

LOT TABLE

LOT NO.	AREA (S.F.)	AREA (S.F.)
1	8,569	18
2	9,845	19
3	9,716	20
4	10,139	21
5	9,275	22
6	8,750	23
7	17,139	24
8	17,139	25
9	8,118	26
10	8,775	27
11	8,100	28
12	8,977	29
13	8,977	30
14	9,011	31
15	7,800	32
16	10,438	33
17	8,513	34

TOTAL LOT AREA = 328,078 S.F.

TRACT TABLE

TRACT	AREA (S.F.)	DESCRIPTION
A	93,047	TRAILWAY WITH PUBLIC EASEMENT FOR WATER SEWER DRAINAGE, REFUSE COLLECTION, EMERGENCY AND SERVICE VEHICLE
B	9,554	COMMON AREA, LANDSCAPE, DRAINAGE, AND PUBLIC UTILITY EASEMENT AS SHOWN
C	14,325	COMMON AREA, LANDSCAPE, DRAINAGE, AND PUBLIC UTILITY EASEMENT AS SHOWN
D	109,378	COMMON AREA, LANDSCAPE, LANDSCAPE PRESERVATION, DRAINAGE, DRAINAGE MAINTENANCE, AND PUBLIC UTILITY EASEMENT AS SHOWN
E	3,958	COMMON AREA, LANDSCAPE, DRAINAGE, AND PUBLIC UTILITY EASEMENT AS SHOWN
F	1,958	COMMON AREA, LANDSCAPE, DRAINAGE, AND PUBLIC UTILITY EASEMENT AS SHOWN
G	9,832	COMMON AREA, LANDSCAPE, DRAINAGE, AND PUBLIC UTILITY EASEMENT AS SHOWN

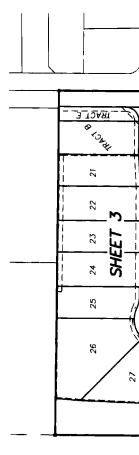
TOTAL TRACT AREA = 254,763 S.F.

NOTES

- NO STRUCTURE OF ANY KIND BE CONSTRUCTED OR ANY VEGETATION BE PLANTED NOR BE ALLOWED TO GROW WITHIN THE DRAINAGE EASEMENT OR TRACT WHICH WOULD IMPERE THE FLOW OF WATER OVER, UNDER OR THROUGH THE EASEMENT OR TRACT.
- NO STRUCTURE OF ANY KIND BE CONSTRUCTED ON, OVER, OR PLACED WITHIN THE SANITARY SEWER EASEMENT EXCEPT PUBLIC SANITARY SEWER PIPING. THE SANITARY SEWER PIPING SHALL BE PLACED AT A MINIMUM DISTANCE OF 10 FEET FROM THE OUTSIDE EDGE OF THE SANITARY SEWER PIPE. NO VEGETATION SHALL BE PLANTED WITHIN THE SANITARY SEWER EASEMENT. THE CITY OF PHOENIX SHALL NOT BE REQUIRED TO REPLACE ANY OBSTRUCTIONS, PAVING OR VEGETATION THAT BECOMES DAMAGED OR MUST BE REMOVED DURING THE COURSE OF MAINTENANCE, CONSTRUCTION, RECONSTRUCTION OR REPAIR OF CITY UTILITIES.
- NO STRUCTURE OF ANY KIND BE CONSTRUCTED ON, OVER, OR PLACED WITHIN THE WATER EASEMENT EXCEPT PUBLIC WATER MAINS, PAVING, WOODEN, 6" (1/2") REBAR AT LOT CORNERS AND CORNERS OF DRAINAGE EASEMENT. THE WATER EASEMENT SHALL BE PLACED AT A MINIMUM DISTANCE OF 10 FEET FROM THE OUTSIDE EDGE OF THE WATER MAINS. NO VEGETATION SHALL BE PLANTED WITHIN THE WATER EASEMENT. THE CITY OF PHOENIX SHALL NOT BE REQUIRED TO REPLACE ANY OBSTRUCTIONS, PAVING OR VEGETATION THAT BECOMES DAMAGED OR MUST BE REMOVED DURING THE COURSE OF MAINTENANCE, CONSTRUCTION, RECONSTRUCTION OR REPAIR OF CITY UTILITIES.
- THIS SUBDIVISION IS LOCATED WITHIN THE CITY OF PHOENIX WATER SERVICE AREA AND HAS BEEN DESIGNATED AS HAVING AN ASSURED WATER SUPPLY.
- ALL NEW OR RELOCATED UTILITIES WILL BE PLACED UNDERGROUND.
- STRUCTURES AND LANDSCAPING WITHIN A TRIANGLE MEASURING 3' X 3' JST ALONG THE PROPERTY LINES WILL BE MAINTAINED AT A MAXIMUM HEIGHT OF 3'.
- A MINIMUM 20' SETBACK (18' VERTICALLY OPENING GARAGE DOORS ARE PROMOTED) FROM BACK OF SIDEWALK TO FACE OF GARAGE DOOR.
- EACH LOT IN THIS SUBDIVISION IS PERMITTED ONE DIMENSION UNIT FOR A TOTAL OF 33 DIMENSIONS WITHIN THE ENTIRE SUBDIVISION.
- AN ASSOCIATION, INCLUDING ALL PROPERTY OWNERS IN THE DEVELOPMENT, WILL BE FORMED AND HAVE RESPONSIBILITY FOR MAINTAINING ALL COMMON AREAS AND TRACTS OF EASEMENTS (INCLUDING LANDSCAPED AREAS, AND DRAINAGE FACILITIES) IN ACCORDANCE WITH APPROVED PLANS.
- DEVELOPMENT AND USE OF THIS SITE WILL CONFORM TO ALL APPLICABLE CODES AND ORDINANCES.
- ADDITIONAL INDIVIDUAL LOT REQUIREMENTS (E.G. SETBACKS, WALL ELEVATIONS) ARE LOCATED ON THE APPROVED FINAL SITE PLAN.
- RIGHTS OF PROPERTY ADJACENT TO PUBLIC RIGHT-OF-WAY WILL HAVE THE RESPONSIBILITY FOR MAINTAINING ALL LANDSCAPING WITHIN THE RIGHT-OF-WAY IN ACCORDANCE WITH APPROVED PLANS.
- ALL EASEMENTS ARE SUBORDINATE TO THE CORNERS OF DRAINAGE EASEMENT.
- 1/2" REBAR AT LOT CORNERS AND CORNERS OF DRAINAGE EASEMENT.
- EACH LOT CONSTITUTES A BUILDING ENVELOPE AND ACCESSORY USES AND STRUCTURES SUCH AS POOLS AND PRIVATE WALLS ARE PERMITTED EXCEPT AS OTHERWISE REGULATED BY OTHER CITY CODES AND ORDINANCES.
- WITHIN THE LANDSCAPE PRESERVATION EASEMENT IN THE VEGETATION IS TO BE PRESERVED IN ITS NATURAL STATE.

FINAL PLAT
 FOR
"Mandalay at South Mountain Phase II"

A RESIDENTIAL DEVELOPMENT, SUBJECT TO SINGLE FAMILY DESKAR REVIEW, LOCATED IN A PORTION OF THE S. 1/4 OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 3 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA



LINE TABLE

LINE	BEARING	LENGTH	AREA	LENGTH	AREA
L1	S89°59'41.7"E	25.00	39.27	25.00	39.27
L2	N02°26'00.7"W	23.00	23.00	23.00	23.00
L3	S89°23'00.7"E	23.00	23.00	23.00	23.00
L4	S89°23'00.7"E	23.00	23.00	23.00	23.00
L5	S89°23'00.7"E	23.00	23.00	23.00	23.00

CURVE TABLE

CURVE	RADIUS	AREA	LENGTH	AREA	LENGTH	AREA
C1	25.00	930.0000	39.27	25.00	39.27	25.00
C2	50.00	465.0000	19.64	50.00	19.64	50.00
C3	50.00	465.0000	19.64	50.00	19.64	50.00
C4	15.00	60.0000	23.56	15.00	23.56	15.00
C5	75.00	100.0000	26.18	75.00	26.18	75.00
C6	50.00	60.0000	23.56	50.00	23.56	50.00
C7	50.00	60.0000	23.56	50.00	23.56	50.00
C8	50.00	60.0000	23.56	50.00	23.56	50.00
C9	50.00	60.0000	23.56	50.00	23.56	50.00
C10	50.00	60.0000	23.56	50.00	23.56	50.00
C11	50.00	60.0000	23.56	50.00	23.56	50.00
C12	50.00	60.0000	23.56	50.00	23.56	50.00
C13	50.00	60.0000	23.56	50.00	23.56	50.00
C14	50.00	60.0000	23.56	50.00	23.56	50.00
C15	50.00	60.0000	23.56	50.00	23.56	50.00
C16	50.00	60.0000	23.56	50.00	23.56	50.00
C17	50.00	60.0000	23.56	50.00	23.56	50.00
C18	50.00	60.0000	23.56	50.00	23.56	50.00
C19	50.00	60.0000	23.56	50.00	23.56	50.00
C20	50.00	60.0000	23.56	50.00	23.56	50.00
C21	50.00	60.0000	23.56	50.00	23.56	50.00
C22	50.00	60.0000	23.56	50.00	23.56	50.00
C23	50.00	60.0000	23.56	50.00	23.56	50.00
C24	50.00	60.0000	23.56	50.00	23.56	50.00
C25	50.00	60.0000	23.56	50.00	23.56	50.00
C26	50.00	60.0000	23.56	50.00	23.56	50.00
C27	50.00	60.0000	23.56	50.00	23.56	50.00
C28	50.00	60.0000	23.56	50.00	23.56	50.00
C29	50.00	60.0000	23.56	50.00	23.56	50.00
C30	50.00	60.0000	23.56	50.00	23.56	50.00
C31	50.00	60.0000	23.56	50.00	23.56	50.00
C32	50.00	60.0000	23.56	50.00	23.56	50.00
C33	50.00	60.0000	23.56	50.00	23.56	50.00
C34	50.00	60.0000	23.56	50.00	23.56	50.00
C35	50.00	60.0000	23.56	50.00	23.56	50.00
C36	50.00	60.0000	23.56	50.00	23.56	50.00
C37	50.00	60.0000	23.56	50.00	23.56	50.00
C38	50.00	60.0000	23.56	50.00	23.56	50.00
C39	50.00	60.0000	23.56	50.00	23.56	50.00
C40	50.00	60.0000	23.56	50.00	23.56	50.00
C41	50.00	60.0000	23.56	50.00	23.56	50.00
C42	50.00	60.0000	23.56	50.00	23.56	50.00
C43	50.00	60.0000	23.56	50.00	23.56	50.00
C44	50.00	60.0000	23.56	50.00	23.56	50.00
C45	50.00	60.0000	23.56	50.00	23.56	50.00
C46	50.00	60.0000	23.56	50.00	23.56	50.00
C47	50.00	60.0000	23.56	50.00	23.56	50.00
C48	50.00	60.0000	23.56	50.00	23.56	50.00
C49	50.00	60.0000	23.56	50.00	23.56	50.00
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C52	50.00	60.0000	23.56	50.00	23.56	50.00
C53	50.00	60.0000	23.56	50.00	23.56	50.00
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C58	50.00	60.0000	23.56	50.00	23.56	50.00
C59	50.00	60.0000	23.56	50.00	23.56	50.00
C60	50.00	60.0000	23.56	50.00	23.56	50.00
C61	50.00	60.0000	23.56	50.00	23.56	50.00
C62	50.00	60.0000	23.56	50.00	23.56	50.00
C63	50.00	60.0000	23.56	50.00	23.56	50.00
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C65	50.00	60.0000	23.56	50.00	23.56	50.00
C66	50.00	60.0000	23.56	50.00	23.56	50.00
C67	50.00	60.0000	23.56	50.00	23.56	50.00
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C77	50.00	60.0000	23.56	50.00	23.56	50.00
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C84	50.00	60.0000	23.56	50.00	23.56	50.00
C85	50.00	60.0000	23.56	50.00	23.56	50.00
C86	50.00	60.0000	23.56	50.00	23.56	50.00
C87	50.00	60.0000	23.56	50.00	23.56	50.00
C88	50.00	60.0000	23.56	50.00	23.56	50.00
C89	50.00	60.0000	23.56	50.00	23.56	50.00
C90	50.00	60.0000	23.56	50.00	23.56	50.00
C91	50.00	60.0000	23.56	50.00	23.56	50.00
C92	50.00	60.0000	23.56	50.00	23.56	50.00
C93	50.00	60.0000	23.56	50.00	23.56	50.00
C94	50.00	60.0000	23.56	50.00	23.56	50.00
C95	50.00	60.0000	23.56	50.00	23.56	50.00
C96	50.00	60.0000	23.56	50.00	23.56	50.00
C97	50.00	60.0000	23.56	50.00	23.56	50.00
C98	50.00	60.0000	23.56	50.00	23.56	50.00
C99	50.00	60.0000	23.56	50.00	23.56	50.00
C100	50.00	60.0000	23.56	50.00	23.56	50.00

DEDICATION
 STATE OF ARIZONA
 COUNTY OF MARICOPA, J.S.S.

KNOW ALL MEN BY THESE PRESENTS MANDALAY AT SOUTH MOUNTAIN, L.L.C., AN ARIZONA LLC, ROBERT FREDERIKSEN, AND ELERA ANSELMO, AS OWNERS HAVE SUBDIVIDED UNDER THE NAME OF "MANDALAY AT SOUTH MOUNTAIN" THE SOUTHWEST QUARTER OF SECTION 3, TOWNSHIP 1 SOUTH, RANGE 3 EAST OF THE GILA AND SALT RIVER BASE AND MERIDIAN, MARICOPA COUNTY, ARIZONA, AS SHOWN AND PLATTED HEREON AND HEREBY PUBLISHES THIS PLAN AND LOCATION AND LOTS, TRACTS AND DIMENSIONS OF THE LOTS, TRACTS, STREETS AND EASEMENTS CONSTITUTING SAME AND THAT EACH LOT, TRACT AND STREET SHALL BE SEPARATELY OWNED BY THE INDIVIDUALS OR CORPORATIONS WHOSE NAMES ARE SHOWN ON SAID PLAN AND THAT THE PUBLIC FOR USE AS SUCH, THE STREETS, PUBLIC UTILITY AND DRAINAGE EASEMENTS AS SHOWN ON SAID PLAN AND INCLUDED IN ABOVE DESCRIBED PREMISES, MAINTENANCE OF THE DRAINAGE EASEMENTS WILL BE OF THE INDIVIDUAL LOT OWNERS.

TRACTS A IS HEREBY DECLARED AS A PRIVATE ACCESS SERVICE TRACTS B THROUGH G ARE HEREBY DEDICATED TO THE PUBLIC FOR WATER SEWER, DRAINAGE, REFUSE COLLECTION, EMERGENCY AND SERVICE VEHICLE.

TRACTS H THROUGH S ARE HEREBY RELEASED AS COMMON AREAS FOR THE USE AND ENJOYMENT OF LOT OWNERS AS MORE FULLY SET FORTH IN THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR MANDALAY AT SOUTH MOUNTAIN PHASE II HOMEOWNERS ASSOCIATION TO BE HEREAFTER RECORDED AND WILL BE OWNED AND MAINTAINED BY THE MANDALAY AT SOUTH MOUNTAIN PHASE II HOMEOWNERS ASSOCIATION.

A DRAINAGE EASEMENT IS HEREBY DEDICATED OVER TRACTS B THROUGH G.

IN WITNESS WHEREOF:

THE UNDERSIGNED HAS CAUSED THE CORPORATE NAME OF MANDALAY AT SOUTH MOUNTAIN, L.L.C., AN ARIZONA LIMITED LIABILITY COMPANY TO BE SIGNED AND ATTESTED TO BY THE SIGNATURE OF THE UNDERSIGNED OFFICER BEING THEREIN DULY AUTHORIZED ON THIS _____ DAY OF _____, 2005.

By: *Robert Frederiksen* Robert Frederiksen, President
Elera Anselmo Elera Anselmo, Secretary

ACKNOWLEDGMENTS
 STATE OF ARIZONA, J.S.S.
 COUNTY OF MARICOPA, J.S.S.

BEFORE ME THIS 9th DAY OF September, 2005
 DAVID EYERSON PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, WHO KNOWS AND BELIEVES HIMSELF TO BE THE PERSONAL SIGNATURE OF DAVID EYERSON, AND HE REQUESTED THAT I EXECUTE THE FOREGOING INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL.

My Commission Expires: _____
 DATE: _____
 NOTARY PUBLIC

ACKNOWLEDGMENTS
 STATE OF ARIZONA, J.S.S.
 COUNTY OF MARICOPA, J.S.S.

BEFORE ME THIS 9th DAY OF September, 2005
 ROBERT FREDERIKSEN PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, WHO KNOWS AND BELIEVES HIMSELF TO BE THE PERSONAL SIGNATURE OF ROBERT FREDERIKSEN, AND HE REQUESTED THAT I EXECUTE THE FOREGOING INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL.

My Commission Expires: _____
 DATE: _____
 NOTARY PUBLIC

ACKNOWLEDGMENTS
 STATE OF ARIZONA, J.S.S.
 COUNTY OF MARICOPA, J.S.S.

