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8 Daniel J. Oehler, Arizona State Bar No.: 002739
9 Attorney for Defendants

10 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
11 **IN AND FOR THE COUNTY OF MOHAVE**

12 NANCY KNIGHT,

13 Plaintiff,

14 vs.

15 GLEN LUDWIG and PEARL LUDWIG, Trustees
16 of THE LUDWIG FAMILY TRUST; FAIRWAY
17 CONSTRUCTORS, INC.; MEHDI AZARMI;
18 JAMES B. ROBERTS and DONNA M.
19 ROBERTS, husband and wife; JOHN DOES 1-10;
20 JANE DOES 1-10; ABC CORPORATIONS 1-10;
21 and XYZ PARTNERSHIPS 1-10.

22 Defendants.

NO.: CV-2018-04003

**RESPONSE TO PLAINTIFF'S
MOTION FOR DECLARATORY
JUDGMENT**

23 COME NOW, the Defendants, by and through their attorney, the undersigned, and in
24 response to Plaintiff's Motion for Declaratory Judgment provide this Court their Response
25 as set forth in the attached Memorandum of Points and Authorities.

26 Plaintiff's Motion asks this Court effectively for a judgment/finding not in accord with
27 the provisions of A.R.S. §12-1831, et seq., declaring rights, status and the legal relations, but
28 rather the ultimate question which is the subject matter of the underlying litigation whether
or not the CC&Rs of Desert Lakes Golf Course & Estates Tract 4076-B are a valid binding
and enforceable contract, or as is the position of the Defendants that as a result of
approximately 30 years of abandonment, the CC&Rs are unenforceable under Arizona law.

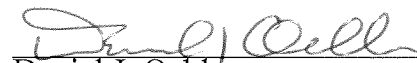
Plaintiff's current Motion is also untimely in that there is and has been coercive
pending litigation before this Court.

1 Next, this Court has previously ruled on the question of whether or not the Plaintiff
2 has the right, status or legal relationship to bring the action (standing). On this issue, the
3 Court has already declared that Plaintiff does not have standing regarding Count 1 of her
4 Complaint; however, Plaintiff does have standing regarding Count 2 limited to Desert Lakes
5 Golf Course & Estates Tract 4076-B and Tract 4163, exclusively. The current Motion for
6 Declaratory Judgment is but another example of Plaintiff's unwarranted, inappropriate
7 practice of continuing to file redundant meritless pleading such as Plaintiff's three failed
8 prior motions to amend Plaintiff's Complaint.

9 The filing of the subject Motion is clearly an abuse of process and warrants an award
10 of all attorney's fees and costs incurred by the responding Defendants as is hereinafter set
11 forth.

12 RESPECTFULLY SUBMITTED this 4th day of January, 2019.

13 LAW OFFICES OF DANIEL J. OEHLER

14 

15 Daniel J. Oehler,
16 Attorney for Defendants

17 **MEMORANDUM OF POINTS AND AUTHORITIES**

18 Plaintiff moves this Court pursuant to multiple statutory provisions set forth in Title
19 12 of the Arizona Revised Statutes regarding declaratory judgment. In her current Motion,
20 Plaintiff indicates that the purpose of the Plaintiff's Motion "is to settle and to afford relief
21 from uncertainty and insecurity with respect to rights, status and other legal relations" (see
22 Plaintiff's Motion, p. 1, lines 25 and 26.

23 While it is difficult at best to ascertain what declaratory relief the Plaintiff seeks, it
24 would appear from the general context of the Motion that Plaintiff seeks a judgment from the
25 Court declaring that the 1989 CC&Rs enforceable and have not been abandoned despite the
26 fact that virtually hundreds if not thousands of violations that have accrued in Desert Lakes
27 Golf Course & Estates Tract 4076-B, and a subsequent resubdivision of two parcels that were
28 originally in Tract 4076-B now known as Tract 4163. In part, Plaintiff places her reliance

