th day of May, 1989, before me, the undersigned officer, personally appeared ANGELO RINALDI, President of LAGO ENTERPRISES, INC., who acknowledged himself to be a General Partner in DESERT LAKES DEVELOPMENT, a Delaware Limited Partnership, and that he, as such Incorporator being authorized so do do, executed the foregoing instrument for the purposes therein contained, by signing the name of the Corporation by himself as a Incorporator.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires  
MY COMMISSION EXPIRES MAY 30, 1990.

  
Notary Public

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
DESERT LAKES GOLF COURSE & ESTATES 4076-C  
MOHAVE COUNTY, ARIZONA

INDEXED  
#90-34031  
BK 1724 PG 39  
MOHAVE CO. AZ.  
OFFICIAL RECORDS  
JOAN McCALL  
05/23/90  
11:00 A.M.  
PG 1 OF 7  
FEE 11.00

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION made and entered into this 18th day of April, 1990, by WestTITLE CORPORATION, an Arizona corporation, as Trustee, under Trust No. 1035, hereinafter designated "The Declarant" which holds the lands hereinafter referred to as the Trustee for the benefit of DESERT LAKES DEVELOPMENT L. P., a Delaware Limited Partnership.

WHEREAS, the Declarant is the owner of DESERT LAKES GOLF COURSE & ESTATES, TRACT 4076-C, County of Mohave, State of Arizona, as per plat thereof recorded on the 23rd day of May, 1990 at Fee No. 90-34030, and

WHEREAS, the Declarant intends to sell, dispose of or convey from time to time all or a portion thereof the lots in said Tract 4076-C and desires to subject the same to certain protective reservations, covenants, conditions and restrictions between it and the acquirers and/or users of the lots in said tract.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that the Declarant hereby certifies and declares that it has established and does hereby establish a general plan for the protection, maintenance, development and improvement of said tract, and that this declaration is designed for the mutual benefit of the lots in said tract and Declarant has fixed and does hereby fix the protective conditions upon and subject to which all lots, parcels and portions of said tract and all interest therein shall be held, leased or sold and/or conveyed by the owners or users thereof, each and all of which is and are for the mutual benefit of the lots in said tract and of each owner thereof, and shall run with the land, and shall inure to and pass with each lot and parcel of land in said tract, and shall apply to and bind the respective successors in interest thereof, and further are and each thereof is imposed upon each and every lot, parcel or individual portion of said tract as a mutual equitable servitude in favor of each and every other lot, parcel or individual portion of land therein as the dominant tenement.

Every conveyance of any of said property or portion thereof in Tract 4076-C, shall be and is subject to the said Covenants, Conditions and Restrictions as follows:

ARTICLE I

COMMITTEE OF ARCHITECTURE

Declarant shall appoint a Committee of Architecture, hereinafter sometimes called "Committee", consisting of three (3) persons. Declarant shall have the further power to create and fill vacancies on the Committee. At such time that ninety percent (90%) of the lots within the subdivision have been sold by Declarant, or within one year of the issuance of the original public report, whichever occurs first, the owners of such lots upon request to the Committee may elect three members therefrom to consist of and serve on the Committee of Architecture. Nothing herein contained shall prevent Declarant from assigning all rights, duties and obligations of the Architecture Committee

to a corporation organized and formed for and whose members consist of the owners of lots within this subdivision.

Notwithstanding anything hereinbefore stated, architectural review and control shall be vested in the initial Architecture Committee composed of ANGELO RINALDI, FRANK PASSANTINO AND STERLING VARNER until such time as ninety percent (90%) of the lots in Tract 4076-C have been sold by Declarant, or within one year of the issuance of the original public report, whichever occurs first. The initial address of said Committee shall be P. O. Box 8858 Fort Mojave, Arizona 86427. Any and all vacancies during such period shall be filled on designation by DESERT LAKES DEVELOPMENT L. P.

No building, porch, fence, patio, ramada, awning or other structure shall be erected, altered, added to, placed upon or permitted to remain upon the lots in Tract 4076-C, or any part of any such lot, until and unless the plan showing floor areas, external designs and the ground location of the intended structure, along with a plot plan and front/rear landscaping plan and a fee in the amount set by the Committee but not less than TEN DOLLARS AND NO/100 (\$10.00) nor more than ONE HUNDRED DOLLARS AND NO/100 (\$100.00) have been first delivered to and approved in writing by the Committee of Architecture.