BEFORE ME THIS 9th DAY OF September, 2005
 ELERA ANSELMO PERSONALLY APPEARED BEFORE ME, THE UNDERSIGNED NOTARY PUBLIC, WHO KNOWS AND BELIEVES HERSELF TO BE THE PERSONAL SIGNATURE OF ELERA ANSELMO, AND HE REQUESTED THAT I EXECUTE THE FOREGOING INSTRUMENT FOR THE PURPOSES HEREIN CONTAINED.

IN WITNESS WHEREOF, I HERETO SET MY HAND AND OFFICIAL SEAL.

My Commission Expires: _____
 DATE: _____
 NOTARY PUBLIC

APPROVALS
 APPROVED BY THE COMMISSIONER OF THE CITY OF PHOENIX, ARIZONA, THE 12th DAY OF October, 2005.

ATTEST: *Yolanda Nunez* City Clerk
 DATE: 10/17/05

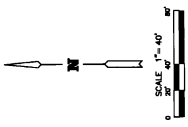
FOR DEVELOPMENT SERVICES DEPT.

CERTIFICATION
 I, DENNIS F. KECH, HEREBY CERTIFY THAT I AM A REGISTERED LAND SURVEYOR IN THE STATE OF ARIZONA, THAT THIS MAP CONSISTS OF 3 SHEETS, CORRECTLY IDENTIFIED AS SHEETS 1, 2 AND 3, AND THAT THIS MAP WAS PREPARED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT THE INSTRUMENTS SHOWING ACTUALLY LOCATED SURVEY MONUMENTS AND THAT SAID MONUMENTS ARE SUFFICIENT TO ENABLE THE SURVEY TO BE REPRODUCED.

By: *Dennis F. Kech* Surveyor
 DENNIS F. KECH
 14150 W. MOOREHEAD ROAD
 PHOENIX, ARIZONA 85038
 REG. NO. 10848

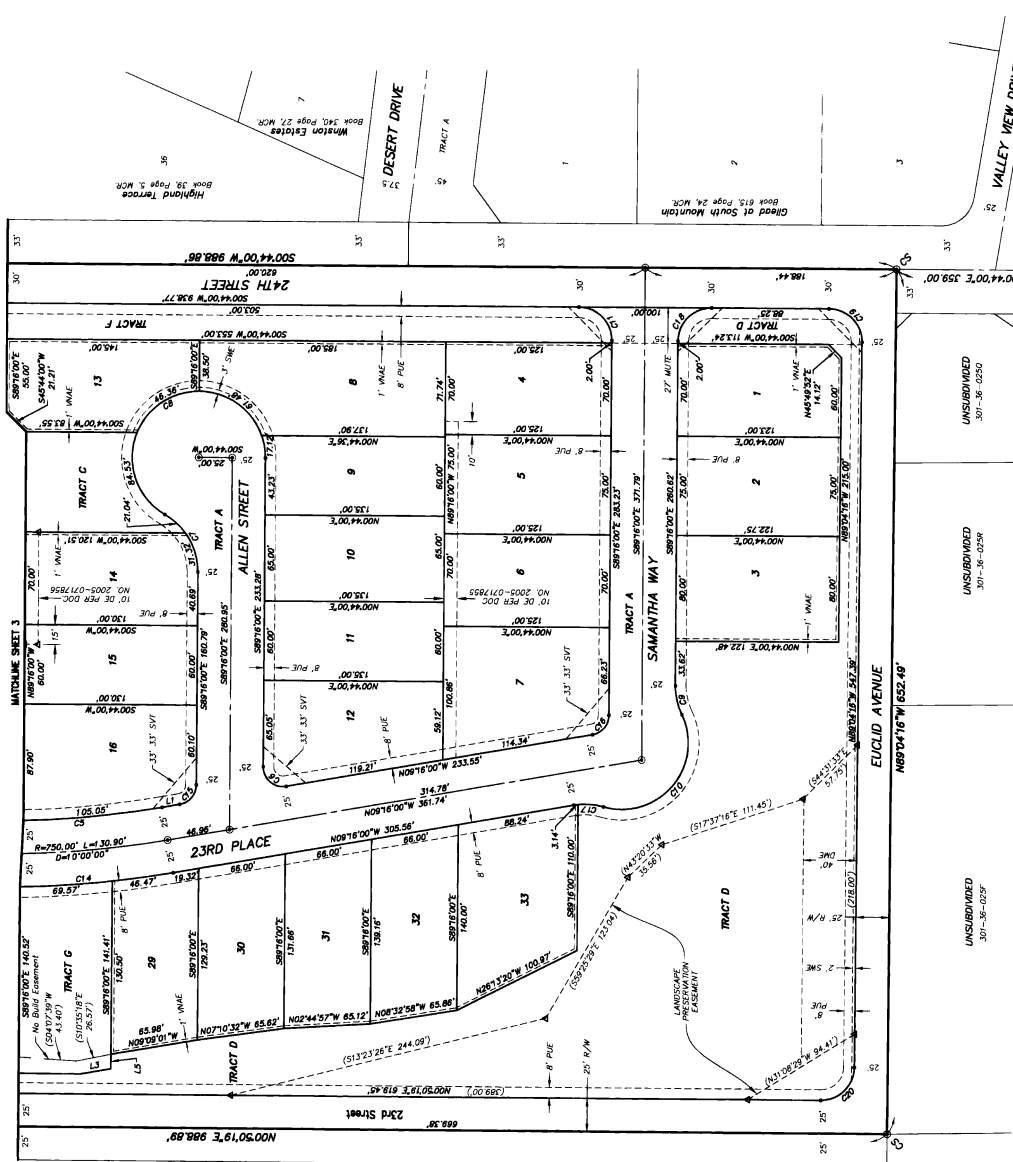
OWNER/DEVELOPER
 MANDALAY AT SOUTH MOUNTAIN, L.L.C.
 2183 E. CAMELBACK RD., SUITE 110
 PHOENIX, ARIZONA 85016
 PHONE: (602) 964-3800
 CONTACT: DAVID EYERSON

ENGINEER
 KECH ENGINEERING, INC.
 14150 W. MOOREHEAD ROAD
 PHOENIX, ARIZONA 85038
 PHONE: (602) 535-7260
 FAX: (602) 535-7262
 CONTACT: DENNIS



KVA 04-1600
 SEW 040827
 CS# 02-32
 PLAT# 06007
 FINAL PLAT
 "MANDALAY AT SOUTH MOUNTAIN
 PHASE II"
 Keough Engineering, Inc.
 1405 E. Grand St., Suite 200
 Ann Arbor, MI 48106
 (734) 769-1100
 Fax: (734) 769-1101
 E-MAIL: kjo@keougheng.com
 License No. E-162690

SHEET 2 OF 3
 SHEET 1 OF 3
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BOOK 784 PAGE 50
 OFFICIAL RECORDS OF
 MICHIGAN COUNTY CLERK
 2005-162690
 02/21/05

UNSUBDIVIDED
 301-36-0278
 UNSUBDIVIDED
 301-36-0279
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KIVIM 04-1509
SBEV 0400027
CSF 02-32
PLAN 058007



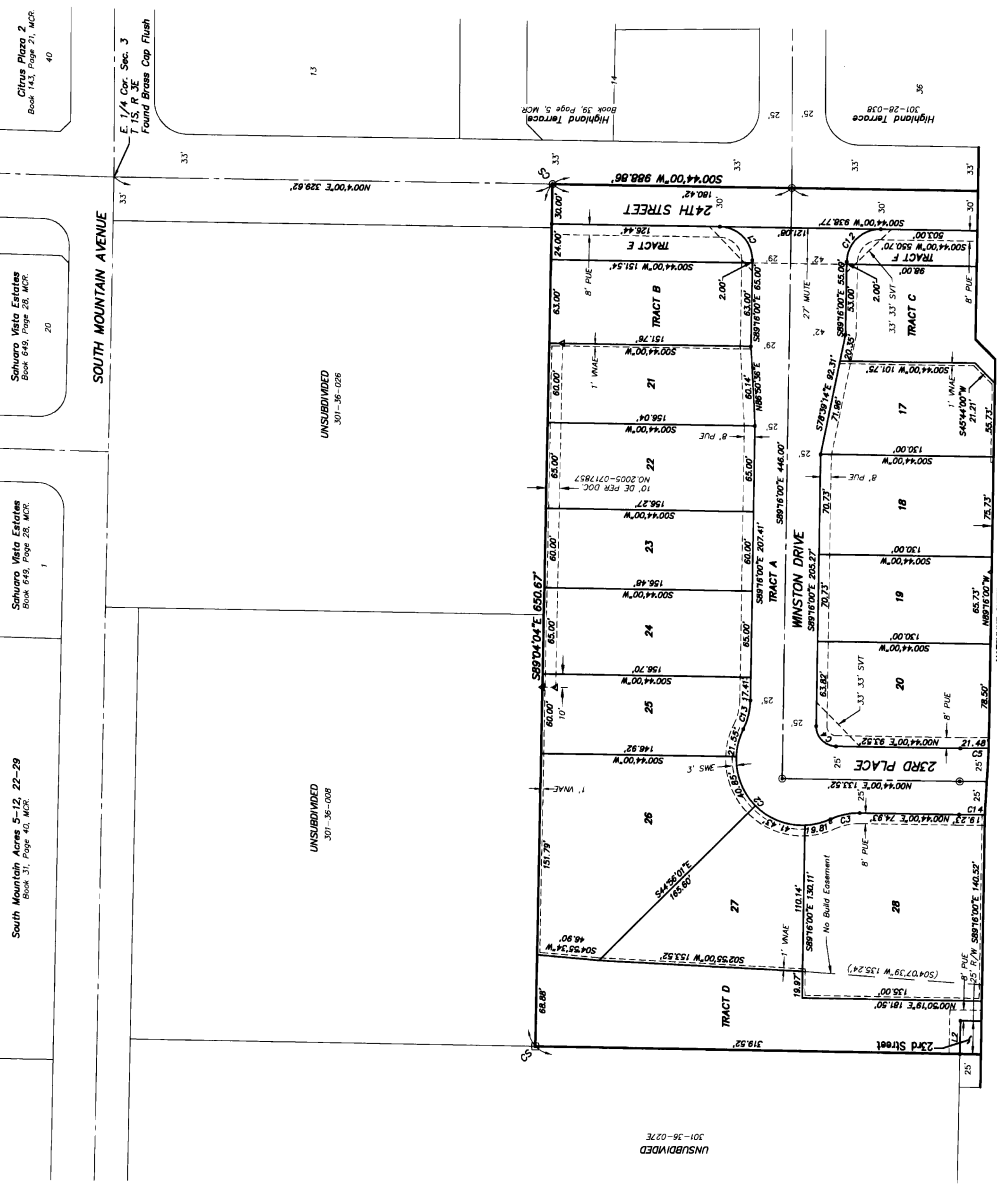
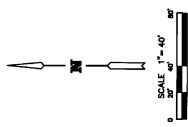
FINAL PLAT
"MANDALAY AT SOUTH MOUNTAIN
PHASE II"

Kingdom Engineering, Inc.
10000
PHASE II 02-32-018 10000 02-32-018
JOB NO. 190038 MAP NO. E-190038

SHEET 3 OF 3
NO. LOTS-33
GROSS AREA-14.79 ACRES

BOOK 784 PAGE 50
OFFICIAL RECORDS OF
MANDALAY CITY ENGINEER
2005-1525990
02/24/05

Plot Date / Time: 08/05/05 12:32pm Layout Name: Sheet 3 Full File Path: I:\9035-Mandaly at South Mt\Final Plat\3-F02.dwg AutoCAD Version: 16.0 Log Name: SHAWN KEOGH



City of Reno, NV
Book 143, Page 21, MCR

Siuhuro Vista Estates
Book 646, Page 30, MCR

Siuhuro Vista Estates
Book 649, Page 28, MCR

South Mountain Acres 5-12, 22-29
Book 31, Page 40, MCR

SOUTH MOUNTAIN AVENUE

24TH STREET

WINSTON DRIVE

23RD PLACE

MATCHLINE SHEET 2

UNSUBDIVIDED
301-36-026

UNSUBDIVIDED
301-36-008

UNSUBDIVIDED
301-36-027E

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When recorded mail to:

Mandalay at South Mountain, LLC
Attn: Jeffery Fijalka
2198 E Camelback Rd, Ste 305
Phoenix, AZ 85016
BD 2000

BD2000-4-1-1--
Ward1

DRAINAGE EASEMENT

In consideration of One Dollar (\$1.00), receipt of which is hereby acknowledged,

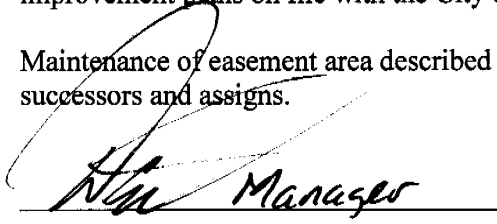
Mandalay at South Mountain, LLC, an Arizona Limited Liability Company

as Grantor, hereby grants Quintessa Home Owners' Association, an Arizona Limited Liability Corporation, as Grantee, its successors and assigns, an easement for drainage on the following described premises situated in Maricopa County, Arizona:

See "Drainage Easement C" attached hereto and made part hereof

Together with the rights of ingress to said property to construct, install, maintain, repair and replace said drainage facilities on the above described property. The easement described herein shall also accept storm water runoff from adjoining lots, per approved improvement plans on file with the City of Phoenix.

Maintenance of easement area described herein shall be solely by the Grantor, its successors and assigns.



Manager
Mandalay at South Mtn, LLC


STATE OF ARIZONA)
) ss.
County of Maricopa)

On May 27th, 2005, before me, the undersigned Notary Public, personally appeared David Everson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the

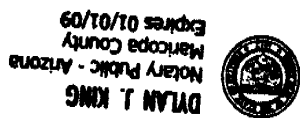
instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires:



Notary Public





Keogh Engineering, Inc.

14150 W. McDowell Rd. • Goodyear Arizona 85338
(623) 535-7260 • Fax (623) 535-7262 • E-mail: keoeng@qwest.net

Consulting Engineers | Land Surveyors

Legal Description
Mandalay Homes
Our Job No. 19638
18 May 2005

DRAINAGE EASEMENT C

A portion of the Southeast quarter of Section 3, Township 1 South, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona more particularly described as follows:

Beginning at the Northeast corner of said Southeast quarter; thence South 0° 44' 00" West along the East line of said Southeast quarter, a distance of 980.04 feet; thence North 89° 16' 00" West, a distance of 117.00 feet to the TRUE POINT OF BEGINNING of the herein described easement; thence continuing North 89° 16' 00" West, a distance of 255.86 feet; thence South 9° 16' 00" East, a distance of 10.15 feet; thence South 89° 16' 00" East, a distance of 254.09 feet; thence North 0° 44' 00" East, a distance of 10.00 feet to the TRUE POINT OF BEGINNING.

Said easement contains 2,550 square feet or 0.0585 acres, more or less.

DESCRIPTION	
Dictated	<u>ES</u>
Typed	<u>ES</u>
Proof 1	<u>ES</u>
Proof 2	<u>TA</u>
KEOGH ENGINEERING, INC.	



PREPARED FOR:

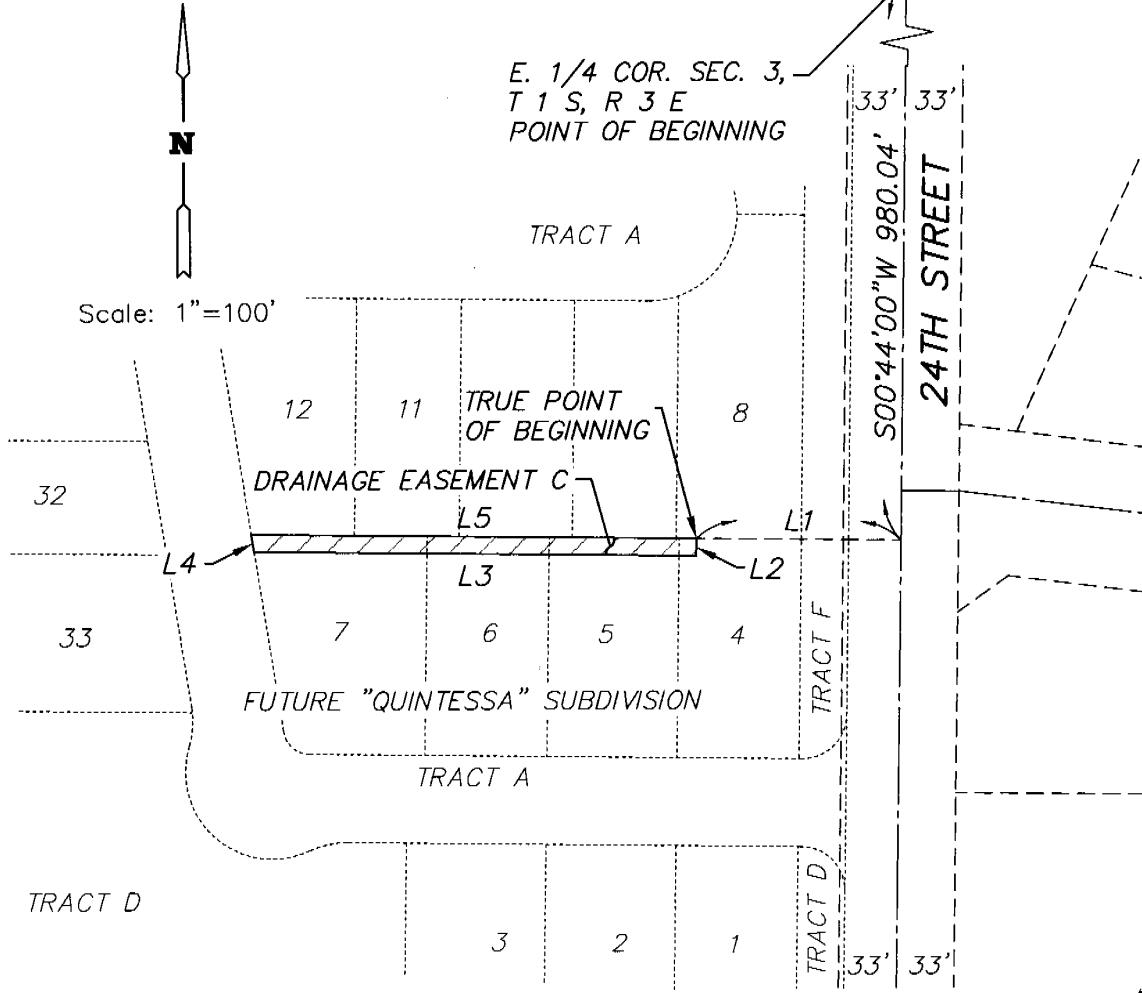
MANDALAY at SOUTH MOUNTAIN II

BY: SPK

DATE: May, 2005

JOB NO. 19638

SOUTH MOUNTAIN AVENUE



LINE TABLE

LINE	BEARING	LENGTH
L1	S89°16'00"E	117.00'
L2	S00°44'00"W	10.00'
L3	N89°16'00"W	254.09'
L4	N09°16'00"W	10.15'
L5	S89°16'00"E	255.86'

AREA:
2,550 S.F.