1 on an “April 2, 2018” finding of this Court (see **Exhibit A**). This finding was ultimately
2 reduced to a formal Order of the Court entered June 11, 2018 (see **Exhibit B**). In that
3 decision where the Court dismissed Count 1 of Plaintiff’s Complaint regarding Plaintiff’s
4 lack of standing to litigate alleged CC&R violations in Desert Lakes Golf Course & Estates
5 Tract 4076-A. Subsequently, Plaintiff has filed three failed motions to amend Plaintiff’s
6 Complaint seeking without success to add hundreds of additional properties located in not
7 fewer than five additional subdivisions to Plaintiff’s Complaint. Plaintiff was found to have
8 “standing” to argue the current enforceability of the CC&Rs recorded in 1989 for Tract
9 4076-B and a direct derivative of Tract 4163. It would appear that the Plaintiff, via her
10 declaratory judgment action is again seeking a duplicative finding from this Court that she
11 has standing to process this litigation. This is the identical relief that Plaintiff has previously
12 obtained from this Court, namely, a declaration from the Court that, in the opinion of the trial
13 court, Plaintiff has the Court’s declared right to prosecute alleged violations of the 1989
14 CC&Rs covering Tract 4076-B, exclusively. In the final paragraph of her pending Motion,
15 the Plaintiff states:

16 “The Plaintiff would suffer substantially if the Court should
17 deny enforcement rights of the Plaintiff whereby another
18 acrimonious adjacent neighbor could impede her views again
19 with no recourse for the Plaintiff. The Plaintiff has the legal
20 right to prosecute and needs the Court to afford relief from
21 uncertainty and insecurity as to Plaintiff’s rights.” Plaintiff’s
22 Motion for Declaratory Judgment, p. 4, lines 1-16.

23 Again, the Court has previously ruled that this Plaintiff has the right, in the opinion
24 of the Court, to prosecute an alleged violation of the Tract 4076-B CC&Rs. That declaration
25 has already been issued by the Court exactly as stated in the Court’s formal Order entered
26 June 11, 2018, wherein the Court ruled, in pertinent part:

27 “4. That Plaintiff has standing to prosecute this action as an
28 owner of land in Tract 4163 which is a resubdivision of a parcel
of land originally within Tract 4076-B and therefore is an owner
of land in Tract 4076-B, and pursuant to Tract 4076-B CC&Rs
as an owner or person owning property is authorized to bring an
action to enforce the CC&Rs governing Tract 4076-B as
complained of in Count 2 of Plaintiff’s Complaint.” 6/11/2018
Findings and Order Dismissing Count 1 of Plaintiff’s
Complaint, pp. 3-4.

1 The remaining issue before this Court is whether or not the 1989 CC&Rs have been
2 abandoned and as a result of their abandonment, are the CC&Rs enforceable against any
3 Defendants or unnamed property owners that own property within Tract 4076-B or Tract
4 4163. The pending issues before this Court is not an issue for declaratory judgment.

5 An expedited review of the Uniform Declaratory Judgments Act, as set forth under
6 the provisions of A.R.S. §§12-1831 through 12-1846, clearly indicates that the matter
7 currently before this Court and the relief sought in Plaintiff's current Motion do not fall
8 within the purview of the facts or issues that remain before this Court. First of all, pursuant
9 to A.R.S. §12-1835, the issue before this Court is not whether or not, based on current Court
10 orders, the Plaintiff has standing or authority to bring the subject action, but whether or not
11 with or without standing the contract enforcement sought by the Plaintiff is available to the
12 Plaintiff or any other Tract 4076-B owner. A declaratory judgment of the Court, that is the
13 Court declaring the Plaintiff has authority to bring this action in limited scope regarding
14 Desert Lakes Golf Course & Estates Tract 4076-B or Tract 4163 will not terminate the
15 controversy that is before the Court, nor will it remove any uncertainty, all as specified under
16 A.R.S. §12-1835. The issue before the Court, once again, is whether or not the contract is
17 enforceable by anyone, that is, are the CC&Rs in question that were recorded in 1989 under
18 the facts of this case enforceable by anyone or, rather, has the contractual enforcement
19 thereof been abandoned? Defendants' position is that there have virtually been thousands
20 of violations that are current and ongoing. Defendants' position is that the CC&Rs in regard
21 to issues raised by the Plaintiff are contractually unenforceable under Arizona law. A.R.S.
22 §12-1835 precludes further declaratory judgment on the remaining issues before the Court.
23 See also, the provisions of A.R.S. §12-1836 which reads:

24 "The court may refuse to render or enter a declaratory judgment
25 or a decree where such judgment or decree if rendered or
26 entered would not terminate the uncertainty or controversy
giving rise to the proceeding."

