

When recorded return to:

LS&SS Properties Inc.
6008 E Indian Bend Rd.
Paradise Valley, Az. 85253

DECLARATION OF COVENANTS,
CONDITIONS & RESTRICTIONS
FOR
CONTINENTAL MOUNTAIN ESTATES

This Declaration of Covenants, Conditions, and Restrictions (herein called the "Declaration") is made as of _____, 2006, by the persons who have Executed, acknowledged, and delivered this Declaration in the capacities shown Beneath their signatures at the end hereof, all of whom are herein collectively called "Declarant".

WITNESSETH

The Declarant is the owner of the following described real property situated in Maricopa County, Arizona:

CONTINENTAL MOUNTAIN ESTATES, a subdivision of 13 lots in the South Half of Section 14, T6N R4E of the G&SRB&M, Maricopa County, Arizona, as shown In Book 856 of Maps, Page 40.

(herein sometimes called the "Property")

The Property and each lot therein shall be subject to the following covenants, conditions, and restrictions (herein collectively called "restrictions"), which shall remain In effect in accordance with the terms in Paragraph 28 in this Declaration. The Restrictions are hereby imposed for the exclusive benefit of the Declarant and any successor to or assignee of its enforcement rights hereunder, as may hereafter be set forth in any grant of record it may make of such rights (the Declarant and any such successors or assigns being collectively included in any reference herein to Declarant).

NOW, THEREFORE, Declarant hereby declares, covenants, and agrees that this Property shall be held, mortgaged, leased, sold and conveyed, subject to the following Restrictions:

- 1. Residential Use:** Each lot shall be for single family use only.
- 2. Association:** Declarant will form an entity (an Arizona corporation or Limited Liability Company) to be designated Continental Mountain Estates Homeowners Association (herein called the "Association"), which will be comprised of the owners of all of the lots into which the Property is subdivided. The Association in turn, in accordance with its governing by-laws, will designate a Design Review Committee to perform the functions set forth in the Design Guidelines adopted by Declarant. The Association will undertake the enforcement of these Restrictions, the maintenance of any common elements of the Property, and any other activities generally affecting the Property and the owners of the Lots into which it is subdivided. Upon its formation, the Association will assume and may thereafter exercise all of the rights, authority, and prerogatives of the Declarant as set forth in the by-laws.

3. **Architectural Control:** No building, fence, wall, or other structure of any kind shall be commenced, placed, or erected on the Property, residence or other structure or improvement upon the Property, or the land-scaping, grading, or drainage thereof, including the painting (other than repainting with the same color of paint as then applied) of exterior walls, patio covers, and fences, except in compliance with plans and specifications therefore which have been submitted to and approved by the Design Review Committee in accordance with the Design Guidelines as to harmony of the external design and location in relation to surrounding structures and topography. All construction shall be done in accordance with the plans and specification approved by the Design Review Committee.

4. **Temporary Buildings:** No temporary building, shack, tent, trailer or unsightly structure shall ever be erected or maintained on any lot, provided that nothing herein contained shall prevent the erection of a temporary shop or office structure by a contractor or builder during the actual bona fide construction of a permitted structure upon a lot. No garage or guest house shall be commenced or erected until the construction of the main building complying with these Restrictions shall have been started.

5. **Maintenance, Repair & Reconstruction:** Each owner shall furnish and be responsible for, at the Owner's expense, all of the maintenance, repairs, and replacements within the Owner's own lot. Each Owner is responsible for the maintenance and replacement of the landscape on the lot. If the dwelling unit or any other structure on the lot is damaged or destroyed, the Owner shall promptly repair the damage or rebuild the structure. If the repair or rebuilding restores the structure as it was prior to the damage or destruction, the Owner need not receive the approval of the Design Review Committee as otherwise required pursuant to Paragraph 3 above.