LEGEND

DRAINAGE ESMT.



KIVA 04-1509
SDEV 0400627
QS# 02-32

AutoCad Version: 16.0
Login Name: SHAWN KEOGH

Map-Drainage Esmt.C
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Plot Date / Time: 05/18/05 02:12
Full File Path: L:\19638-Mandalay at South Mtn II\Drainage Esmt Exhibits\DE C.dwg



Keogh Engineering, Inc.

14150 W. MCDOWELL RD. • GOODYEAR, AZ 85338
PHONE (623) 535-7260 • FAX (623) 535-7262 • EMAIL keoeng@qwest.net

CHECKED BY: DFK

DATE: May, 2005

SHEET NO. 1

OF 1

When recorded mail to:

Mandalay at South Mountain, LLC
Attn: Jeffery Fijalka
2198 E Camelback Rd, Ste 305
Phoenix, AZ 85016
BD2001

BD2001-4-1-1--
Ward1

DRAINAGE EASEMENT

In consideration of One Dollar (\$1.00), receipt of which is hereby acknowledged,

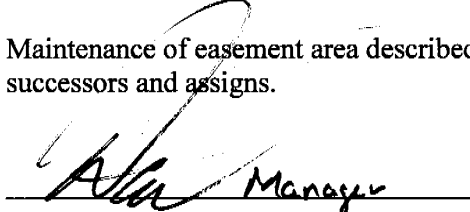
Mandalay at South Mountain, LLC, an Arizona Limited Liability Company

as Grantor, hereby grants Quintessa Home Owners' Association, an Arizona Limited Liability Corporation, as Grantee, its successors and assigns, an easement for drainage on the following described premises situated in Maricopa County, Arizona:

See "Drainage Easement B" attached hereto and made part hereof

Together with the rights of ingress to said property to construct, install, maintain, repair and replace said drainage facilities on the above described property. The easement described herein shall also accept storm water runoff from adjoining lots, per approved improvement plans on file with the City of Phoenix.

Maintenance of easement area described herein shall be solely by the Grantor, its successors and assigns.



Alla Manayev
Mandalay at South Mtn, LLC

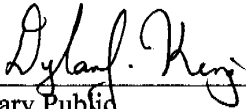
STATE OF ARIZONA)
) ss.
County of Maricopa)

On May 27th, 2005, before me, the undersigned Notary Public, personally appeared David Everson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the

instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires:



Notary Public



DYLAN J. KING
Notary Public - Arizona
Maricopa County
Expires 01/01/09



Keogh Engineering, Inc.

14150 W. McDowell Rd. • Goodyear Arizona 85338
(623) 535-7260 • Fax (623) 535-7262 • E-mail: keoeng@qwest.net

Consulting Engineers | Land Surveyors

Legal Description
Mandalay Homes
Our Job No. 19638
18 May 2005

DRAINAGE EASEMENT B

A portion of the Southeast quarter of Section 3, Township 1 South, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona more particularly described as follows:

Beginning at the Northeast corner of said Southeast quarter; thence South 0° 44' 00" West along the East line of said Southeast quarter, a distance of 665.04 feet; thence North 89° 16' 00" West, a distance of 202.79 feet to the TRUE POINT OF BEGINNING of the herein described easement; thence continuing North 89° 16' 00" West, a distance of 85.00 feet; thence South 0° 44' 00" West, a distance of 10.00 feet; thence South 89° 16' 00" East, a distance of 85.00 feet; thence North 0° 44' 00" East, a distance of 10.00 feet to the TRUE POINT OF BEGINNING.

Said easement contains 850 square feet or 0.0195 acres, more or less.

DESCRIPTION
Dictated ES
Typed ES
Proof-1 ES
Proof-2 TR
KEOGH ENGINEERING, INC.



PREPARED FOR:

MANDALAY at SOUTH MOUNTAIN II

BY: SPK

DATE: May, 2005

JOB NO. 19638

SOUTH MOUNTAIN AVENUE

E. 1/4 COR. SEC. 3,
T 1 S, R 3 E
POINT OF BEGINNING

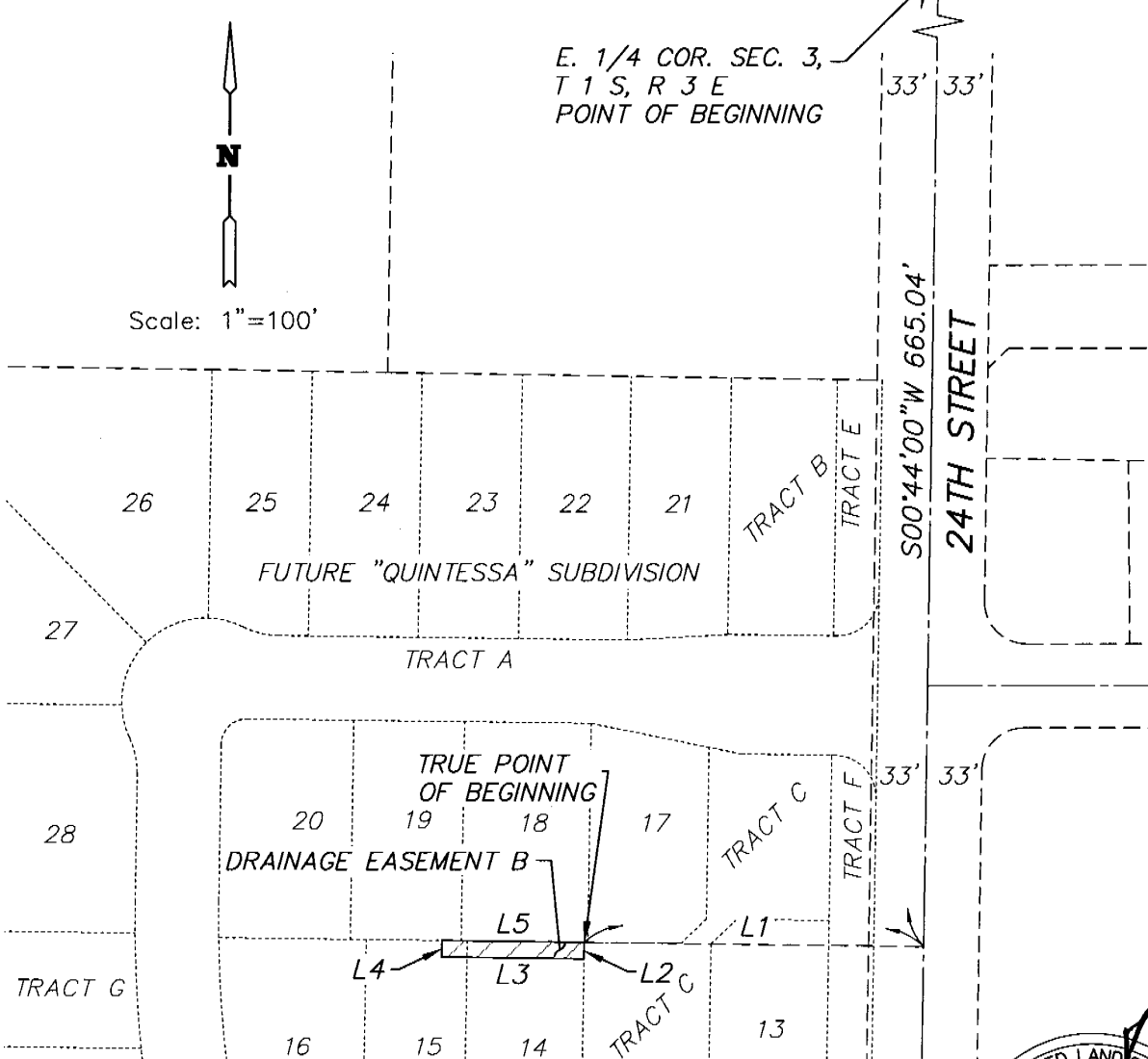


Scale: 1"=100'

AutoCad Version: 16.0
Login Name: SHAUN KEOGH

Layout Name: Map-Drainage Esmt.B
Full File Path: L:\19638-Mandalay at South Mtn II\Drainage Esmt Exhibits\DE B.dwg

Plot Date / Time: 05/18/05 02:01pm
Full File Path: L:\19638-Mandalay at South Mtn II\Drainage Esmt Exhibits\DE B.dwg



FUTURE "QUINTESSA" SUBDIVISION

TRACT A

TRUE POINT OF BEGINNING

DRAINAGE EASEMENT B

TRACT B

TRACT E

S00°44'00"W 665.04'

24TH STREET

TRACT C

TRACT F

LINE TABLE

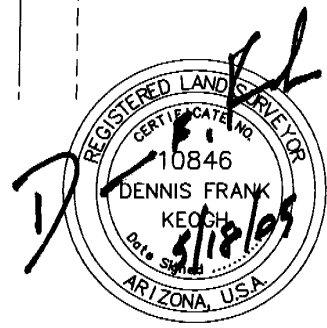
LINE	BEARING	LENGTH
L1	N89°16'00"W	202.79'
L2	S00°44'00"W	10.00'
L3	N89°16'00"W	85.00'
L4	N00°44'00"E	10.00'
L5	S89°16'00"E	85.00'

AREA:

850 S.F.

LEGEND

DRAINAGE ESMT.



KIVA 04-1509
SDEV 0400627
QS# 02-32



Keogh Engineering, Inc.

14150 W. MCDOWELL RD. • GOODYEAR, AZ 85338
PHONE (623) 535-7260 • FAX (623) 535-7262 • EMAIL keoeng@qwest.net

CHECKED BY: DFK

DATE: May, 2005

SHEET NO. 1

OF 1

When recorded mail to:

Mandalay at South Mountain, LLC
Attn: Jeffery Fijalka
2198 E Camelback Rd, Ste 305
Phoenix, AZ 85016
BD 2002

BD2002-4-1-1--
Ward1

DRAINAGE EASEMENT

In consideration of One Dollar (\$1.00), receipt of which is hereby acknowledged,

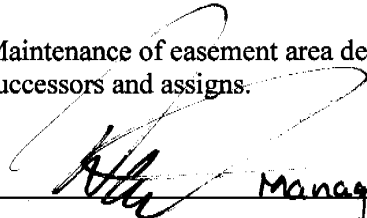
Mandalay at South Mountain, LLC, an Arizona Limited Liability Company

as Grantor, hereby grants Quintessa Home Owners' Association, an Arizona Limited Liability Corporation, as Grantee, its successors and assigns, an easement for drainage on the following described premises situated in Maricopa County, Arizona:

See "Drainage Easement A" attached hereto and made part hereof

Together with the rights of ingress to said property to construct, install, maintain, repair and replace said drainage facilities on the above described property. The easement described herein shall also accept storm water runoff from adjoining lots, per approved improvement plans on file with the City of Phoenix.

Maintenance of easement area described herein shall be solely by the Grantor, its successors and assigns.



Manager
Mandalay at South Mtn, LLC.

STATE OF ARIZONA)
) ss.
County of Maricopa)

On May 27th 2005, before me, the undersigned Notary Public, personally appeared David Everson, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the

instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

My Commission Expires:



Notary Public



DYLAN J. KING
Notary Public - Arizona
Maricopa County
Expires 01/01/09



Keogh Engineering, Inc.

14150 W. McDowell Rd. • Goodyear Arizona 85338
(623) 535-7260 • Fax (623) 535-7262 • E-mail: keoeng@qwest.net

Consulting Engineers | Land Surveyors

Legal Description
Mandalay Homes
Our Job No. 19638
18 May 2005

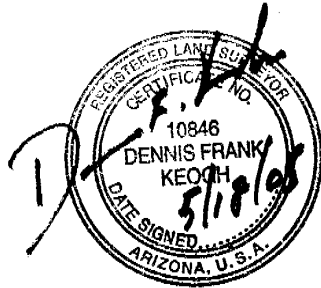
DRAINAGE EASEMENT A

A portion of the Southeast quarter of Section 3, Township 1 South, Range 3 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona more particularly described as follows:

Beginning at the Northeast corner of said Southeast quarter; thence South 0° 44' 00" West along the East line of said Southeast quarter, a distance of 329.62 feet; thence North 89° 04' 04" West, a distance of 120.00 feet to the TRUE POINT OF BEGINNING of the herein described easement; thence continuing North 89° 04' 04" West, a distance of 260.00 feet; thence South 0° 44' 00" West, a distance of 10.00 feet; thence South 89° 04' 04" East, a distance of 260.00 feet; thence North 0° 44' 00" East, a distance of 10.00 feet to the TRUE POINT OF BEGINNING.

Said easement contains 2,600 square feet or 0.0597 acres, more or less.

DESCRIPTION
Dictated KS
Typed KS
Proof-1 KS
Proof-2 TA
KEOGH ENGINEERING, INC.



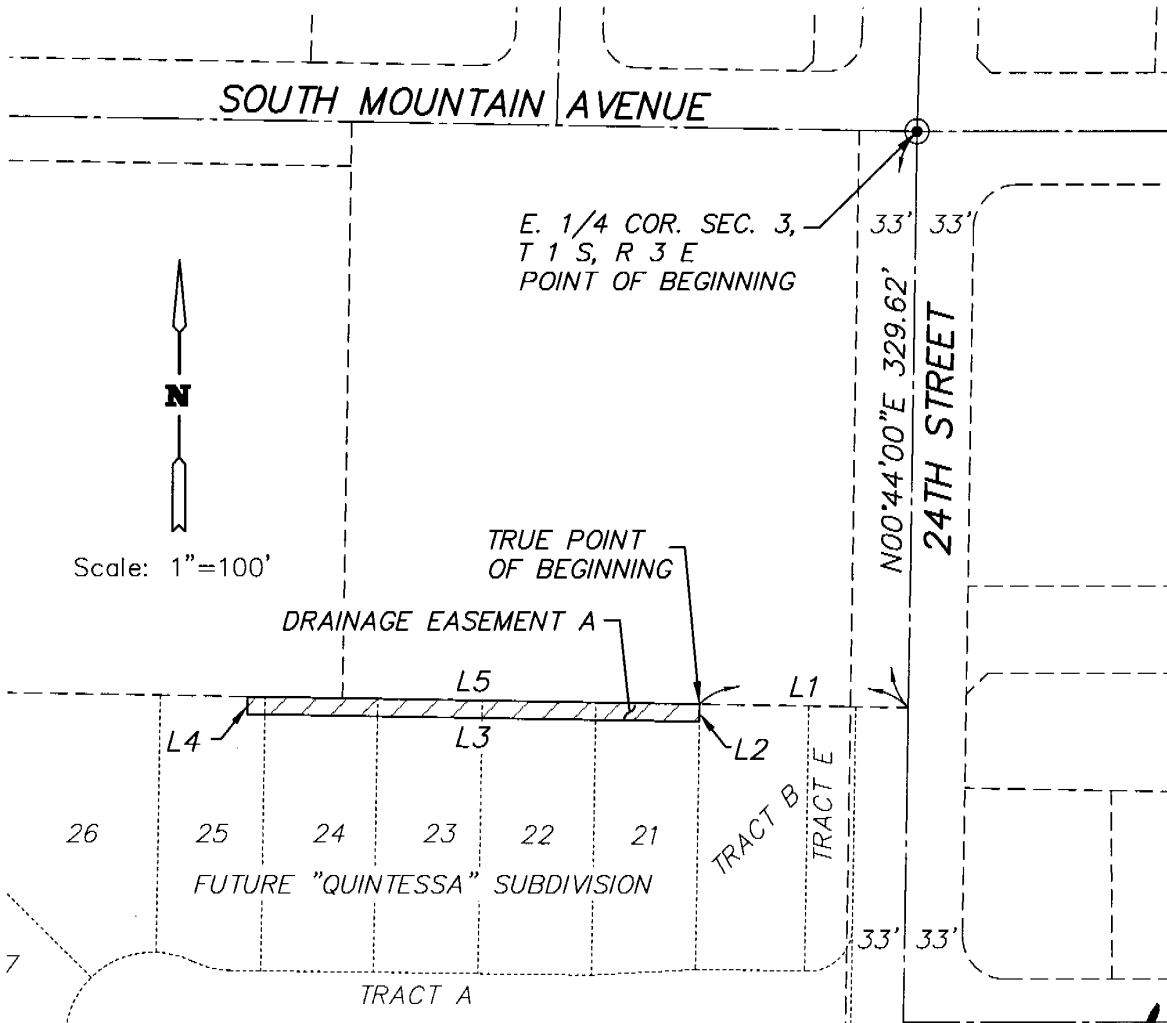
PREPARED FOR:

MANDALAY at SOUTH MOUNTAIN II

BY: SPK

DATE: May, 2005

JOB NO. 19638



LINE TABLE

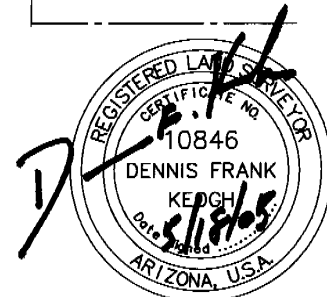
LINE	BEARING	LENGTH
L1	N89°04'04"W	120.00'
L2	S00°44'00"W	10.00'
L3	N89°04'04"W	260.00'
L4	N00°44'00"E	10.00'
L5	S89°04'04"E	260.00'

AREA:

2,600 S.F.