27 Plaintiff's request is untimely. As was favorably cited by the Arizona Supreme Court
28 in Merritt-Chapman and Scott Corporation v. Frasier, 92 Ariz. 136, 375 P.2d 18 (Ariz. 1962):

1 "It was never intended that the relief to be obtained under the
2 Declaratory Judgment Act should be exercised for the purpose
3 of trying issues involved in cases already pending. Stanley
4 Elevator Company, Inc. v. Otis Elevator Company, 35 F. Supp.
5 78 (D.C.N.J. 1940). See also, Borchard, *Declaratory*
6 *Judgments*, 2d, Ed., pp. 302, 350, 351."

7 A coercive remedy is sought in the Plaintiff's pending Complaint. The remedy sought
8 by Plaintiff is damages, injunctive relief, removal of construction, recovery of actual and
9 consequential damages, compensation to all property owners for diminished values (200+
10 owners), forgiveness of some owner violations and attorney fees. As such, this is not an
11 issue or cause of action for declaratory judgment under Title 12. As stated in Seattle
12 Audubon Soc. v. Moseley, 80 F.3d 1401 (9th Cir., 1996):

13 "A declaratory judgment offers a means by which rights
14 and obligations may be adjudicated in cases 'brought by any
15 interested party' involving an actual controversy that has not
16 reached a stage at which either party may seek a coercive
17 remedy and in cases where a party who could sue for coercive
18 relief has not yet done so. See 28 U.S.C. §2201; 10A Charles A.
19 Wright, Arthur R. Miller & Mary Kay Kane, *Federal Practice*
20 *and Procedure: Civil 2d*, §2751, p. 569 ('Wright & Miller')."
21 Id., at p. 1405.

22 Finally, the requirements and mandates of A.R.S. §12-1841 have not been complied
23 with. This statute, in pertinent part, states:

24 "A. When declaratory relief is sought, all persons shall be
25 made parties who have or claim any interest which would be
26 effected by the declaration, and no declaration shall prejudice
27 the rights of persons not parties to the proceeding."

28 In this instance, there are in excess of 200 property owners within Desert Lakes Golf
Course & Estates Tract 4076-B and Tract 4163. Of the approximate 200 potential effected
and impacted parties, two property owners have been served and are parties to this action.

While it is always difficult, and perhaps often impossible to prepare and file a
response to a motion such as that which the Court has before it today, it appears that the
Plaintiff is suggesting to the Court that some sort of declaratory order is appropriate
regarding the ultimate issue in this case, i.e., the enforceability of deed restrictions and
apparently to bolster Plaintiff's position, Plaintiff has attached and marked as Exhibit 1A a

1 note from the Plaintiff to a gentleman named “Paul Garcia” inquiring as to whether or not
2 the recent purchaser of Desert Lakes Golf Course, the Fort Mojave Indian Tribe, has
3 provided Mr. Garcia with “any feedback from the Tribal Council about enforcing our
4 CC&Rs or from the gas company about the piles of dirt adjacent to Fairway 11?” This 2016
5 note from the Plaintiff to a third party, namely, the Fort Mojave Tribal Council, hardly
6 represents or cannot be construed as an enforcement of a known set of CC&Rs (assuming
7 for the moment that the Plaintiff’s letter to the Tribal Council representative was in fact
8 referring to Desert Lakes Golf Course & Estates Tract 4076-B, as opposed to the multiple
9 separate subdivisions that include the name Desert Lakes Golf Course & Estates such as
10 Tract 4076-A, Tract 4076-C, Tract 4076-D, Tract 4132, Tract 4159 and Tract 4163, each of
11 which are separate, distinct stand-alone subdivisions). Nor does Exhibit 2 which appears to
12 be a photograph of contractor debris that was apparently piled onto some unknown
13 subdivision lot by either an unidentified contractor or the Mohave County Road Department
14 represent a CC&R enforcement as opposed to a Mohave County Code Enforcement issue.

15 Plaintiff goes on in her current Motion to allege erroneously that a gentleman by the
16 name of Sterling Varner “...under the auspices of being an architectural committee member”
17 resubdivided Parcel V-V of Tract 4076-B along with a portion of the actual Golf Course
18 (Parcel K-K) in 2005. Yet, the Plaintiff knows well that in the year 2005, Sterling Varner
19 was not a member of any architectural committee, nor was he operating under the authority
20 of or on behalf of any architectural committee as no architectural committee existed. Rather,
21 Sterling Varner for a period of one year subsequent to the recording of the CC&Rs for Tract
22 4076-B in 1989 was designated within the CC&Rs to be one of three members of an
23 anticipated future architectural committee that was never formed, that never took action, and
24 the term of the subject CC&R appointment by the original subdivision developer expired, 12
25 months subsequent to the recording of the subject CC&Rs, in 1990 (see **Exhibit C**). The
26 authority provided in the original 1989 CC&Rs for Tract 4076-B, if it existed at all regarding
27 the original architectural committee expired some 15 years prior to Mr. Varner re-
28 subdividing a portion of the golf course and Parcel V-V. Yet, Plaintiff continues to allege