6. **Assessments:** Each Owner, by becoming the Owner of a Lot, is deemed to covenant and agree, to pay Assessments to the Association in accordance with this Declaration. All Assessments shall be established and collected as provided in this Declaration. The Assessments, together with interest, late charges and all costs, including but not limited to attempting to collect delinquent Assessments, whether or not suit is filed, shall be a charge on the Lot and shall be a continuing lien upon the Lot against which each such Assessment is made. Each Assessment, together with interest and all costs, including but not limited to reasonable attorney's fees, incurred by the Association in collecting or attempting to collect delinquent Assessments, whether or not suit is filed, shall also be the personal obligation of the Person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by them. No Owner shall be exempt from liability for Assessments because of abandonment of such Owner's Lot or other circumstance. The obligation to pay Assessments is a separate and independent obligation on the part of each Owner. No diminution or abatement of Assessments or set-off shall be claimed or allowed for any alleged failure of the Association, the Board or the Architectural Committee to take some action or perform some function required of it.

6.A **Annual Assessments:** In order to provide for the operation and management of the Association and to provide funds for the Association to pay all Common Expenses and to perform its duties and obligations under this Declaration, the Board of Directors, for each calendar year shall assess against each Lot, an Annual Assessment. The total amount to be assessed against the Lots as an annual Assessment shall be the amount which is reasonably estimated by the Board to produce income to the Association equal to the total budgeted Common Expenses taking into account other sources of funds available to the Association. The Board shall give notice of the Annual Assessment to each Owner at least thirty (30) days prior to the beginning of each calendar year, but the

failure to give such notice shall not affect the validity of the Annual Assessment established by the Board nor relieve any Owner from its obligation to pay the Annual Assessment. If the Board determines during any Assessment Period that the funds budgeted for that calendar year and the revised Annual Assessment shall commence on the date designated by the Board. The amount of the Annual Assessment shall be the same for each Lot.

6.B Special Assessments: In addition to the Annual Assessments, the Association may levy against each Lot a Special Assessment for the purpose of paying Common Expenses if the Special Assessment is approved by Members entitled to cast more than fifty percent (50%) of the votes entitled to be cast by Members present in person or by proxy at a meeting duly called for such purpose.

6.C Rules Regarding billing and Collection Procedures: Annual Assessments shall be collected on a quarterly basis or such other basis as may be selected by the Board. Special Assessments may be collected as specified by the Board. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making Assessments and for the billing and collection of the Assessments provided that the procedures are not inconsistent with the provisions of this Declaration. The failure of the Association to send a bill to a Member shall not relieve any Member of such Member's liability for any Assessment or charge under this Declaration, but the Assessment Lien therefore shall not be foreclosed until the Member has been given not less than thirty (30) days written notice prior to such foreclosure that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Lot changes during an Assessment Period but successor Owners of Lots shall be given credit for prepayments, on a prorated basis, made by prior Owners.

6.D Effect of Nonpayment of Assessments: Remedies of the Association:

(a) Any Assessment, or any installment of an Assessment, not paid within thirty (30) days after the Assessment, or the installment of the Assessment, first became due shall bear interest from the due date at the rate of twelve percent (12%) interest. In addition, the Board may establish a late fee to be charged to any Owner who has not paid any assessment, or any installment of a Assessment, within thirty (30) days after such payment was due.

(b) The Association shall have a lien on each Lot for: (i) all Assessments levied against the Lot, (ii) all interest, lien fees, late charges and other fees and charges assessed against the lot or payable by the Owner of the Lot, (iii) all fines levied against the Owner of the Lot, (iv) all attorney fees, court costs, title report fees, costs and fees charged by any collection agency either to the Association or to an Owner and any other fees or costs incurred by the Association in attempting to collect Assessments or other amounts due to the Association by the Owner of a Lot whether or not suit is filed by the Association, and (v) any other amounts payable to the Association pursuant to this Declaration, the Design Guidelines or the Articles or By-Laws. The Recording of this Declaration constitutes record notice and perfection of the Assessment Lien. The Association may, at its option, record a Notice of Lien setting forth the name of the delinquent Owner as shown in the records of the Association, the legal description or street address of the Lot against which the Notice of Lien is recorded and the amount claimed to be past due as of the date of the Recording of the Notice, including interest, lien recording fees and reasonable attorney's fees. Before recording any Notice of Lien