LEGEND

DRAINAGE ESMT.



KIVA 04-1509
SDEV 0400627
QS# 02-32

AutoCad Version: 16.0
Login Name: SHAUN KEOGH

Plot Date / Time: 05/18/05 01:51pm
Full File Path: L:\19638-Mandalay at South Mtn II\Drainage Esmt Exhibits\DE_A.dwg
Layout Name: Map-Drainage Esmt.A



Keogh Engineering, Inc.

14150 W. MCDOWELL RD. • GOODYEAR, AZ 85338
PHONE (623) 535-7260 • FAX (623) 535-7262 • EMAIL keoeng@qwest.net

CHECKED BY: DFK

DATE: May, 2005

SHEET NO. 1

OF 1

WHEN RECORDED, RETURN TO:

David D. Everson
Mandalay Homes, Inc.
2198 E. Camelback Road, Suite 305
Phoenix, Arizona 85016



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL
2005-1693398 11/08/05 13:33
1 OF 1

HENSLEVE

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MANDALAY AT SOUTH MOUNTAIN
PHASE II**

This Declaration of Covenants, Conditions and Restrictions (hereinafter termed the "Declaration") is made on this 31st Day of October, by Mandalay at South Mountain, L.L.C., an Arizona limited liability company (hereinafter sometimes termed "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the Owner of the real property located in Phoenix, Maricopa County, Arizona, which is described on Exhibit "A" (the "Covered Property") attached hereto.

WHEREAS, the Covered Property shall be developed as a single family residential subdivision.

NOW, THEREFORE, Declarant hereby declares that all of said real property (hereinafter sometimes referred to as Mandalay at South Mountain Phase II) shall be held, sold, and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration which are for the purpose of protecting the value and desirability of, and which shall run with said real property, and be binding on all parties having any right, title or interest in said real property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1
DEFINITIONS

Section 1.1. "Articles" shall mean the Articles of Incorporation of the Association, which have been, or will be, filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 1.2. "Association" shall mean "Mandalay at South Mountain Homeowners Association Phase II, Inc.," an Arizona nonprofit corporation.

Section 1.3. "Association Rules" shall mean the rules and regulations adopted by the Association, as the same may be amended from time to time.

Section 1.4. "Board" shall mean the Board of Directors of the Association.

Section 1.5. "Builder" shall mean a person or entity who is engaged in residential real estate development and who purchases one or more Lots from the Declarant for the purpose of constructing Improvements thereon for sale or lease.

Section 1.6. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.7. "Common Area" shall mean all real property, and all Improvements located thereon, owned by the Association for the common use and enjoyment of the Owners.

Section 1.8. "Declarant" shall mean Mandalay at South Mountain, L. L. C., an Arizona limited liability company, its successors and any person or entity to whom it may expressly assign its rights under this Declaration.

Section 1.9. "Declaration" shall mean the covenants, conditions and restrictions herein set forth in this entire document, as same may from time to time be amended.

Section 1.10. "Improvement" shall mean buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping Improvements of every type and kind.

Section 1.11. "Lot" shall mean any parcel of real property designated as a Lot on the Plat.

Section 1.12. "Member" shall mean any person, corporation, partnership, joint venture, or other legal entity that is an Owner of a Lot within the Property.

Section 1.13. "Owner" shall mean the record Owner, whether one (1) or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) the Purchaser of a Lot under an executory contract for the sale of real property, (ii) persons or entities having an interest in a Lot merely as security for the performance of an obligation, or (iii) a lessee or tenant of a Lot. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust shall be deemed to be the Owner.

Section 1.14. "Plat" shall mean the Final Plat of the Project, which Plat was recorded with the County Recorder of Maricopa County, Arizona on December 8th, 2003 as "Mandalay at South Mountain" in Book 662 of Maps, page 10, official records of Maricopa County in instrument number 2003-1663181.

Section 1.15. "Project Documents" shall mean this Declaration and the Articles, Bylaws, and Association Rules.

Section 1.16. "Property" or "Project" shall mean the real property described on Exhibit A attached to this Declaration.

Section 1.17. "Purchaser" shall mean any person other than the Declarant who by means of a voluntary transfer acquires a legal or equitable interest in a Lot other than (a) a leasehold interest (including renewable options) of less than five (5) years or (b) as security for an obligation.

Section 1.18. "Single Family" shall mean a group of one (1) or more persons each related to the other by blood, marriage or legal adoption; or a group of persons not all so related not to exceed five (5) in number, who maintain a common household in a dwelling.

Section 1.19. "Single Family Residential Use" shall mean the occupation or use of a residence by a single family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county, or municipal rules and regulations.

Section 1.20. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is, or would be, visible to a person six (6) feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE 2
THE ASSOCIATION

Section 2.1. Rights, Powers, and Duties. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration.

Section 2.2. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint, in accordance with the Articles and the bylaws.

Section 2.3. Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee, or lessee of such Owner; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be available for inspection by the Members at reasonable times.

ARTICLE 3
MEMBERSHIP

Section 3.1. Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

Section 3.2. Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such Purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be voided and shall not be reflected upon the books and records of the Association.

ARTICLE 4
VOTING RIGHTS

Section 4.1. Classes of Members. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all owners of Lots, with the exception of the Declarant. Each Class A Member shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B Membership shall be all memberships held by the Declarant. The Declarant shall be entitled to three (3) votes for each Membership held by the Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When Seventy-Five Percent (75%) of the Lots are deeded to Owners; or
- (b) When the Declarant notifies the Board of Directors of the Association in writing that Declarant expressly converts Declarant's remaining Class B Memberships to Class A Memberships; or
- (c) January 1, 2027.

Section 4.2. Joint Ownership. When more than one (1) person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one (1) ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

Section 4.3. Corporate Ownership. In the event any Lot is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have power to vote said membership, and in the absence of such designation and until such designation is made, the chief executive officer, if any, of such

corporation, partnership or association shall have the power to vote the membership, and if there is no chief executive officer, then the Board of Directors or general partner of such corporation, partnership or association shall designate who shall have the power to vote the membership.

Section 4.4. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any assessments or other amounts due under any of the provisions of the Project Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including collection and/or attorneys, fees, are brought current, and for a period not to exceed sixty (60) days for any infractions of the Project Documents and for successive sixty (60) day periods if the infraction has not been corrected.

ARTICLE 5

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants, and each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association: (1) annual assessments, (2) supplemental assessments, (3) special assessments for capital improvements, and (4) transfer fees. The annual, supplemental, and special assessments, together with costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. The lien of assessment is subordinate to the lien of a first mortgage. Each such assessment, together with costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 5.2. Purpose of the Assessments. The assessments levied by the Association shall be used exclusively for the upkeep, maintenance, and improvement of the Common Area, including, but not limited to, that certain wall that is contiguous to the common area and not contiguous to any Lot, landscaping, and landscaping irrigation systems, and such portions of the Lots, and such portions of the Improvements located thereon, as the Association is obligated to maintain under Sections 9.1 and 9.2 of this Declaration, and for promoting the recreation, health, safety and welfare of the Owners and residents of Lots within the Property.

Section 5.3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum

annual assessment for each Lot shall be Three Hundred Eighty Five and No/100 Dollars (\$385.00). Thereafter Assessment may be increased pursuant to Arizona Revised Statute Section 33-1801 pertaining to Planned Communities.

Section 5.4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any litigating the enforcement of the Declaration, construction, reconstruction, repair or replacement of capital improvement of the Common Area, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any such assessment shall have the assent of Members having at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 5.5. Uniform Rate of Assessment. Annual, supplemental, and special assessments must be fixed at a uniform rate for all Lots. However, as long as there is a Class B membership, Declarant shall not be subject to assessments for Lots not sold to individual Purchasers, but instead shall be required to subsidize the Association the difference between the cost of operating and administering the Association and the total amount of Annual Assessments. When the Class B Memberships cease as prescribed in Article 4, Section 4.1, Declarant shall no longer be required to subsidize the cost of operating and administering the Association but shall become a Class A Member and will be subject to payment of assessments for each remaining undeveloped Lot owned by Declarant.

Section 5.6. Unimproved Lot Assessment. The Owner of a Lot, other than Declarant, shall pay twenty-five percent (25%) of the Annual Assessment amount until the earlier of (i) the completion of the first dwelling unit on the Lot, (ii) six (6) months following commencement of construction of the dwelling unit on the Lot, or (iii) January 1, 2003. The one hundred percent (100%) assessment permanently attaches upon initial occupancy regardless of its state of occupancy thereafter.

Section 5.7. Date of Commencement of Annual Assessments, Due Dates. The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board may require that the annual assessment be paid in installments and in such event the Board shall establish the due dates for each installment. The Association shall, upon

demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 5.8. Transfer Fee. Each person or entity other than Declarant or a builder who purchases a Lot from a person or entity other than the Declarant or a builder shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board.

Section 5.9. Effect of Nonpayment of Assessments; Remedies of the Association. 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 a monthly late charge to be set by the Board. Any assessment, or any installment of an assessment, which is delinquent shall become a continuing lien on the Lot against which such assessment was made. The lien shall be perfected by the recording of a "Notice of Claim of Lien" which shall set forth (1) the name of the delinquent Owner as shown on the records of the Association, (2) legal description, street address and number of the Lot against which the lien is made, (3) the amount claimed as of the date of the recording of the notice including lien recording fees, late charges and reasonable attorneys' fees, and (4) the name and address of the Association. The Association's lien shall have priority over all liens or claims created subsequent to the recording of the Notice of Claim of Lien except for tax liens for real property taxes on the Lot, assessments on any Lot in favor of any municipal or other governmental body and the liens which are specifically described in Section 5.1 of this Declaration.

Before recording a lien against any Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent assessments, together with late charges and reasonable attorneys' and collection fees, if any. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release any lien recorded pursuant to this Section until all delinquent assessments, lien fees, late charges and reasonable attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

The Association shall have the right, at its option, to enforce collection of any delinquent assessments together with lien fees, late charges, reasonable attorneys and collection fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (a) bringing an action at law against the Owner personally obligated to pay the delinquent assessments and such action may be brought without waiving any lien securing any such delinquent assessments or (b) bringing an action to

foreclose its 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 at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

Section 5.10. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments that become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 5.11. Exemption of Owner. No Owner of a Lot may exempt himself from liability for annual, supplemental, or special assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities, or by the abandonment of his Lot.

ARTICLE 6

PERMITTED USES AND RESTRICTIONS

Section 6.1. Scope. Except as otherwise specified, the provisions of this Article shall apply to all of the Property.

Section 6.2. Residential Use. All Lots shall be used, improved, and devoted exclusively to Single Family Residential use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any Lot. Nothing herein shall be deemed to prevent the leasing of a Lot to a Single Family from time to time by the Owner thereof, subject to all of the provisions of the Project Documents. Any Owner who leases his Lot shall promptly notify the Association and shall advise the Association of the term of the lease and the name of each lessee. All buildings or structures erected upon the Property shall be of new construction and no buildings or structures shall be moved from other locations onto the Property without the prior written approval of the Board.

Section 6.3. Animals. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any property and then only if they are kept, bred, or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighboring

Property. Upon the written request of any Owner, the Board shall determine whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet, or nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Board shall be enforceable to the same extent as other restrictions contained in this Declaration.

Section 6.4. Utility Service. Except as approved in writing by the Board, no lines, wires, or other devices for the communication of, transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Board. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incidental to the construction of buildings or structures approved by the Board.

Section 6.5. Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time, on any portion of the Property, for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such property shall be removed immediately after the completion of construction.

Section 6.6. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed on any such property.

Section 6.7. Trash Containers and Collection. No garbage or trash shall be placed or kept on any property except in covered containers of a type, size and style that are approved by the Board. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then, only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, and garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot. No garbage or trash containers shall be kept or placed on any grass or other landscaped area.

Section 6.8. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed, or maintained on any property so as to be Visible From Neighboring Property.

Section 6.9. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any property except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a residence, appurtenant structures, or other Improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Property

Section 6.10. Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board.

Section 6.11. Signs. No signs whatsoever (including, but not limited to, commercial advertising and similar signs) shall be erected or maintained anywhere on the Property including but not limited to, the inside or outside of windows in any building located on the Property, except such signs as may be required by legal proceedings or otherwise approved herein. The use of typical real estate "For Sale" signs shall be permitted. Use of "For Lease" signs is subject to approval by the Board except as provided in Section 6.12 herein.

Section 6.12. Declarant's Exemption. Notwithstanding any other provision of the Project Documents, it shall be expressly permissible for the Declarant or its duly authorized agents, employees, and representatives to maintain during the period of the sale of Lots, such facilities, structures, and signs as are necessary or convenient, in the sole opinion of the Declarant, to the sale of the lots, including, but without limitation, a business office, storage area, construction yard, homes, and sales offices; provided, however, that such use of the Common Area by the Declarant must be reasonable and must not interfere with any Owner's use and enjoyment of the Common Area.

Section 6.13. Mineral Exploration. No property shall be used in any manner to explore for, or to remove any water, oil, or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

Section 6.14. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any property that shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 6.15. Trash and Debris. Each Owner of a Lot, when installing or constructing Improvements on the Lot, shall provide a place for the daily collection and storage of trash and debris and will remove such trash and debris on a reasonable schedule. No Owner of a Lot will allow any nuisance to occur on his Lot or adjacent to his Lot other than the reasonable result of construction activity. The Board shall be the sole judge as to whether on not undue nuisance is occurring and upon notice from the Board to the Lot Owner, any such nuisances identified by the Board shall be corrected.

Section 6.16. Repair of Building. No building or structure on any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required within this Declaration, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

Section 6.17. Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Board.

Section 6.18. Trucks, Trailers, Campers and Boats. No mobile home, travel trailer, motor home, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on the Common Areas or the Streets unless approved in writing by the Board.

Section 6.19. Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or have major repairs upon any Lot or street in Mandalay at South Mountain Phase II, and no inoperable vehicle, including but not limited to vehicles with flat tires may be stored or parked on any such Lot or street so as to be visible from Neighboring Property or to be visible from Common Areas or streets; provided however, that the provisions of this section shall not apply to emergency vehicle repairs; reasonable vehicle maintenance; including proper disposal of any materials that can be construed as hazardous by any local, state or federal legislation, vehicle repair that is not visible from Neighboring Property or visible from Common Areas or streets; or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved in writing by the Board.

Section 6.20. Parking. It is the intent of the Declarant to restrict On-Street parking as much as possible. Vehicles of all Owners, Lessees and Residents, and of their employees, guests and invitees, are to be kept in garages, carports, residential driveways

of the Owner, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot or Parcel; provided, however, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking within Mandalay at South Mountain Phase II is otherwise prohibited or the parking of any inoperable or unlicensed vehicle.

Section 6.21. Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot or Parcel, any member of the Architectural Committee, any member of the Board, or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot or Parcel, and the improvements thereon, except for the interior portions of any completed residence, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

Section 6.22. Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners or residents, the Board may make rules restricting or regulating their presence at Mandalay at South Mountain Phase II as part of the Association Rules

Section 6.23. Exterior Paint. The exterior paint and trim color of any residence within the Project may not be changed without the prior written approval of the Board.

Section 6.24. Landscaping. Each Owner of a Lot or Parcel shall install and substantially complete the landscape in the front of the Dwelling Unit and any other areas of the Lot or Parcel which are Visible From Neighboring Property or visible from Common Areas upon the earlier of (i) within three (3) months of occupancy of the Lot or Parcel or (ii) within one year following commencement of construction on the Dwelling Unit or initial grading of the Lot or Parcel. If any Owner does not install and complete approved landscaping within the three (3) month period described, the Declarant, or the Board, after giving the Owner thirty (30) days' written notice to cure any such default, shall have the right to cause the necessary landscaping work to be done and the Owner in default shall be responsible for the cost thereof and the parties expending funds for such work shall have a lien on the defaulting Owner's Lot for the funds expended together with interest thereon at the rate of twelve percent (12%) per annum until paid.