1 these "incidents" of possible Code Enforcement, actions by the Fort Mojave Indian Tribe as
2 the owner of the golf course, and actions by subdividers that occurred 15+ years after the
3 subdivision was created, are alleged "incidents of CC&R enforcement actions." Such could
4 not be further from the truth and will be sorted out more thoroughly in an anticipated motion
5 for summary judgment on behalf of the named Defendants.

6 A review of this file reflects that Plaintiff secured Superior Court authority to process
7 this action, the Court finding that despite the fact Plaintiff is a land owner in Tract 4163 and
8 Tract 4163 was a re-subdivided parcel in Tract 4076-B, that Plaintiff has standing to attempt
9 to enforce the contractual rights, if they continue to exist, as a property owner in Tract 4076-
10 B. The issue remaining before this Court is not whether Plaintiff has standing in regard to
11 Tract 4076-B, but whether there is or is not an enforceable contract for anyone to enforce.
12 That issue is not the proper subject matter of a declaratory judgment motion and is certainly
13 not supported from a declaratory judgment standpoint from any documentation submitted to
14 this Court previously in Plaintiff's three failed motions to amend nor this pending effectively
15 duplicative Motion for Declaratory Judgment.

16 The subject Motion before the Court is an abuse of process, is clearly inappropriate
17 in regard to any justifiable request for declaratory judgment, represents Plaintiff's continuing
18 utilization of the court system on a fully inappropriate basis and warrants the finding by this
19 Court that the pending Motion should be denied, that it was not filed in good faith, that the
20 Motion for Declaratory Judgment effectively masquerades as yet a fourth motion to amend,
21 requests relief from the Court that cannot be granted. Defendants are entitled to an award
22 of all attorney's fees and costs incurred in responding to this Motion.

23 RESPECTFULLY SUBMITTED this 4 day of January, 2019.

24 LAW OFFICES OF DANIEL J. OEHLER

25 
26 Daniel J. Oehler,
27 Attorney for Defendants
28

1 **COPY** of the foregoing emailed
2 this 4th day of January, 2019, to:

3 Honorable Eric Gordon
4 Mohave County Superior Court
5 Division 6
6 2001 College Drive
7 Lake Havasu City, Arizona 86403
8 (928) 453-0739 Heidi
9 division6@mohavecourts.com

10 Plaintiff Pro Per
11 Nancy Knight
12 1803 E. Lipan Circle
13 Fort Mohave, Arizona 86426
14 (928) 768-1537
15 nancyknight@frontier.com

16 By: 
17 Patricia L. Emond, Legal Assistant

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Knight v. Ludwig, et al.
Mohave County Superior Court
Docket No. CV-2018-04003

EXHIBIT A

**IN THE SUPERIOR COURT
MOHAVE COUNTY, STATE OF ARIZONA**

**HONORABLE DEREK CARLISLE
DIVISION: 2 COURTROOM: L
COURT REPORTER: DAWN DUFFEY**

**VIRLYNN TINNELL, CLERK
BY: T SEMLER, DEPUTY CLERK
HEARING DATE: APRIL 2, 2018**

NANCY KNIGHT, et. al.,	Plaintiff,	CASE NO: CV-2018-04003
VS		ORAL ARGUMENT
GLEN LUDWIG, et. al.,	Defendant(s).	START: 2:00 P.M.

APPEARANCES: Nancy Knight, Plaintiff in Pro Per; Daniel Oehler, Attorney for and with Defendants, Jim and Donna Roberts.

This is the time set for oral argument on Defendant's Motion to Dismiss which the Court is treating as a Motion for Summary Judgment.

Mr. Oehler presents oral argument.

Ms. Knight presents oral argument.

The Court states its findings for the record.

IT IS ORDERED granting the Motion to Dismiss with respect to Count 1.

IT IS ORDERED denying the Motion to Dismiss with respect to Count 2.

Mr. Oehler will prepare an order for the Court's signature.

Discussion ensues regarding attorney fees and costs; the Court will allow Mr. Oehler to file a motion with respect to attorney fees and costs.