against a Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments together with interest, late charges and reasonable attorney's fees, if any, and all other amounts secured by the Assessment Lien. Each default shall constitute a separate basis for a demand, but any number of defaults may be included within the single demand. If the amounts specified in the demand are not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Lien against the Lot. If the Association records a Notice of Lien, the Association may charge the Owner of the Lot against which the Notice of Lien is Recorded a lien fee in an amount established from time to time by the Board.

© The Assessment Lien shall have priority over all liens or claims except for: (i) tax liens for real property taxes, (ii) assessments in favor of any municipal or other governmental body, and (iii) the lien of any First Mortgage. Any First Mortgagee or any other Person acquiring title or coming into possession of a Lot through foreclosure of the first Mortgage. Purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other Person. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

(d) The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, interest, lien fees, fines, reasonable attorney's fees, court costs, collection costs and all other sums payable to the Association by the Owner of the Lot have been paid in full.

(e) The Association shall have the right, at its option to enforce collection of any delinquent Assessments together with Interest, lien fees, reasonable attorney's fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

The Association's exercise of one of the above legal remedies shall not prevent the Association from exercising any other legal remedy for the collection of Assessments.

7. **Pets:** No animals, livestock, or poultry shall be kept on any lot other than a reasonable number of commonly accepted household pets. In no event shall any domestic pet be allowed to run free away from its owner's lot without a leash, or to conduct itself so as to create an unreasonable annoyance.

8. **Signs:** No sign of a commercial nature (including but not limited to a "For Sale" sign) shall be placed or allowed on the lot without the express written consent of the Design Review Committee first.

9. **Antennas:** Any Owner wishing to install an antenna or satellite dish must first

get approval from the Design Review Committee prior to installation.

10. **Businesses:** No business of any kind or character whatsoever shall be conducted in or from the residence on the lot, unless such business can be, and is, conducted in a manner that precludes any external indication of commercial activity within the residence and is not in violation of any zoning laws.

11. **Nuisances:** No television set, radio, musical instrument, stove, fireplace, or other sound, odor, or smoke-producing apparatus or object shall be operated on any lot in any manner deemed objectionable by the Design Review committee. No clotheslines, clothes drying yards or areas, auxiliary storage sheds, woodpiles, equipment or other items of any nature whatsoever stored for current or future use, or any other unsightly object or nuisance shall be erected, placed, or maintained on any lot in any manner deemed objectionable by the Design Review Committee. Nor shall any use or thing be done or permitted on any lot which is the opinion of the Design Review Committee may endanger the health or unreasonably disturb the owner or occupant of any other lot, or which is any way might violate or conflict with any governmental law, rule, ordinance, or regulation or might constitute a public or private nuisance or waste, including, but not limited to any actions prohibited by the Design Guidelines.

12. **Trash:** Every lot shall be maintained free of rubbish, trash, or garbage, and the same shall be removed from the Property and not allowed to accumulate thereon. No garbage cans or other garbage or trash containers or receptacles shall be placed or maintained on any lot in any manner deemed objectionable by the Design Review Committee.

13. **Septic tanks:** Each private septic tank within the subdivision shall be pumped and maintained as required by the Maricopa County Health Department or any other appropriate regulatory agency.

14. **Utility lines:** All public utility lines and wires on all the Lots shall be put underground from the place provided by the utility company, except as may be otherwise permitted by the Design Review Committee.

15. **Fire sprinklers:** Each residence shall construct an individual fire sprinkler system that complies with the requirements of the Rural Metro Fire Department.