Section 6.25. Sports and Recreation Equipment; Basketball Hoops. No structure, equipment or apparatus Visible From Neighboring Property or from the street shall be permitted without prior approval of the Declarant or the Board, including but not limited to, sport courts, exercise equipment, and children's playground equipment. Location of any swimming pool, if Visible From Neighboring Property, shall be approved by the

Declarant or the Architectural Committee. No basketball hoops may be mounted on the roofs or attached to a residence. Portable basketball hoops may be permitted on the condition that they are stored so as not to be Visible From Neighboring Property when not in immediate use.

Section 6.26. Single-Family Dwellings. Single-family dwellings constructed on any Lots shall be of permanent construction. Single-family dwellings shall have a minimum livable square footage (exclusive of carports, breezeways, garages, open patios, and/or porches) of 1,800 square feet. All structures shall be constructed of stucco, masonry, or any other material as shall be approved in writing by the Architectural Committee.

Section 6.27. Walls or Fences. Walls which are constructed upon the dividing line between Lots, or near or adjacent to a dividing line because of minor encroachments are "Party Walls." Except as hereinafter provided, the rights and duties of owners with respect to Party Walls between Lots and Parcels shall be as follows:

- (a) The Owners of contiguous Lots or Parcels who have a Party Wall shall both equally have the right to use such Wall, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.
- (b) In the event that any Party Wall is damaged or destroyed through the act of an Owner or Owner's tenants, agents, guests, or family members (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall without cost to the Owner of the adjoining Lot or Parcel. Any dispute over an Owner's liability for such damage shall be resolved as provided in subsection (e) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.
- (c) In the event any Party Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner or Owner's tenants, agents, guests or family, it shall be the obligation of all Owners whose Lots or Parcels adjoin such Party Wall to rebuild and repair such Wall at their joint expense, such expense to be allocated among the owners in accordance with the frontage of their Lots or Parcels on the Party Wall.
- (d) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Party Wall without the prior consent of all Owners of any interest therein.

- (e) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall, or with respect to the sharing of the cost thereof, such adjoining owners shall submit the dispute to the Board, the decision of which shall be binding.

- (f) In the case of Party Walls between Common Areas and Lots, the Lot Owner shall be responsible for all maintenance thereof, subject to the provisions of subparagraph (b) above.

Section 6.28. Model Homes. The provisions of this Declaration which prohibit non-residential use of Lots and Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons engaged in the construction of residential dwellings in Mandalay at South Mountain Phase II, and parking incidental to the visiting of such model homes, so long as the opening and closing hours are approved by the Board, and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The Board may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of the City of Phoenix and/or Maricopa County. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner or Builder thereof is not actively engaged in the construction and sale of single family residences of Mandalay at South Mountain Phase II.

Section 6.29. Lighting. Owners shall be permitted to install exterior lighting provided that the lighting is approved in advance in writing by the Board and complies with municipal, county and state rules and regulations with respect to the lighting designation for the Property.

Section 6.30 Architectural Control. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered, or made without the prior written approval of the Board. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots, shall be subject to the prior written approval of the Board.

ARTICLE 7
EASEMENTS

Section 7.1. Utility Easement. There is hereby created a blanket easement upon, across, over, and under the Common Area for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to water, sewers, gas, telephones, electricity, and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility to erect and maintain the necessary facilities and equipment on the Common Area. This easement shall in no way affect any other recorded easements on the Common Area.

Section 7.2. Easement for Unintended Encroachments. In the event a wall, landscaping, or other approved Improvement on a Lot or the Common Area encroaches upon another Lot or the Common Area, and such encroachment is inadvertent and has no significant adverse impact on the adjacent property, an easement for such encroachment is hereby given and the right to determine whether such encroachment causes a significant adverse impact shall be determined by the Board upon request by either of the parties. When the Board makes such determination, that determination is binding on all parties.

Section 7.3. Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Declarant, the Owners, and their family, guests, tenants, and invitees for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes as the same from time to time may exist upon the Common Area; and for vehicular traffic over, through and across such portions of the Common Area as from time to time may be paved and intended for such purposes; and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.

Section 7.4. Association's Easement For Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Area and the Lots for the purpose of repairing, maintaining and replacing the Common Area and those portions of the Lots which the Association is obligated to maintain under Article 9 of this Declaration.

Section 7.5. Use and Drainage Easements Among Owners. Wherever drainage, as estimated by the Declarant, flows from one (1) Lot under or through one (1) or more other lots, said drainage flow shall not be impeded, diverted, or otherwise changed. These easements shall include, but are not limited to, receiving the runoff from roofs and drainage under and through garden walls.

ARTICLE 8
PROPERTY RIGHTS

Section 8.1. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area. Said easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

- (a) the right of the Association to adopt reasonable rules and regulations governing the use of the Common Area and all facilities located thereon;
- (b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication or transfer shall be effective unless evidenced by an instrument signed by at least two-thirds (2/3) of each class of Members, except that the Board may make a dedication for transfer without consent of the Members, providing such transfer is of minimal value and causes no adverse impact to the Members;
- (c) the right of Declarant and its agents and representatives, in addition to the rights set forth elsewhere in this Declaration, to the non-exclusive use, without charge, of the Common Area for maintenance of sales facilities, and display and exhibit purposes.

Section 8.2. Delegation of Use. Any Owner may delegate, subject to this Declaration, Association Rules, and so long as the Owner is current on the payment of any special or regular assessments owing to the Association, the Owner's right of enjoyment to the Common Area and facilities to the members of Owner's family, tenants, guests or invitees, provided such delegation is for a reasonable number of persons and at reasonable times, and in accordance with reasonable Association Rules.

Section 8.3. Limitations. An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Area.

ARTICLE 9
MAINTENANCE

Section 9.1. Maintenance of Common Area by the Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and may, without any approval of the Owners being required, do any of the following:

- (a) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area) including, but not limited to, landscaping, landscaping irrigation systems, or walls contiguous to the Common Area and not contiguous to a Lot;
- (c) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- (d) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;
- (e) Do all such other and further acts that the Board deems necessary to preserve and protect the Common and the appearance thereof, in accordance with the general purposes specified in this Declaration.

Section 9.2. Exterior Maintenance By Association. In addition to the maintenance, repair and replacement of the Common Area and the Improvements located thereon, the Association shall maintain, repair and replace the landscaping and other Improvements on any area within, or immediately adjacent to, Mandalay at South Mountain Phase II, providing the Board agrees that such maintenance shall be in the best interest of all the Members and agrees to such maintenance in writing.

Section 9.3. Maintenance by Owners. Each Owner shall be solely responsible for that portion of the maintenance, repair and replacement of his Lot and Improvements that are not maintained by the Association as described in Sections 9.1 and 9.2.

Section 9.4. Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association, in connection therewith. No Owner shall in any way interfere with the maintenance responsibilities of the Association, including, but not limited to, landscaping, street maintenance, and wall maintenance. Any expenses incurred by the Association by reason of any such act of an Owner, his grantees or assignees, shall be paid by said Owner, upon demand, to the Association to the extent that the Owner is liable therefor

under Arizona law, and such amounts shall be a lien on any Lots owned by said Owner and the Association may enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of assessments.

Section 9.5. Non-Performance by Owners. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of Mandalay at South Mountain Phase II which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates the Project Documents, or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents with respect to the maintenance repair or replacement of the Improvements located on such Lot, the Board may, by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give written notice thereof to the Owner by mail to the mailing address of the Lot and make demand that corrective action be taken within thirty (30) calendar days of the day of the notice. If at the expiration of the said thirty (30) day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken, including but not limited to the hiring of an attorney to take action on behalf of the Board, whether by informal pre-suit action or by formal legal proceedings. The costs of any action taken by the Board as set forth herein, including but not limited to incidental and taxable costs, attorneys fees, and any fines assessed against any Owner shall be added to and become a part of the assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the assessment lien.

ARTICLE 10 **INSURANCE**

Section 10.1. Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to an individual Owner other than the Declarant, the Association shall maintain adequate insurance for Common Area liability to extend to those areas the Association may agree to maintain pursuant to Article 9 herein, officers and directors liability, committees appointed by the Board, property, fidelity and any other coverage deemed necessary by the Board.

Section 10.2. Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

Section 10.3. Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (b) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot.

Section 10.4. Owner's Responsibility. It is the responsibility of each Owner of a Lot to maintain insurance on his Lot and Improvements thereon.

ARTICLE 11

GENERAL PROVISIONS

Section 11.1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.2. Severability. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

Section 11.3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

Section 11.4. Amendment by Owners. This Declaration may be amended during the first twenty-five (25) year period by an instrument signed by: (i) Owners representing not less than eighty percent (80%) of the Lots or (ii) Declarant or its successors, so long as Declarant or its successors holds Class B Membership, and thereafter by an instrument signed by Owners representing not less than seventy-five percent (75%) of the Lots. Any amendment must be recorded.

Section 11.5. Amendment by Board. Notwithstanding anything to the contrary in this Declaration, the Board shall have the right, but not the obligation, to amend this Declaration, without obtaining the approval or consent of any other Owner or mortgagee, in order to conform the Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or other government or government approved agencies when such modification is required to qualify for the use of the services, insurance, or other guarantees provided by such agencies.

Section 11.6. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner.

Section 11.7. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

Section 11.8. Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

Section 11.9. Delivery of Notices and Documents. Any written notice or other documents relating to, or required by, this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 11.10. Binding Effect. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future

Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

Section 11.11. Management Agreements. Any agreement for professional management of the Association, the Project, or any other contract providing for services of the Declarant, or other developer, sponsor or builder of the Project shall not exceed one (1) year.

Section 11.12. Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 11.13. Topic Headings. The marginal or topical headings of the Sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Sections or this Declaration.

Section 11.14. Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any way connected with such membership and the covenants and obligations incidental thereto. For purposes of this Section 11.14, the word "Member" shall not include the Declarant or its successors.

Section 11.15. Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, or Association Rules, the provisions of this Declaration shall prevail.

Section 11.16. Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in, or imposed by, this Declaration, shall be joint and several.

Section 11.17. Attorneys' Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration, or to collect any assessments or other amounts due from an Owner, or to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents, the offending Owner or other person or entity shall pay to the Association, upon demand, all

attorney fees and court costs incurred by the Association, whether or not suit is filed, which fees and costs shall be secured by the assessment lien.

Section 11.18. Declarant's Right To Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one (1) or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

Section 11.19. FHA/VA Approval. If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA and any loans have been made on property in Mandalay at South Mountain Phase II which are insured or guaranteed by FHA or VA, then as long as there is a Class B membership, the following actions may require the prior approval of the FHA or VA, based on the then existing guidelines and procedures of FHA or VA or, unless the need for such approval has been waived by FHA or VA: (i) annexation of additional properties, (ii) mortgaging of the Common Area, and (iii) dedication of the Common Area except as required by zoning stipulations effective prior to the date hereof.


IN WITNESS WHEREOF, Mandalay at South Mountain, L.L.C., an Arizona limited liability company, has hereunto signed this instrument the date first written above.

“DECLARANT”

MANDALAY AT SOUTH MOUNTAIN, L. L. C.
An Arizona Limited Liability Company

By: Mandalay Homes, Inc.
An Arizona Corporation

Its: Managing Member

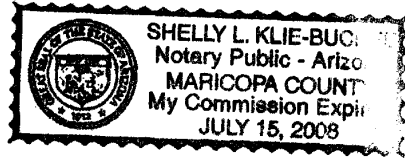

By: David D. Everson
Its: President

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 31st Day of October 2005, by David D. Everson, President of Mandalay Homes, Inc, an Arizona corporation, the Managing Member of Mandalay at South Mountain, L. L. C., on behalf of said company.

Shelly L. Klie-Buckel

Notary Signature



FIDELITY NATIONAL TITLE

WHEN RECORDED, RETURN TO:

1312-25-1-1--
gonzalesj

David D. Everson
Mandalay Homes, Inc.
2198 E. Camelback Road, Suite 305
Phoenix, Arizona 85016

BD 0001312-1/1

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MANDALAY AT SOUTH MOUNTAIN PHASE II**

This Declaration of Covenants, Conditions and Restrictions (hereinafter termed the "Declaration") is made on this 9th day of November 2005, by Mandalay at South Mountain, L.L.C., an Arizona limited liability company (hereinafter sometimes termed "Declarant").

WITNESSETH:

WHEREAS, the Declarant is the Owner of the real property located in Phoenix, Maricopa County, Arizona, which is described on Exhibit "A" (the "Covered Property") attached hereto.

WHEREAS, the Covered Property shall be developed as a single family residential subdivision.

NOW, THEREFORE, Declarant hereby declares that all of said real property (hereinafter sometimes referred to as Mandalay at South Mountain) shall be held, sold, and conveyed subject to the easements, restrictions, covenants, and conditions contained in this Declaration which are for the purpose of protecting the value and desirability of, and which shall run with said real property, and be binding on all parties having any right, title or interest in said real property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1
DEFINITIONS

Section 1.1. "Articles" shall mean the Articles of Incorporation of the Association, which have been, or will be, filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

Section 1.2. "Association" shall mean "Mandalay at South Mountain Homeowners Association Phase II, Inc.," an Arizona nonprofit corporation.

Section 1.3. "Association Rules" shall mean the rules and regulations adopted by the Association, as the same may be amended from time to time.

Section 1.4. "Board" shall mean the Board of Directors of the Association.

Section 1.5. "Builder" shall mean a person or entity who is engaged in residential real estate development and who purchases one or more Lots from the Declarant for the purpose of constructing Improvements thereon for sale or lease.

Section 1.6. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 1.7. "Common Area" shall mean all real property, and all Improvements located thereon, owned by the Association for the common use and enjoyment of the Owners.

Section 1.8. "Declarant" shall mean Mandalay at South Mountain, L. L. C., an Arizona limited liability company, its successors and any person or entity to whom it may expressly assign its rights under this Declaration.

Section 1.9. "Declaration" shall mean the covenants, conditions and restrictions herein set forth in this entire document, as same may from time to time be amended.

Section 1.10. "Improvement" shall mean buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping Improvements of every type and kind.

Section 1.11. "Lot" shall mean any parcel of real property designated as a Lot on the Plat.

Section 1.12. "Member" shall mean any person, corporation, partnership, joint venture, or other legal entity that is an Owner of a Lot within the Property.

Section 1.13. "Owner" shall mean the record Owner, whether one (1) or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) the Purchaser of a Lot under an executory contract for the sale of real property, (ii) persons or entities having an interest in a Lot merely as security for the performance of an obligation, or (iii) a lessee or tenant of a Lot. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the Trustor shall be deemed to be the Owner. In the case of Lots, the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary of any such trust shall be deemed to be the Owner.

Section 1.14. "Plat" shall mean the Final Plat of the Project, which Plat was recorded with the County Recorder of Maricopa County, Arizona on October 13th, 2005 as "Mandalay at South Mountain Phase II" in Book 784 of Maps, page 50, official records of Maricopa County in instrument number 2005-1525990.

Section 1.15. "Project Documents" shall mean this Declaration and the Articles, Bylaws, and Association Rules.

Section 1.16. "Property" or "Project" shall mean the real property described on Exhibit A attached to this Declaration.

Section 1.17. "Purchaser" shall mean any person other than the Declarant who by means of a voluntary transfer acquires a legal or equitable interest in a Lot other than (a) a leasehold interest (including renewable options) of less than five (5) years or (b) as security for an obligation.

Section 1.18. "Single Family" shall mean a group of one (1) or more persons each related to the other by blood, marriage or legal adoption; or a group of persons not all so related not to exceed five (5) in number, who maintain a common household in a dwelling.

Section 1.19. "Single Family Residential Use" shall mean the occupation or use of a residence by a single family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county, or municipal rules and regulations.

Section 1.20. "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is, or would be, visible to a person six (6) feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

ARTICLE 2
THE ASSOCIATION

Section 2.1. Rights, Powers, and Duties. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in this Declaration.

Section 2.2. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers and committees as the Board may elect or appoint, in accordance with the Articles and the bylaws.

Section 2.3. Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee, or lessee of such Owner; provided, however, that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Association Rules as they may from time to time be adopted, amended or repealed, shall be available for inspection by the Members at reasonable times.

ARTICLE 3
MEMBERSHIP

Section 3.1. Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a Member of the Association and shall remain a Member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

Section 3.2. Transfer of Membership. Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such Purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be voided and shall not be reflected upon the books and records of the Association.

ARTICLE 4
VOTING RIGHTS

Section 4.1. Classes of Members. The Association shall have two (2) classes of voting membership:

Class A. Class A Members shall be all owners of Lots, with the exception of the Declarant. Each Class A Member shall be entitled to one (1) vote for each Lot owned.

Class B. The Class B Membership shall be all memberships held by the Declarant. The Declarant shall be entitled to three (3) votes for each Membership held by the Declarant. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

- (a) When Seventy-Five Percent (75%) of the Lots are deeded to Owners;
or
- (b) When the Declarant notifies the Board of Directors of the Association in writing that Declarant expressly converts Declarant's remaining Class B Memberships to Class A Memberships; or
- (c) January 1, 2030.