It shall be the general purpose of this Committee to provide for maintenance of a high standard of architecture and construction in such manner as to enhance the aesthetic properties and structural soundness of the developed subdivision.

The Committee shall be guided by, and, except when in their sole discretion good planning would dictate to the contrary, controlled by this Declaration. Notwithstanding any other provision of this Declaration, it shall remain the prerogative within the jurisdiction of the Committee to review applications and grant approvals for exceptions or variances to this Declaration. Variations from these requirements and in general other forms of deviations from these restrictions imposed by this Declaration may be made when and only when such exceptions, variances and deviations do not in any way detract from the appearance of the premises, and are not in any way detrimental to the public welfare or to the property of other persons located within the tract, all in the sole opinion of the Committee.

Said Committee, in order to carry out its duties, may adopt reasonable rules and regulations for the conduct of its proceedings and may fix the time and place for its regular meetings and for such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for inspection to any lot owners upon the consent of any one of the members of said Committee. Said Committee shall by a majority vote elect one of its members as chairman and one of its members as secretary and the duties of such chairman and secretary appertain to such offices. Any and all rules or regulations adopted by said Committee regulating its procedure may be changed by said Committee from time to time by a majority vote and none of said rules and regulations shall be deemed to be any part or portion of this Declaration or the conditions herein contained.

The Committee shall determine whether the conditions contained in this Declaration are being complied with.

#### ARTICLE II

##### LAND USE

#### A. General

1. All buildings erected upon the lots within the subdivision shall be of new construction. All such buildings must

be completed within twelve (12) months from the commencement of construction. Mobile homes and all structures built, constructed or prefabricated off the premises are expressly prohibited, including but not limited to modular or manufactured structures and existing structures.

2. No noxious or offensive activities shall be carried on upon any lot, nor shall anything be done thereon which may be or may become an annoyance or nuisance to the neighborhood.

3. No lot shall be conveyed or subdivided smaller than that shown or delineated upon the original plat map, but nothing herein contained shall be so construed as to prevent the use of one lot and all or a fraction of an adjoining lot as one building site, after which time such whole lot and adjacent part of the other lot shall be considered as one lot for the purposes of these restrictions.

4. All buildings on lots not adjacent to the golf course being Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, BLOCK L, Lots 5 and 63, BLOCK M, Lots 28, 29, 30, 31, 32, 33 and 34, BLOCK N, and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 36, 40, 41, 42, 46, 47 and 48, BLOCK O shall have a minimum of one thousand four hundred (1,400) square feet of living space, exclusive of garages, porches, patios and basements. Buildings on all other lots, being those lots adjacent to the golf course, in Tract 4076-C shall have a minimum of one thousand six hundred (1,600) square feet of living space, exclusive of garages, porches, patios and basements. No construction shed, basement, garage, tent, shack, travel trailer, recreational vehicle, camper or other temporary structure shall at any time be used as a residence.

5. All buildings shall have: (i) a maximum building height of Thirty (30) feet from the surface of the lot to the peak of the highest projection thereof; (ii) no more than two stories; (iii) no exposed radio, radio-telephone, television or microwave receiving or transmitting antennas, masts or dishes; (iv) no airconditioning unit on roofs; (v) a closed garage with interior dimensions of no less than twenty (20) feet; (vi) on any roof visible from ground level at any point within Tract 4076-C as its exposed visible surface, clay, concrete or ceramic tile, slate, or equal as may be approved by the Committee on Architecture; (vii) tempered glass in all windows facing fairways and driving range lakes.

6. All buildings and projections thereof on lots not adjacent to the golf course being Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, and 36, BLOCK L, Lots 5 and 63, BLOCK M, Lots 28, 29, 30, 31, 32, 33 and 34, BLOCK N, and Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 36, 40, 41, 42, 46, 47 and 48, BLOCK O shall be constructed not less than twenty feet (20') back from the front and rear property lines and five feet (5') from side property lines. All buildings and projections thereof on Lots adjacent to the golf course being Lots 37, 38, 39, 40, 41, 42 and 43, BLOCK L, Lots 1, 2, 3, 4, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79 and 80, BLOCK M, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61 and 62, BLOCK N, and Lots 24, 25,

26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 43, 44 and 45, BLOCK 0 shall be constructed not less than twenty feet (20') from the front and rear property lines and five feet (5') from the side property lines.