16. **Guard Gate:** Lot owners may elect to have a Guard or Security Gate at the entrance of the Subdivision in the future. If the Town of Cave Creek approves and seven Lot Owners or more approve such Gate, then it will be constructed with the cost and maintenance of same to paid by all the lot owners on a pro-rata basis. Further, lots one (1) and nine (9) will provide perpetual easements for the Gate facilities if it becomes necessary to use a portion of these lots to construct same. The Design Review Committee will be responsible for the design of the Guard or Security Gate.

17. **Subdivision Identification Monument:** Lots one (1) and nine (9) will provide perpetual easements for the construction and maintenance of the Subdivision Identification Monuments and all of the Lot Owners will pay for the maintenance thereof

on a pro-rata basis.

18. **Landscaping and Water Usage:** Any plants outside of the Building Envelope will be restricted to Native Plants only. All other imported plants should be Low Water Usage Plants. Turf Lawns are restricted to a maximum of 600 sq. ft.. All Irrigations Systems will use the Latest Conservation Technologies.

19. **Resubdividing:** No Lot shall be resubdivided.

20. **Parking:** No automobile, truck, van, trailer, camper, recreational vehicle, boat or similar vehicle and/or equipment shall be maintained or parked on any Lot, except in a garage on the lot, or on any other portion of the Property, except in parking areas, if any, specifically approve by the Design Review Committee. No on-street parking will be permitted except with prior approval of the Design Review Committee.

21. **Interpretation of Restrictions:** Except for judicial construction, the Declarant shall have the exclusive right to construe and interpret these Restrictions. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Declarant's construction or interpretation of the Restrictions hereunder shall be final, conclusive, and binding upon all persons and the Property.

22. **Severability:** Any determination by any court of competent jurisdiction that any provision in this instrument is invalid or unenforceable shall not affect the validity or enforceability of the remaining provisions of this instrument and the same shall remain in full force and effect.

23. **Reference to Restrictions:** Any and all instruments of conveyance of any interest in any lot may contain reference to this instrument and shall be subject to the covenants, restrictions, reservations, and conditions of this instrument the same as if they were therein set forth in full, provided, however, that the restrictive covenants, terms, and conditions of this instrument shall be binding upon all persons affected by the same, whether express reference is made to this instrument or not.

24. **Waiver or Abandonment:** The failure to enforce any breach or violation of any of the provisions of this instrument shall not constitute an abandonment or a waiver of any right to enforce such provision or any subsequent breach or violation of such provision or of any of the other Restrictions herein set forth.

25. **Enforcement:** These Restrictions, which shall run with the Property and be a burden on each lot, shall be enforceable exclusively by the Declarant and its successors and assigns, and shall not be enforceable by the owners separately or individually. Violation of any one or more of the Restrictions herein set forth may be restrained or enforced by any court of competent jurisdiction and damages may be awarded for any violation. However, nothing herein shall be construed as meaning that damages are an adequate remedy where equitable relief is sought. In the event the Declarant employs an attorney to enforce any of the foregoing Restrictions and prevails in such action, Declarant shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such action.

26. **Amendment:** These Restrictions may be revoked or amended from time to time by recording in the office of the Maricopa County Recorder an instrument in writing reciting the amendment and signed by Declarant and the Owners of not less than 70% of the Lots. The President of the Association shall record any amendment or revocation upon receiving the required signatures.

27. **Term:** These Restrictions, as they may be amended pursuant to paragraph 26 shall be binding upon the Property to and including _____, 2026. After that date, these Restrictions, as so amended, shall be automatically extended for successive periods of ten years each. Any future amendments shall be made in accordance with Paragraph 26.

28. **Transference of Rights:** All rights granted to Declarant under the terms of this agreement shall transfer to the Association or the Design Review Committee upon the earlier occurrence of when Declarant no longer owns any lots in the Property or when Declarant voluntarily transfers these rights to the Association. Such transfer shall be evidenced by a document in writing, signed by Declarant and sent to each member of the Association.

IN WITNESS WHEREOF, Declarant has executed this instrument as of the day, month and year first herein above set forth.

LS&SS Properties Inc.

By _____

State of Arizona)
)
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by _____.

My Commission Expires:

Notary Public