Section 4.2. Joint Ownership. When more than one (1) person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one (1) ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.

Section 4.3. Corporate Ownership. In the event any Lot is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have power to vote said membership, and in the absence of such designation and until such designation is made, the chief executive officer, if any, of such

corporation, partnership or association shall have the power to vote the membership, and if there is no chief executive officer, then the Board of Directors or general partner of such corporation, partnership or association shall designate who shall have the power to vote the membership.

Section 4.4. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any assessments or other amounts due under any of the provisions of the Project Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including collection and/or attorneys, fees, are brought current, and for a period not to exceed sixty (60) days for any infractions of the Project Documents and for successive sixty (60) day periods if the infraction has not been corrected.

ARTICLE 5

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 5.1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it, hereby covenants, and each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association: (1) annual assessments, (2) supplemental assessments, (3) special assessments for capital improvements, and (4) transfer fees. The annual, supplemental, and special assessments, together with costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. The lien of assessment is subordinate to the lien of a first mortgage. Each such assessment, together with costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 5.2. Purpose of the Assessments. The assessments levied by the Association shall be used exclusively for the upkeep, maintenance, and improvement of the Common Area, including, but not limited to, that certain wall that is contiguous to the common area and not contiguous to any Lot, landscaping, and landscaping irrigation systems, and such portions of the Lots, and such portions of the Improvements located thereon, as the Association is obligated to maintain under Sections 9.1 and 9.2 of this Declaration, and for promoting the recreation, health, safety and welfare of the Owners and residents of Lots within the Property.

Section 5.3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum

annual assessment for each Lot shall be Three Hundred Eighty Five and No/100 Dollars (\$385.00). Thereafter Assessment may be increased pursuant to Arizona Revised Statute Section 33-1801 pertaining to Planned Communities.

Section 5.4. Special Assessments. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any litigating the enforcement of the Declaration, construction, reconstruction, repair or replacement of capital improvement of the Common Area, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any such assessment shall have the assent of Members having at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 5.5. Uniform Rate of Assessment. Annual, supplemental, and special assessments must be fixed at a uniform rate for all Lots. However, as long as there is a Class B membership, Declarant shall not be subject to assessments for Lots not sold to individual Purchasers, but instead shall be required to subsidize the Association the difference between the cost of operating and administering the Association and the total amount of Annual Assessments. When the Class B Memberships cease as prescribed in Article 4, Section 4.1, Declarant shall no longer be required to subsidize the cost of operating and administering the Association but shall become a Class A Member and will be subject to payment of assessments for each remaining undeveloped Lot owned by Declarant.

Section 5.6. Unimproved Lot Assessment. The Owner of a Lot, other than Declarant, shall pay twenty-five percent (25%) of the Annual Assessment amount until the earlier of (i) the completion of the first dwelling unit on the Lot, (ii) six (6) months following commencement of construction of the dwelling unit on the Lot, or (iii) January 1, 2003. The one hundred percent (100%) assessment permanently attaches upon initial occupancy regardless of its state of occupancy thereafter.

Section 5.7. Date of Commencement of Annual Assessments, Due Dates. The annual assessments provided for herein shall commence as to each Lot on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The Board may require that the annual assessment be paid in installments and in such event the Board shall establish the due dates for each installment. The Association shall, upon

demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid.

Section 5.8. Transfer Fee. Each person or entity other than Declarant or a builder who purchases a Lot from a person or entity other than the Declarant or a builder shall pay to the Association immediately upon becoming the Owner of the Lot a transfer fee in such amount as is established from time to time by the Board.

Section 5.9. Effect of Nonpayment of Assessments; Remedies of the Association. 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 a monthly late charge to be set by the Board. Any assessment, or any installment of an assessment, which is delinquent shall become a continuing lien on the Lot against which such assessment was made. The lien shall be perfected by the recording of a "Notice of Claim of Lien" which shall set forth (1) the name of the delinquent Owner as shown on the records of the Association, (2) legal description, street address and number of the Lot against which the lien is made, (3) the amount claimed as of the date of the recording of the notice including lien recording fees, late charges and reasonable attorneys' fees, and (4) the name and address of the Association. The Association's lien shall have priority over all liens or claims created subsequent to the recording of the Notice of Claim of Lien except for tax liens for real property taxes on the Lot, assessments on any Lot in favor of any municipal or other governmental body and the liens which are specifically described in Section 5.1 of this Declaration.

Before recording a lien against any Lot, the Association shall make a written demand to the defaulting Owner for payment of the delinquent assessments, together with late charges and reasonable attorneys' and collection fees, if any. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release any lien recorded pursuant to this Section until all delinquent assessments, lien fees, late charges and reasonable attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

The Association shall have the right, at its option, to enforce collection of any delinquent assessments together with lien fees, late charges, reasonable attorneys and collection fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (a) bringing an action at law against the Owner personally obligated to pay the delinquent assessments and such action may be brought without waiving any lien securing any such delinquent assessments or (b) bringing an action to

foreclose its 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 at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

Section 5.10. Subordination of the Lien to Mortgages. The lien of the assessments provided for in this Declaration shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments that become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 5.11. Exemption of Owner. No Owner of a Lot may exempt himself from liability for annual, supplemental, or special assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities, or by the abandonment of his Lot.

ARTICLE 6

PERMITTED USES AND RESTRICTIONS

Section 6.1. Scope. Except as otherwise specified, the provisions of this Article shall apply to all of the Property.

Section 6.2. Residential Use. All Lots shall be used, improved, and devoted exclusively to Single Family Residential use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any Lot. Nothing herein shall be deemed to prevent the leasing of a Lot to a Single Family from time to time by the Owner thereof, subject to all of the provisions of the Project Documents. Any Owner who leases his Lot shall promptly notify the Association and shall advise the Association of the term of the lease and the name of each lessee. All buildings or structures erected upon the Property shall be of new construction and no buildings or structures shall be moved from other locations onto the Property without the prior written approval of the Board.

Section 6.3. Animals. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any property and then only if they are kept, bred, or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighboring

Property. Upon the written request of any Owner, the Board shall determine whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet, or nuisance, or whether the number of animals on any such property is reasonable. Any decision rendered by the Board shall be enforceable to the same extent as other restrictions contained in this Declaration.

Section 6.4. Utility Service. Except as approved in writing by the Board, no lines, wires, or other devices for the communication of, transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Board. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incidental to the construction of buildings or structures approved by the Board.

Section 6.5. Temporary Occupancy. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time, on any portion of the Property, for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such property shall be removed immediately after the completion of construction.

Section 6.6. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any property, and no odors shall be permitted to arise therefrom, so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such property so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells, or other sound devices, except security devices used exclusively for security purposes, shall be located, used, or placed on any such property.

Section 6.7. Trash Containers and Collection. No garbage or trash shall be placed or kept on any property except in covered containers of a type, size and style that are approved by the Board. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then, only for the shortest time reasonably necessary to effect such collection. All rubbish, trash, and garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot. No garbage or trash containers shall be kept or placed on any grass or other landscaped area.

Section 6.8. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed, or maintained on any property so as to be Visible From Neighboring Property.

Section 6.9. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any property except such machinery or equipment as is usual and customary in connection with the use, maintenance, or construction of a residence, appurtenant structures, or other Improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Property

Section 6.10. Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board.

Section 6.11. Signs. No signs whatsoever (including, but not limited to, commercial advertising and similar signs) shall be erected or maintained anywhere on the Property including but not limited to, the inside or outside of windows in any building located on the Property, except such signs as may be required by legal proceedings or otherwise approved herein. The use of typical real estate "For Sale" signs shall be permitted. Use of "For Lease" signs is subject to approval by the Board except as provided in Section 6.12 herein.

Section 6.12. Declarant's Exemption. Notwithstanding any other provision of the Project Documents, it shall be expressly permissible for the Declarant or its duly authorized agents, employees, and representatives to maintain during the period of the sale of Lots, such facilities, structures, and signs as are necessary or convenient, in the sole opinion of the Declarant, to the sale of the lots, including, but without limitation, a business office, storage area, construction yard, homes, and sales offices; provided, however, that such use of the Common Area by the Declarant must be reasonable and must not interfere with any Owner's use and enjoyment of the Common Area.

Section 6.13. Mineral Exploration. No property shall be used in any manner to explore for, or to remove any water, oil, or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.

Section 6.14. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any property that shall induce, breed or harbor infectious plant diseases or noxious insects.

Section 6.15. Trash and Debris. Each Owner of a Lot, when installing or constructing Improvements on the Lot, shall provide a place for the daily collection and storage of trash and debris and will remove such trash and debris on a reasonable schedule. No Owner of a Lot will allow any nuisance to occur on his Lot or adjacent to his Lot other than the reasonable result of construction activity. The Board shall be the sole judge as to whether on not undue nuisance is occurring and upon notice from the Board to the Lot Owner, any such nuisances identified by the Board shall be corrected.

Section 6.16. Repair of Building. No building or structure on any Lot shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required within this Declaration, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

Section 6.17. Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet without the prior written approval of the Board.

Section 6.18. Trucks, Trailers, Campers and Boats. No mobile home, travel trailer, motor home, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on the Common Areas or the Streets unless approved in writing by the Board.

Section 6.19. Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or have major repairs upon any Lot or street in Mandalay at South Mountain, and no inoperable vehicle, including but not limited to vehicles with flat tires may be stored or parked on any such Lot or street so as to be visible from Neighboring Property or to be visible from Common Areas or streets; provided however, that the provisions of this section shall not apply to emergency vehicle repairs; reasonable vehicle maintenance; including proper disposal of any materials that can be construed as hazardous by any local, state or federal legislation, vehicle repair that is not visible from Neighboring Property or visible from Common Areas or streets; or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any Improvement approved in writing by the Board.

Section 6.20. Parking. It is the intent of the Declarant to restrict On-Street parking as much as possible. Vehicles of all Owners, Lessees and Residents, and of their employees, guests and invitees, are to be kept in garages, carports, residential driveways of the Owner, and other designated parking areas wherever and whenever such facilities

are sufficient to accommodate the number of vehicles at a Lot or Parcel; provided, however, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking within Mandalay at South Mountain is otherwise prohibited or the parking of any inoperable or unlicensed vehicle.

Section 6.21. Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot or Parcel, any member of the Architectural Committee, any member of the Board, or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot or Parcel, and the improvements thereon, except for the interior portions of any completed residence, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

Section 6.22. Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners or residents, the Board may make rules restricting or regulating their presence at Mandalay at South Mountain as part of the Association Rules

Section 6.23. Exterior Paint. The exterior paint and trim color of any residence within the Project may not be changed without the prior written approval of the Board.

Section 6.24. Landscaping. Developer of Lots 1 through 32 shall install and substantially complete the landscape in the front of the Dwelling Unit and any other areas of the Lot or Parcel which are Visible From Neighboring Property or visible from Common Areas upon the earlier of (i) within thirty (30) days of occupancy of the Lot or Parcel or (ii) within one year following commencement of construction on the Dwelling Unit or initial grading of the Lot or Parcel. If any Owner does not install and complete approved landscaping within the thirty (30) day period described, the Declarant, or the Board, after giving the Developer thirty (30) days' written notice to cure any such default, shall have the right to cause the necessary landscaping work to be done and the Developer in default shall be responsible for the cost thereof and the parties expending funds for such work shall have a lien on the defaulting Developer's Lot for the funds expended together with interest thereon at the rate of twelve percent (12%) per annum until paid. Front yard landscaping must be approved by Developer prior to installation and any modifications are subject to approval by the Board. All installed front yard landscaping will be maintained exclusively by the Home Owner's Association.

Section 6.25. Sports and Recreation Equipment; Basketball Hoops. No structure, equipment or apparatus Visible From Neighboring Property or from the street shall be permitted without prior approval of the Declarant or the Board, including but not limited to, sport courts, exercise equipment, and children's playground equipment. Location of

any swimming pool, if Visible From Neighboring Property, shall be approved by the Declarant or the Architectural Committee. No basketball hoops may be mounted on the roofs or attached to a residence. Portable basketball hoops may be permitted on the condition that they are stored so as not to be Visible From Neighboring Property when not in immediate use.

Section 6.26. Single-Family Dwellings. Single-family dwellings constructed on any Lots shall be of permanent construction. Single-family dwellings shall have a minimum livable square footage (exclusive of carports, breezeways, garages, open patios, and/or porches) of 1,800 square feet. All structures shall be constructed of stucco, masonry, or any other material as shall be approved in writing by the Architectural Committee. Only Lot 33 which contains pre-existing structures is exempt from these restrictions.

Section 6.27. Walls or Fences. Walls which are constructed upon the dividing line between Lots, or near or adjacent to a dividing line because of minor encroachments are "Party Walls." Except as hereinafter provided, the rights and duties of owners with respect to Party Walls between Lots and Parcels shall be as follows:

- (a) The Owners of contiguous Lots or Parcels who have a Party Wall shall both equally have the right to use such Wall, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.
- (b) In the event that any Party Wall is damaged or destroyed through the act of an Owner or Owner's tenants, agents, guests, or family members (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Party Wall without cost to the Owner of the adjoining Lot or Parcel. Any dispute over an Owner's liability for such damage shall be resolved as provided in subsection (e) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.
- (c) In the event any Party Wall is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner or Owner's tenants, agents, guests or family, it shall be the obligation of all Owners whose Lots or Parcels adjoin such Party Wall to rebuild and repair such Wall at their joint expense, such expense to be allocated among the owners in accordance with the frontage of their Lots or Parcels on the Party Wall.
- (d) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any Party Wall without the prior

consent of all Owners of any interest therein.

- (e) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a Party Wall, or with respect to the sharing of the cost thereof, such adjoining owners shall submit the dispute to the Board, the decision of which shall be binding.
- (f) In the case of Party Walls between Common Areas and Lots, the Lot Owner shall be responsible for all maintenance thereof, subject to the provisions of subparagraph (b) above.

Section 6.28. Model Homes. The provisions of this Declaration which prohibit non-residential use of Lots and Parcels and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons engaged in the construction of residential dwellings in Mandalay at South Mountain, and parking incidental to the visiting of such model homes, so long as the opening and closing hours are approved by the Board, and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The Board may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of the City of Phoenix and/or Maricopa County. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner or Builder thereof is not actively engaged in the construction and sale of single family residences of Mandalay at South Mountain.

Section 6.29. Lighting. Owners shall be permitted to install exterior lighting provided that the lighting is approved in advance in writing by the Board and complies with municipal, county and state rules and regulations with respect to the lighting designation for the Property. The Developer will install low voltage lighting within the landscaping of the front yards of Lots 1 through 32. The low voltage lighting will be maintained exclusively by the Homeowner's Association.

Section 6.30 Architectural Control. No building, fence, wall, residence or other structure shall be commenced, erected, maintained, improved, altered, or made without the prior written approval of the Board. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme, and all changes in the grade of Lots, shall be subject to the prior written approval of the Board.

ARTICLE 7 **EASEMENTS**

Section 7.1. Utility Easement. There is hereby created a blanket easement upon, across, over, and under the Common Area for ingress, egress, installation, replacing, repairing, and maintaining all utilities, including, but not limited to water, sewers, gas, telephones, electricity, and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility to erect and maintain the necessary facilities and equipment on the Common Area. This easement shall in no way affect any other recorded easements on the Common Area.

Section 7.2. Easement for Unintended Encroachments. In the event a wall, landscaping, or other approved Improvement on a Lot or the Common Area encroaches upon another Lot or the Common Area, and such encroachment is inadvertent and has no significant adverse impact on the adjacent property, an easement for such encroachment is hereby given and the right to determine whether such encroachment causes a significant adverse impact shall be determined by the Board upon request by either of the parties. When the Board makes such determination, that determination is binding on all parties.

Section 7.3. Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Declarant, the Owners, and their family, guests, tenants, and invitees for pedestrian traffic over, through and across sidewalks, paths, walks, and lanes as the same from time to time may exist upon the Common Area; and for vehicular traffic over, through and across such portions of the Common Area as from time to time may be paved and intended for such purposes; and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.

Section 7.4. Association's Easement For Performing Maintenance Responsibilities. The Association shall have an easement upon, across, over and under the Common Area and the Lots for the purpose of repairing, maintaining and replacing the Common Area and front yards of all Lots and those portions of the Lots which the Association is obligated to maintain under Article 9 of this Declaration.

Section 7.5. Use and Drainage Easements Among Owners. Wherever drainage, as estimated by the Declarant, flows from one (1) Lot under or through one (1) or more other lots, said drainage flow shall not be impeded, diverted, or otherwise changed. These easements shall include, but are not limited to, receiving the runoff from roofs and drainage under and through garden walls.

Section 7.6. Sight Visibility Easement. Specific Sight Visibility Triangles are set forth on the Mandalay at South Mountain Phase II Final Plat which affect Lots 1, 4, 7, 12,

16, and 20. These Site Visibility Triangle areas are hereby reserved as easements ("Site Visibility Easements"). Prospective Purchasers are encouraged to consult the Final Plat, which reflects the thirty-three foot (33') by thirty-three foot (33') Site Visibility Easements. These areas contain restrictions limiting structures and or landscaping located therein to a height not to exceed three feet (3').