7. Fences and walls shall not exceed six (6) feet in height and shall not be constructed in the street set back area (being twenty feet (20') from the front property line). Fences and walls visible from the street must be decorative and shall not be of wire, chain link, or wood or topped with barbed wire, except that on all lots adjacent to fairway lots the rear fences shall be of wrought iron construction for a total fence height of five feet (5') black in color which shall continue along the side lot line for a distance of fifteen feet (15'). Access to the golf course from lots adjacent to the golf course is prohibited.

8. No individual water supply system (private well) shall be permitted on any lot in the subdivision.

9. No animals, livestock, birds or poultry of any kind shall be raised, bred or kept on any lot, provided, however, that personal pets such as dogs, cats or other household pets may be kept, but shall be fenced or leashed at all times.

10. No lot shall be used or allowed to become in such condition as to depreciate the value of adjacent property. No weeds, underbrush, unsightly growth, refuse piles, junk piles or other unsightly objects shall be permitted to be placed or to remain upon said lot. In the event of any owner not complying with the above provisions, the corporation whose members are the lot owners, Declarant, or its successor and assigns, shall have the right to enter upon the land and remove the offending objects at the expense of the owner, who shall repay the same upon demand, and such entry shall not be deemed a trespass.

11. No sign, advertisement, billboard or advertising structure of any kind shall be erected or allowed on any of the unimproved lots, and no signs shall be erected or allowed to remain on any lots, improved or otherwise, provided, however, that an owner may place on his improved lot "For Sale" signs, "For Lease" signs or "For Rent" signs so long as they are of reasonable dimensions.

12. All dwellings shall install water flush toilets, and all bathrooms, toilets or sanitary conveniences shall be inside the buildings constructed on said property. All bathrooms, toilets or sanitary conveniences shall be connected to central sewer. Septic tanks, cesspools and other individual sewage systems are expressly prohibited. Water and energy conservation devices including but not limited to toilets, shower heads, water heaters, and insulation shall be used whenever feasible. Low water use vegetation shall be used whenever possible in landscaping.

13. The storage of inoperative, damaged or junk motor vehicles and appliances and of tools, landscaping instruments, household effects, machinery or machinery parts, boats, trailers, empty or filled containers, boxes or bags, trash, materials, including used construction materials, or other items that shall in appearance detract from the aesthetic values of the property shall be so placed and stored to be concealed from the view of the public right-of-way and adjacent landowners. Trash for collection may be placed at the street right-of-way line on regular collection days for a period not to exceed twelve hours prior to pickup.

14. Under no circumstances shall any owner of any lot or parcel of land be permitted to deliberately alter the topographic

conditions of his lot or parcel of land in any way that would permit additional quantities of water from any source other than what nature originally intended to flow from his property onto any adjoining property or public right-of-way, or redirect the flow.

15. No person shall use any premise in any land use area, which is designed, arranged or intended to be occupied or used for any purpose other than expressly permitted in this Declaration as set forth herein and in part "B" hereof. Multiple family dwellings, including apartments, condominiums, town houses and patio homes are expressly forbidden.

16. None of the premises shall be used for other than residential purposes or for any of the following: storage yard; circuses; carnivals; manufacturing or industrial purposes; produce packing; slaughtering or eviscerating of animals, fowl, fish or other creatures; abattoirs or fat rendering; livery stables, kennels or horse or cattle or other livestock pens or boarding; cotton ginning; milling; rock crushing; or any use or purpose whatsoever which shall increase the fire hazard to any other of the said structures located upon the premises or which shall generate, give off, discharge or emit any obnoxious or excessive odors, fumes, gasses, noises, vibrations or glare or in any manner constitute a health menace or public or private nuisance to the detriment of the owner or occupant of any structure located within the premises or violate any applicable law.

17. These covenants, restrictions, reservations and conditions shall run with the land and shall be binding upon all parties and all persons claiming under them for a period of twenty-five (25) years from the date hereof. Thereafter, they shall be deemed to have been renewed for successive terms of ten (10) years, unless revoked or amended by an instrument in writing, executed and acknowledged by the then owners of not less than seventy-five percent (75%) of the lots on all of the property then subject to these conditions. Notwithstanding anything herein to the contrary, prior to the Declarant having sold a lot that is subject to this instrument, Declarant may make any reasonable, necessary or convenient amendments in these restrictions and said amendments shall supercede or add to the provisions set forth in this instrument from and after the date the duly executed document setting forth such amendment is recorded in the Mohave County Recorder's Office.