The Court recesses at 2:49 p.m.

Knight v. Ludwig, et al.
Mohave County Superior Court
Docket No. CV-2018-04003

EXHIBIT B

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Daniel J. Oehler, Arizona State Bar No.: 002739
Attorney for Defendants

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MOHAVE

NANCY KNIGHT,)	NO.: CV-2018-04003
)	
Plaintiff,)	FINDINGS AND ORDER
)	DISMISSING COUNT 1 OF
vs.)	PLAINTIFF'S COMPLAINT
)	
GLEN LUDWIG and PEARL LUDWIG, Trustees)	
of THE LUDWIG FAMILY TRUST; FAIRWAY)	
CONSTRUCTORS, INC.; MEHDI AZARMI;)	
JAMES B. ROBERTS and DONNA M.)	
ROBERTS, husband and wife; JOHN DOES 1-10;)	
JANE DOES 1-10; ABC CORPORATIONS 1-10;)	
and XYZ PARTNERSHIPS 1-10.)	
)	
Defendants.)	
_____)	

The Defendants having filed a Motion to Dismiss, the Plaintiff having filed a Response to Defendants' Motion, and Defendants having filed a Reply to the Plaintiff's Response, the Court, having considered the pleadings and filing of all parties, set this matter for oral argument. The Plaintiff appeared in person and the Defendants appeared through their attorney, Daniel J. Oehler, the Defendants, James A. Roberts and Donna M. Roberts, were also present before the Court on April 2, 2018, at the time set for hearing;

The Court, having read the pleadings, Motion, Response and Reply, and having further reviewed the various exhibits and recorded governmental records appended thereto, and having further considered the parties' oral arguments, makes the following findings:

A. Tract 4076-A Desert Lakes Golf Course & Estates is a separate subdivision with separately recorded CC&Rs separate and apart from Tract 4076-B, and separate and apart from the remaining Desert Lakes Golf Course & Estates subdivisions each of which were developed by multiple and different owners/developers over the period of approximately 13 years (1989 - 2002);

B. Desert Lakes Golf Course & Estates and the various Tracts are not a master planned community subject to a single or **master** set of CC&Rs. Each separated subdivision has its separate CC&Rs except only Tract 4163 which has no separately recorded CC&Rs;

C. Plaintiff is not the Declarant, nor is Plaintiff the Declarant's successor or assign, nor is Plaintiff an owner, nor a person owning real property within the subdivision Desert Lakes Golf Course & Estates Tract 4076-A;

D. Defendants, James A. Roberts and Donna M. Roberts, his wife, own their home and reside in Desert Lakes Golf Course & Estates Tract 4076-A (Defendants' Motion to Dismiss Exhibit C);

E. Count 1 of Plaintiff's Complaint alleges a breach of **set back** requirements regarding the Roberts' residence alleging claims against all Defendants, including the Roberts Defendants, the prior owners of the lot upon which the Roberts' residence was constructed, Defendants Glen Ludwig and Pearl Ludwig, Trustees of the Ludwig Family Trust, Fairway Constructors, Inc., a former owner of the lot on which the Roberts home was constructed as well as the general contractor of the Roberts' home, and finally, Mehdi Azarmi, the Vice President of Fairway Constructors, Inc. (Defendants' Motion to Dismiss Exhibits **B** and **C**);

F. The Court further finds that the Plaintiff resides in a subdivision known as Desert Lakes Golf Course & Estates Tract 4163 (Defendants' Motion to Dismiss Exhibit A);

G. That Tract 4163 is a resubdivision of Parcel VV and a part of abandoned Parcel KK of Desert Lakes Golf Course & Estates Tract 4076-B (Exhibit H, Defendants' Reply to Response (p. 4); and Exhibits M and N to Defendants' Reply to Response);

H. That Plaintiff's ownership in Tract 4163 as an original **parcel** within Tract 4076-B gives the Plaintiff ownership standing to enforce the CC&Rs for Tract 4076-B, the same having been recorded in the Official Records of Mohave County in Book 1641 at Page 895, and the Tract 4076-B wherein the CC&Rs authorize at paragraph 20 **any person or persons owning real property located within the subdivision** to enforce the Tract 4076-B CC&Rs (Exhibit H, Defendants' Reply to Response (p. 4); and Exhibits M and N to Defendants' Reply to Response);

I. The Court specifically finds that the Plaintiff, as a property owner in Tract 4163, is, therefore, also a property owner within Tract 4076-B as required by paragraph 20 Tract 4076-B CC&Rs, above-referenced and designated Exhibit F to Defendants' Motion to Dismiss.