18. Invalidation of any of the restrictions, covenants or conditions above by judgment or court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

19. If there shall be a violation or threatened or attempted violation of any of the foregoing covenants, conditions or restrictions it shall be lawful for Declarant, its successors or assigns, the corporation whose members are the lot owners or any person or persons owning real property located within the subdivision to prosecute proceedings at law or in equity against all persons violating or attempting to or threatening to violate any such covenants, restrictions or conditions and prevent such violating party from so doing or to recover damages or other dues for such violations. In addition to any other relief obtained from a court of competent jurisdiction, the prevailing party may recover a reasonable attorney fee as set by the court. No failure of the Trustee or any other person or party to enforce any of the restrictions, covenants or conditions contained herein shall, in any event, be construed or held to be a waiver thereof or consent to any further or succeeding breach or violation thereof. The violation of any of the restrictions, covenants or

conditions as set forth herein, or any one or more of them, shall not affect the lien of any mortgage or deed of trust now on record, or which may hereafter be placed on record.

20. In the event that any of the provisions of this Declaration conflict with any other of the sections herein, or with any applicable zoning ordinance, the more restrictive shall govern. The invalidity of any one or more phrases, sentences, clauses, paragraphs or sections hereof shall not affect the remaining portions of this instrument or any part thereof, all of which are inserted conditionally on their being held valid in law and in the event that one or more of the phrases, sentences, clauses, paragraphs or sections contained therein should be invalid or should operate to render this agreement invalid, this agreement shall be construed as if such invalid phrase or phrases, sentence or sentences, clause or clauses, paragraph or paragraphs, or section or sections had not been inserted. In the event that any provision or provisions of this instrument appear to be violative of the Rule against Perpetuities, such provision or provisions shall be construed as being void and of no effect as of twenty-one (21) years after the death of the last partners of Desert Lakes Development, or twenty-one (21) years after the death of the last survivor of all of said incorporators children or grandchildren who shall be living at the time this instrument is executed, whichever is the later.

21. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.


B(1). Special Development Residential  
SD-R Single Family Residential, Mobile Homes  
Prohibited  
Land Use Regulations.

Uses Permitted:

Single Family dwelling and accessory structures and uses normally incidental to single family residences, MOBILE HOMES, MANUFACTURED HOMES AND PREFABRICATED HOMES PROHIBITED.

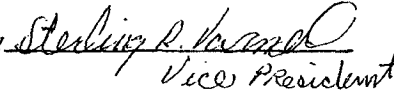
WestTITLE CORPORATION,  
as Trustee

By

  
Title: Trust Officer

DESERT LAKES DEVELOPMENT L.P.  
a Delaware Limited Partnership

By

  
Vice President

STATE OF ARIZONA )  
 ) SS  
COUNTY OF MOHAVE )

On this, the 18th day of April, 19 90,  
before me the undersigned officer, personally appeared  
ROBERT P. DOUGLASS, who acknowledged himself to be a  
Trust Officer of WEST TITLE CORPORATION, an Arizona corporation,  
and that he, as such officer being authorized so to do, executed  
the foregoing instrument for the purposes therein contained, by  
signing the name of the corporation by himself as Trust Officer.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires: May 30, 1990  
MY COMMISSION EXPIRES MAY 30, 1990

*[Signature]*  
Notary Public

STATE OF ARIZONA )  
 ) SS  
COUNTY OF MOHAVE )

On this, the 6th day of December, 1989, before me, the  
undersigned officer, personally appeared FRANK PASSANTINO,  
Secretary of LAGO ENTERPRISES, INC., who acknowledged himself to  
be a General Partner in DESERT LAKES DEVELOPMENT, a Delaware  
Limited Partnership, and that he, as such Incorporator being  
authorized so do do, executed the foregoing instrument for the  
purposes therein contained, by signing the name of the  
Corporation by himself as a Incorporator.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:  
6.30.92

*[Signature]*  
Notary Public

*[Signature]*  
Notary Public

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BELLA/04/18/90

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**Exhibit 2**  
**Envelope addressed to the Plaintiff**  
**for the attempted setback reduction letter and documents to opt-in.**



2

COUNTY DEVELOPMENT  
DEPARTMENT

86402



*Handwritten signature*

KNIGHT WILLIAM R & NANCY L JT  
1803 E LIPAN CIR  
FORT MOHAVE AZ 86426