NOW THEREFORE, THE COURT ENTERS THE FOLLOWING ORDERS:

1. The Plaintiff lacks standing to bring this action under Count 1 of Plaintiff's Complaint as Plaintiff is not a lot owner nor does Plaintiff own any property within Tract 4076-A;

2. That James A. Roberts and Donna M. Roberts are owners of their home located in Tract 4076-A and are therefore dismissed with prejudice from this action;

3. That Plaintiff's claim against Defendants Glen Ludwig and Pearl Ludwig, Trustees of the Ludwig Family Trust, Mehdi Azarmi, Vice President of Fairway Constructors, Inc., and Fairway Constructors, Inc., under Count 1 of Plaintiff's Complaint are dismissed with prejudice;

4. That Plaintiff has standing to prosecute this action as an owner of land in Tract 4163

which is a resubdivision of a parcel of land originally within Tract 4076-B and therefore is an **owner of land** in Tract 4076-B, and pursuant to Tract 4076-B's CC&Rs as an owner or person owning property is authorized to bring an action to enforce the CC&Rs governing Tract 4076-B as complained of in Count 2 of Plaintiff's Complaint.

DATED this 11th day of June, 2018.



HONORABLE DEREK CARLISLE

cc:

Plaintiff Pro Per

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Knight v. Ludwig, et al.
Mohave County Superior Court
Docket No. CV-2018-04003

EXHIBIT C

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

DESERT LAKES GOLF COURSE & ESTATES 4076-B

MOHAVE COUNTY, ARIZONA

KNOW ALL MEN BY THESE PRESENTS:

THIS DECLARATION made and entered into this 6th day of December, 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-B, County of Mohave, State of Arizona, as per plat thereof recorded on the 18th day of November, 19 89, at Fee No. 87-01669, 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-B 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 are 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-B, 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-B 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 Dunes 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-B, 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 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-B 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 roof; (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-B 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 31, 32, 33, 34, 35, 36, 37, 41, 42, 60, 74, 78, 79, 80, and 108 Block F, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22 Block G, Lots 21, 22, 26, 27, 28, 29, 30, 33, 34, 35, 36, 37, 38, 69, 67, and 68 Block H, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 24 Block I, Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, and 17 Block J, and Lots 1, 2, 3, 4, 5, 6, and 7 Block K 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-B, 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. Lots 75 through 86 inclusive, Block F, shall not have direct vehicular driveway access to Mountain View Road or Lippan Boulevard, as the case may be, but rather shall have vehicular access from the twenty-four foot (24') access easement as depicted on the plat. No automobiles, motorcycles, bicycles or other vehicles shall be parked in said access easement.

8. 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.

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

10. 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.

11. 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 successors 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.

12. 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.

13. 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.

14. 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.

15. 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.

16. 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,

17. None of the premises shall be used for other than residential purposes or for any of the following: storage yard, circuses, carnival, 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, gases, 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.

18. 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.

19. 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.

20. 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.

21. 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.

22. 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
SB-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.

LAWYERS TITLE AGENCY, INC.,
as Trustee

DESERT LAKES DEVELOPMENT I, P,
a Delaware Limited Partnership

By [Signature]
Title: Trust Officer

By [Signature]

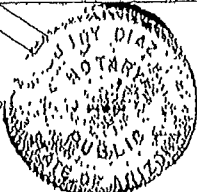
STATE OF ARIZONA
COUNTY OF MOHAVE

On this, the 6th day of December, 1989, before me the undersigned officer, personally appeared ROBERT P. DOUGLASS, who acknowledged himself to be a Trust Officer of LAWYERS TITLE AGENCY, INC., 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:
MY COMMISSION EXPIRES MAY 30, 1990.

[Signature]
Notary Public



STATE OF ARIZONA)
COUNTY OF MOHAVE) SE

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 Incorporated being authorized so to 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 May 01, 1990,
MY COMMISSION EXPIRES MAY 01, 1990.

Notary Public

J2



INDEX MISCELLANEOUS

PROOFED

File # 89-87670

RECORDED IN OFFICIAL RECORDS
OF MOHAVE COUNTY, ARIZONA

DEC 18 '89 - 8 00 AM

Mo. County Recorder
FEE 11.00 PGS 7/7



Unofficial