ARTICLE 8

PROPERTY RIGHTS

Section 8.1. Owners' Easement of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area. Said easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

- (a) the right of the Association to adopt reasonable rules and regulations governing the use of the Common Area and all facilities located thereon;
- (b) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members; provided, however, that no such dedication or transfer shall be effective unless evidenced by an instrument signed by at least two-thirds (2/3) of each class of Members, except that the Board may make a dedication for transfer without consent of the Members, providing such transfer is of minimal value and causes no adverse impact to the Members;
- (c) the right of Declarant and its agents and representatives, in addition to the rights set forth elsewhere in this Declaration, to the non-exclusive use, without charge, of the Common Area for maintenance of sales facilities, and display and exhibit purposes.

Section 8.2. Delegation of Use. Any Owner may delegate, subject to this Declaration, Association Rules, and so long as the Owner is current on the payment of any special or regular assessments owing to the Association, the Owner's right of enjoyment to the Common Area and facilities to the members of Owner's family, tenants, guests or invitees, provided such delegation is for a reasonable number of persons and at reasonable times, and in accordance with reasonable Association Rules.

Section 8.3. Limitations. An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from an Owner's Lot. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered

upon the sale of any Owner's Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to the Common Area.

ARTICLE 9 **MAINTENANCE**

Section 9.1. Maintenance of Common Area by the Association. The Association shall be responsible for the maintenance, repair and replacement of the Common Area and may, without any approval of the Owners being required, do any of the following:

- (a) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area) including, but not limited to, landscaping, landscaping irrigation systems, or walls contiguous to the Common Area and not contiguous to a Lot;
- (c) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;
- (d) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;
- (e) Do all such other and further acts that the Board deems necessary to preserve and protect the Common and the appearance thereof, in accordance with the general purposes specified in this Declaration.

Section 9.2. Exterior Maintenance By Association. In addition to the maintenance, repair and replacement of the Common Area and the Improvements and front yard of Lots located thereon, the Association shall maintain, repair and replace the landscaping and other Improvements on any area within, or immediately adjacent to, Mandalay at South Mountain Phase II, providing the Board agrees that such maintenance shall be in the best interest of all the Members and agrees to such maintenance in writing.

Section 9.3. Maintenance by Owners. Each Owner shall be solely responsible for that portion of the maintenance, repair and replacement of his Lot and Improvements that are not maintained by the Association as described in Sections 9.1 and 9.2.

Section 9.4. Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association, in connection therewith. No Owner shall in any way interfere with the

maintenance responsibilities of the Association, including, but not limited to, landscaping, street maintenance, and wall maintenance. Any expenses incurred by the Association by reason of any such act of an Owner, his grantees or assignees, shall be paid by said Owner, upon demand, to the Association to the extent that the Owner is liable therefor under Arizona law, and such amounts shall be a lien on any Lots owned by said Owner and the Association may enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of assessments.

Section 9.5. Non-Performance by Owners. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of Mandalay at South Mountain Phase II which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates the Project Documents, or in the event the Owner of any Lot is failing to perform any of its obligations under the Project Documents with respect to the maintenance repair or replacement of the Improvements located on such Lot, the Board may, by resolution make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give written notice thereof to the Owner by mail to the mailing address of the Lot and make demand that corrective action be taken within thirty (30) calendar days of the day of the notice. If at the expiration of the said thirty (30) day period the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken, including but not limited to the hiring of an attorney to take action on behalf of the Board, whether by informal pre-suit action or by formal legal proceedings. The costs of any action taken by the Board as set forth herein, including but not limited to incidental and taxable costs, attorneys fees, and any fines assessed against any Owner shall be added to and become a part of the assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the assessment lien.

ARTICLE 10 **INSURANCE**

Section 10.1. Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to an individual Owner other than the Declarant, the Association shall maintain adequate insurance for Common Area liability to extend to those areas the Association may agree to maintain pursuant to Article 9 herein, officers and directors liability, committees appointed by the Board, property, fidelity and any other coverage deemed necessary by the Board.

Section 10.2. Certificates of Insurance. An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of

trust. Any insurance obtained pursuant to this article may not be canceled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

Section 10.3. Repair and Replacement of Damaged or Destroyed Property. Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (a) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (b) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot.

Section 10.4. Owner's Responsibility. It is the responsibility of each Owner of a Lot to maintain insurance on his Lot and Improvements thereon.

ARTICLE 11

GENERAL PROVISIONS

Section 11.1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 11.2. Severability. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall in no way affect any other provisions that shall remain in full force and effect.

Section 11.3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

Section 11.4. Amendment by Owners. This Declaration may be amended during the first twenty-five (25) year period by an instrument signed by: (i) Owners representing not less than eighty percent (80%) of the Lots or (ii) Declarant or its successors, so long

as Declarant or its successors holds Class B Membership, and thereafter by an instrument signed by Owners representing not less than seventy-five percent (75%) of the Lots. Any amendment must be recorded.

Section 11.5. Amendment by Board. Notwithstanding anything to the contrary in this Declaration, the Board shall have the right, but not the obligation, to amend this Declaration, without obtaining the approval or consent of any other Owner or mortgagee, in order to conform the Declaration to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or other government or government approved agencies when such modification is required to qualify for the use of the services, insurance, or other guarantees provided by such agencies.

Section 11.6. Violations and Nuisance. Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by Declarant, the Association or any Owner.

Section 11.7. Violation of Law. Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

Section 11.8. Remedies Cumulative. Each remedy provided herein is cumulative and not exclusive.

Section 11.9. Delivery of Notices and Documents. Any written notice or other documents relating to, or required by, this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four (24) hours after a copy of same has been deposited in the United States mail, postage prepaid. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 11.10. Binding Effect. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Property and hereby evidences his interest that all the restrictions, conditions, covenants, rules and regulations contained in

this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and each shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

Section 11.11. Management Agreements. Any agreement for professional management of the Association, the Project, or any other contract providing for services of the Declarant, or other developer, sponsor or builder of the Project shall not exceed one (1) year.

Section 11.12. Gender. The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

Section 11.13. Topic Headings. The marginal or topical headings of the Sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the Sections or this Declaration.

Section 11.14. Survival of Liability. The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any way connected with such membership and the covenants and obligations incidental thereto. For purposes of this Section 11.14, the word "Member" shall not include the Declarant or its successors.

Section 11.15. Construction. In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, or Association Rules, the provisions of this Declaration shall prevail.

Section 11.16. Joint and Several Liability. In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in, or imposed by, this Declaration, shall be joint and several.

Section 11.17. Attorneys' Fees. In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration, or to collect any assessments or other amounts due from an Owner, or to enforce compliance with or recover damages for any violation or noncompliance with the Project Documents, the offending Owner or other person or entity shall pay to the Association, upon demand, all attorney fees and court costs incurred by the Association, whether or not suit is filed, which fees and costs shall be secured by the assessment lien.

Section 11.18. Declarant's Right To Use Similar Name. The Association hereby irrevocably consents to the use by any other nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one (1) or more words are added to the name of such other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign such letters, documents or other writings as may be required by the Arizona Corporation Commission in order for any other corporation formed or incorporated by the Declarant to use a corporate name which is the same or deceptively similar to the name of the Association.

Section 11.19. FHA/VA Approval. If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA and any loans have been made on property in Mandalay at South Mountain Phase II which are insured or guaranteed by FHA or VA, then as long as there is a Class B membership, the following actions may require the prior approval of the FHA or VA, based on the then existing guidelines and procedures of FHA or VA or, unless the need for such approval has been waived by FHA or VA: (i) annexation of additional properties, (ii) mortgaging of the Common Area, and (iii) dedication of the Common Area except as required by zoning stipulations effective prior to the date hereof.

IN WITNESS WHEREOF, Mandalay at South Mountain, L.L.C., an Arizona limited liability company, has hereunto signed this instrument the date first written above.

"DECLARANT"

MANDALAY AT SOUTH MOUNTAIN, L. L. C.
An Arizona Limited Liability Company

By: Mandalay Homes, Inc.
An Arizona Corporation

Its: Managing Member

EXHIBIT "A"

Legal Description

Mandalay at South Mountain Phase II Final Plat as recorded as instrument number 2005-1525990, on October 13, 2005, in Book 784 of Maps, Page 50, official records of Maricopa County Recorder, Maricopa County, Arizona.

WHEN RECORDED, RETURN TO:

BD1313-3-1-1--
Esquivela

David D. Everson
Mandalay Homes, Inc.
2198 E. Camelback Road, Suite 305
Phoenix, Arizona 85016
BD 0001313

**AMENDMENT TO
DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MANDALAY AT SOUTH MOUNTAIN PHASE II**

This Amendment to Declaration of Covenants, Conditions and Restrictions (hereinafter termed the "Declaration") is made on this 3rd day of January 2006, by Mandalay at South Mountain, L.L.C., an Arizona limited liability company (hereinafter sometimes termed "Declarant").

RECITALS:

A. Declarant executed and caused to be recorded a Declaration of Covenants, Conditions, and Restrictions for Mandalay at South Mountain Phase II, which was recorded November 18, 2005 at Instrument Number 2005-1748429, in the official records of the Maricopa County, Arizona Recorder ("Initial Declaration"); other capitalized terms used in this Amendment without definition shall have the meanings given them in the Initial Declaration.

B. Declarant desires to make a change to the Initial Declaration relating to the Maximum Annual Assessment.

C. As of the date hereof, Declarant has the right and authority to amend the Initial Declaration without the vote or other consent of any other Owners.

THEREFORE, the Initial Declaration is hereby amended as follows.

DECLARATION

1. Section 5.3 of the Initial Declaration is hereby amended in its entirety as follows:

5.3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment for each Lot shall be One Thousand Seven Hundred and No/100 Dollars (\$1700.00). Thereafter Assessment may be increased pursuant to Arizona Revised Statute Section 33-1801 pertaining to Planned Communities.

IN WITNESS WHEREOF, Mandalay at South Mountain, L.L.C., an Arizona limited liability company, has hereunto signed this instrument the date first written above.

“DECLARANT”

MANDALAY AT SOUTH MOUNTAIN, L. L. C.
An Arizona Limited Liability Company

By: Mandalay Homes, Inc.
An Arizona Corporation

Its: Managing Member




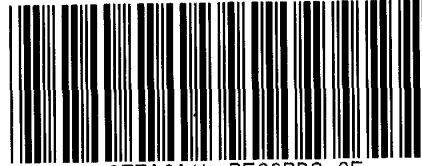
By: David D. Everson
Its: President

State of Arizona)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 3rd day of January, 2006, by David D. Everson, President of Mandalay Homes, Inc, an Arizona corporation, the Managing Member of Mandalay at South Mountain, L. L. C., on behalf of said company.


Notary Signature

 **MICHAEL J. LABRECQUE**
Notary Public - Arizona
Maricopa County
Expires 11/30/08



OFFICIAL RECORDS OF
 MARICOPA COUNTY RECORDER
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 2006-0614217 05/05/06 03:40 PM
 1 OF 1

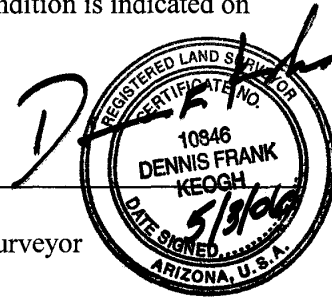
IBARRAS

WHEN RECORDED MAIL TO:
 KEOGH ENGINEERING, INC.
 14150 W. MCDOWELL ROAD
 GOODYEAR, ARIZONA 85338

AFFIDAVIT OF CORRECTION
 MANDALAY AT SOUTH MOUNTAIN PHASE II

This is to certify that I, Dennis F. Keogh, a principal of the firm of Keogh Engineering, Inc. 14150 W. McDowell Road, Goodyear, Arizona 85338, said firm having prepared the subdivision plat of MANDALAY AT SOUTH MOUNTAIN PHASE II, said subdivision plat having been duly recorded in Maricopa County Recorders office in Book 784 of Maps, Page 50, records of Maricopa County, Arizona, hereby publishes this Affidavit of Correction "to correct the lot line and 1.0' Non-Vehicular Access easement for Lots 3 and 33" — This condition is indicated on Exhibit 'A & B' attached hereto and made a part hereof."

 Dennis F. Keogh,
 Registered Land Surveyor



ACKNOWLEDGMENT

STATE OF ARIZONA)
 COUNTY OF MARICOPA) S.S.

On this, 3 day of May 2006, before me, the undersigned Notary, personally appeared Dennis F. Keogh, known to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof, I set my hand and official seal.



My Commission Expires: Sept 9, 2009

Tami R. Adams
 Notary Public

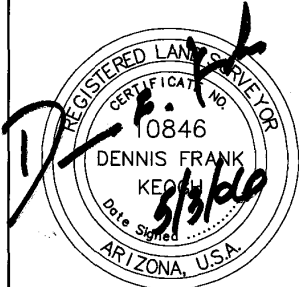
PREPARED FOR:

Mandalay Homes

BY: JEK

DATE: April, 2006

JOB NO. 19638



Scale: 1"=40'

AutoCad Version: 16.0
Login Name: JACKIE

Plot Date / Time: 04/25/06 04:08pm
Full File Path: L:\19638-Mandalay at South Mtn II\Exhibit.dwg

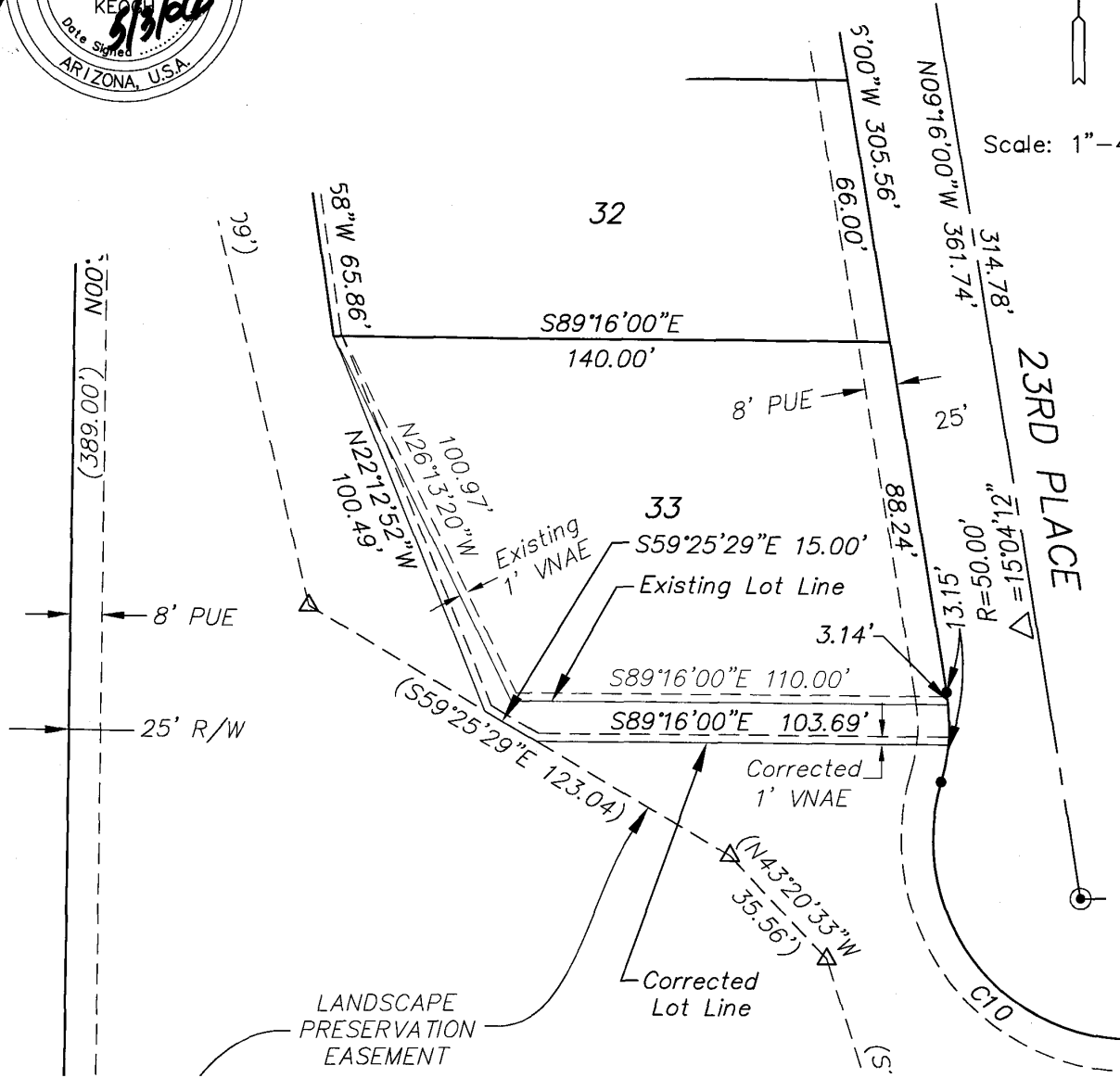


EXHIBIT "A"



Keogh Engineering, Inc.
 14150 W. MCDOWELL ROAD • GOODYEAR, ARIZONA 85338
 PHONE (623) 535-7260 • FAX (623) 535-7262

CHECKED BY: DFK
 DATE: April, 2006

SHEET NO 1
 OF 1

PREPARED FOR:

Mandalay Homes

BY: JEK

DATE: April, 2006

JOB NO. 19638



Scale: 1"=60'

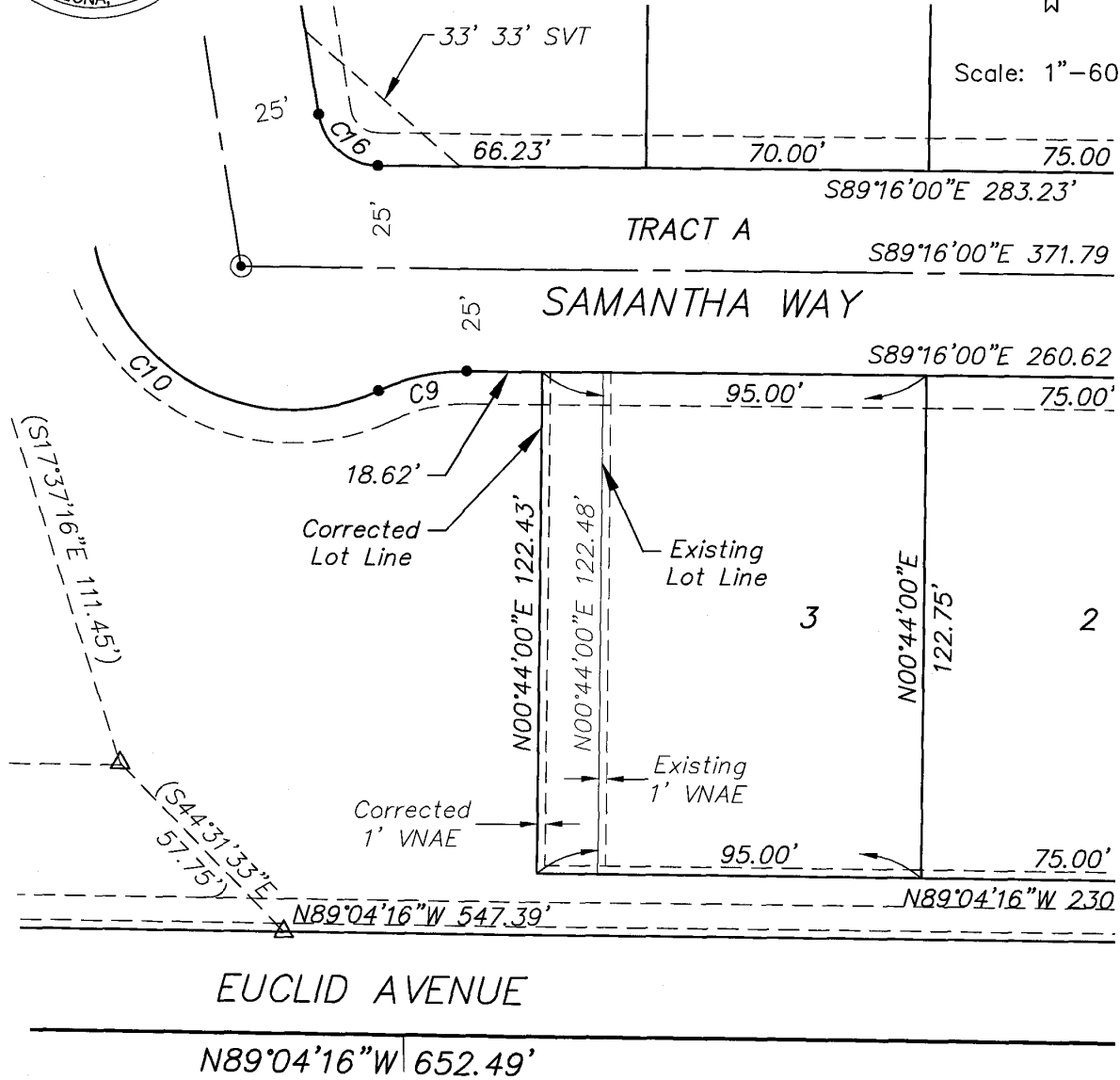


EXHIBIT "B"



Keogh Engineering, Inc.

14150 W. MCDOWELL ROAD • GOODYEAR, ARIZONA 85338
 PHONE (623) 535-7260 • FAX (623) 535-7262

CHECKED BY: DFK

DATE: April, 2006

SHEET NO 1

OF 1

AutoCad Version: 16.0
 Login Name: JACKIE

Plot Date / Time: 04/25/06 04:08pm
 Layout Name: Exhibit B
 Full File Path: L:\19638-Mandalay at South Mtn II\Exhibit.dwg

WHEN RECORDED MAIL TO:

SALT RIVER PROJECT
Land Department/PAB400
P. O. Box 52025
Phoenix, Arizona 85072-2025

20060857-3-1-1--
Tomutac

PUBLIC UTILITIES POWER EASEMENT

Maricopa County
Parcel # 301-36-007

R/W # 2574 Agt.Tierra
Job # KJK-84, KJ1-10485
JJK-55

W. JKD C MT

**MANDALAY AT SOUTH MOUNTAIN, L.L.C.,
and
ROBERT FREDERIKSEN and ELVERA ANSELMO**

hereinafter called Grantor, for and in consideration of the sum of One Dollar, and other valuable consideration, receipt of which is hereby acknowledged, does hereby grant and convey to **SALT RIVER PROJECT AGRICULTURAL IMPROVEMENT AND POWER DISTRICT**, an agricultural improvement district organized and existing under the laws of the State of Arizona, hereinafter called the Grantee, a non-exclusive electrical power easement in common with and identical in areas and locations to each and every one of the various public utility easements (PUE's) depicted and/or dedicated on the plat of the subdivision property described below.

The lands in, upon, over, under, across, through and along which this easement is granted are situated in the County of Maricopa, State of Arizona, and are more particularly described as:

Said easement being in common with and identical in areas and locations to each and every one of the various public utility easements (PUE's) depicted and/or dedicated on the plat of "MANDALAY AT SOUTH MOUNTAIN PHASE II", as recorded in Book 784 of Maps, Page 50, Document Number 2005-1525990, records of Maricopa County, Arizona.

CAUTION: Arizona Revised Statutes, Section 40-360.21, et. seq., Arizona Blue Stake Law, requires that the location of underground electrical conductors or facilities must be verified prior to any excavation.

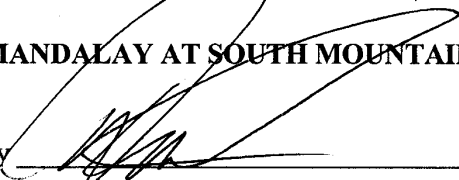
Restrictions on use of the Easement Parcel shall be IDENTICAL TO THOSE designated on said plat or the Covenants, Conditions and Restrictions (CC&R's), By-Laws, or any amendments thereto.

The covenants and agreements herein set forth shall extend and inure in favor and to the benefit of and shall be binding on the heirs, administrators, executors, personal representatives, legal representatives, successors (including successors in ownership and estate), assigns and lessees of the Grantor and Grantee.

The individual executing this document represents and warrants: (i) that he or she is authorized to do so on behalf of Grantor; (ii) that he or she has full legal power and authority to bind Grantor in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority (whether from any partner, owner, spouse, shareholder, director, member, manager, creditor, investor, developer, governmental authority, judicial or administrative body, association, or other person or entity); and (iii) that the execution, delivery, and performance by Grantor of this document and all others relating to the easement will not constitute a default under any agreement to which Grantor is a party. The individual executing this document shall indemnify, defend and hold harmless Grantee for, from and against any and all losses, costs, expenses, liabilities, claims, demands, and actions of any kind or nature, including court costs and attorneys' fees, arising or accruing as a result of the falsity of any of his or her representations and warranties contained in this document.

IN WITNESS WHEREOF, MANDALAY AT SOUTH MOUNTAIN, L.L.C., an Arizona limited liability company has caused its name to be executed by its duly authorized representative(s), and ROBERT FREDERIKSEN and ELVERA ASELMO, this 24 day of April 2006.

MANDALAY AT SOUTH MOUNTAIN, L.L.C.

By  _____

Its Manager _____

By _____

Its _____



ROBERT FREDERIKSEN



ELVERA ANSELMO

STATE OF ARIZONA)
) ss
COUNTY OF MARICOP[A]

The foregoing instrument was acknowledged before me this 24 day of April 2006,
by David D. Everson and
Manager, as Managing Member
and Manager, respectively, of **MANDALAY AT SOUTH MOUNTAIN, L.L.C.**,
an Arizona limited liability company, on behalf of such company.

My Commission Expires:

01/01/09



DYLAN J. KING
Notary Public - Arizona
Maricopa County
Expires 01/01/09

Dylan J. King
Notary Public

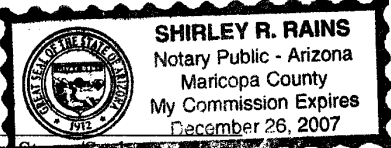
Notary Stamp/Seal

STATE OF ARIZONA)
) ss
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 24 day of April 2006,
by **ROBERT FREDERIKSEN and ELVERA ANSELMO.**

My Commission Expires:

12.26.07



SHIRLEY R. RAINS
Notary Public - Arizona
Maricopa County
My Commission Expires
December 26, 2007

Shirley R. Rains
Notary Public

Notary Stamp/Seal

Note: This instrument is exempt from the real estate transfer fee and affidavit of legal value required under A.R.S. Sections 11-1131 and 11-1132 pursuant to the exemptions set forth in A.R.S. Sections 11-1134(A)(2) and (A)(3).

S/Land/Landform/MASTER Template



OFFICIAL RECORDS OF
 MARICOPA COUNTY RECORDER
 HELEN PURCELL
 2006-1122076 08/23/06 01:49 PM
 1 OF 1

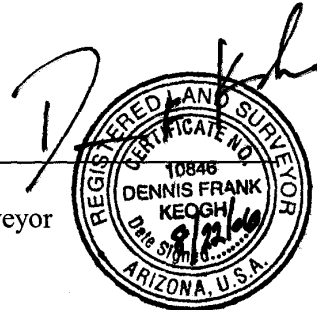
FLORESC

WHEN RECORDED MAIL TO:
 KEOGH ENGINEERING, INC.
 14150 W. MCDOWELL ROAD
 GOODYEAR, ARIZONA 85338

AFFIDAVIT OF CORRECTION
 MANDALAY AT SOUTH MOUNTAIN PHASE II

This is to certify that I, Dennis F. Keogh, a principal of the firm of Keogh Engineering, Inc. 14150 W. McDowell Road, Goodyear, Arizona 85338, said firm having prepared the subdivision plat of MANDALAY AT SOUTH MOUNTAIN PHASE II, said subdivision plat having been duly recorded in Maricopa County Recorders office in Book 784 of Maps, Page 50, records of Maricopa County, Arizona, hereby publishes this Affidavit of Correction "to correct the North lot line dimensions of Lots 18 and 19." This condition is indicated on Exhibit 'A' attached hereto and made a part hereof.

 Dennis F. Keogh,
 Registered Land Surveyor



ACKNOWLEDGMENT

STATE OF ARIZONA)
 COUNTY OF MARICOPA) S.S.

On this, 22 day of august 2006, before me, the undersigned Notary, personally appeared Dennis F. Keogh, known to be the person whose name is subscribed to the foregoing instrument and acknowledged that he executed the same for the purposes therein contained.

In Witness Whereof, I set my hand and official seal.

My Commission Expires: Sept. 28, 2009

Tami R. Adams
 Notary Public

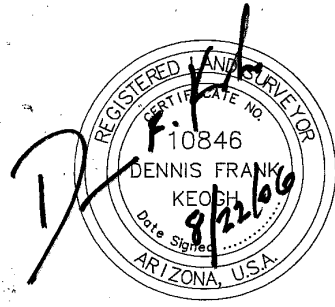


PREPARED FOR:
MANDALAY HOMES

BY: JS

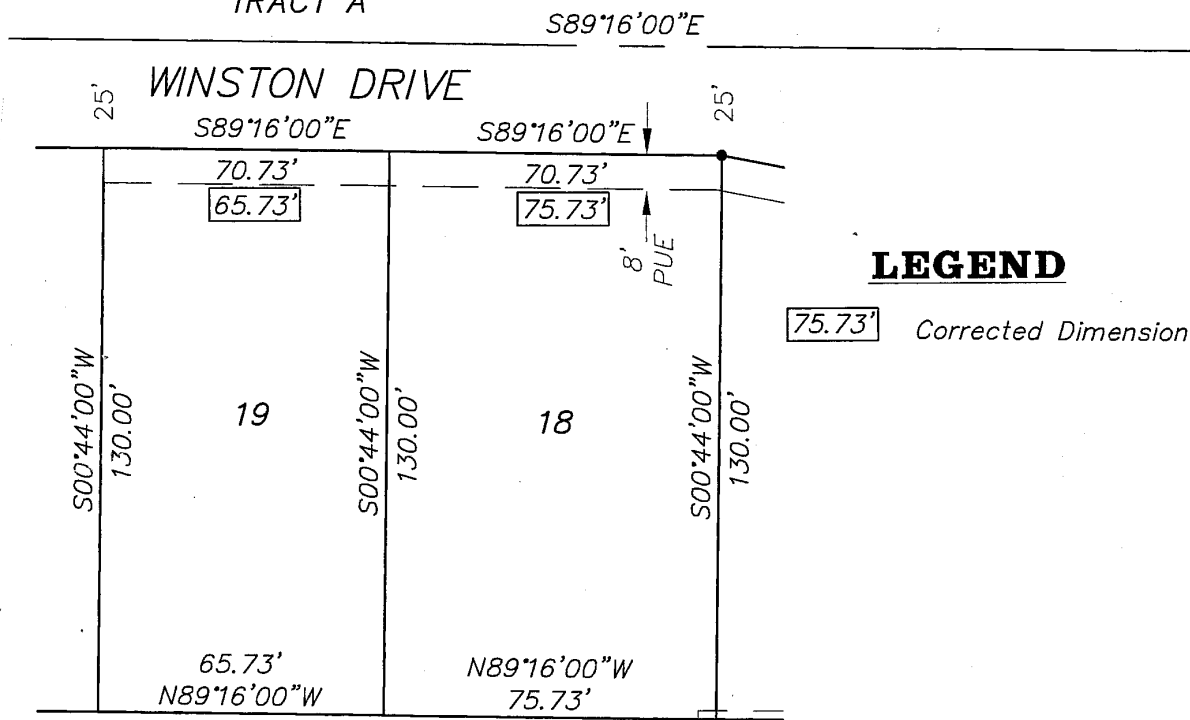
DATE: Aug. 2006

JOB NO. 19638



SCALE 1" = 40'

TRACT A



LEGEND

75.73' Corrected Dimension

Mandalay at
South Mountain
Phase II
Bk 782, Pg 50, MCR

EXHIBIT A



Keogh Engineering, Inc.

14150 W MCDOWELL ROAD GOODYEAR AZ 85338
PHONE (623) 535-7260 FAX (623) 535-7262

CHECKED BY: DFK

DATE: Aug. 2006

SHEET NO 1

OF 1

AutoCad Version: 16.0
Login Name: JSMITH

Plot Date / Time: 08/22/06 07:50am
Layout Name: L:\19638-Mandalay at South Mtn II\19638exhibit-1.dwg

FIDELITY NATIONAL TITLE

When recorded, mail to:

John M. Randolph
Sherman & Howard L.L.C.
2800 North Central Avenue, Suite 1100
Phoenix, Arizona 85004-1043

FT 10001144

1/2

10001144-3-3-1--
Marquardt1

**SECOND AMENDMENT TO
DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
MANDALAY AT SOUTH MOUNTAIN PHASE II**

This Second Amendment to Declaration of Covenants, Conditions and Restrictions is made on this 11 day of February, 2010, by Mandalay at South Mountain, L.L.C., an Arizona limited liability company ("Declarant").

RECITALS:

A. Declarant has previously executed a Declaration of Covenants, Conditions, and Restrictions for Mandalay at South Mountain Phase II, which was recorded November 18, 2005 at Instrument number 2005-1748429, in the official records of Maricopa County, Arizona which Declaration was amended by an amendment to Declaration of Covenants, Conditions and Restrictions dated January 3, 2006 and recorded on January 4, 2006 at Instrument Number 2006-0006950, in the official records of Maricopa County, Arizona (collectively, the "Declaration").

B. Declarant desires to further amend the Declaration upon the terms and conditions hereinafter set forth.

C. As of the date hereof, Declarant has the right and authority to amend the Initial Declaration without the vote or other consent of any other Owners pursuant to Section 11.4 of the Declaration.

NOW, THEREFORE, Declarant hereby declares and amends the Declaration as follows:

1. Capitalized terms used in this amendment shall have the same meaning given them in the Declaration.
2. Section 4.1 (c) of the Declaration is hereby amended to correct a typographical error and change January 1, 2003 to January 1, 2030.
3. A "Builder," as defined in Section 1.5 of Declaration who acquires six or more Lots shall, so long as such person retains ownership of any of such Lots, be entitled to (a) erect signs under Section 6.11, (b) exercise all rights reserved to Declarant under Section 6.12 relating to facilities, structures and signs for the sale of Lots, (c) all of the benefits with respect to model homes and parking facilities provided under Section 6.28 and (d) the rights of Declarant to use, without charge, the Common Area for maintenance of facilities, display and exhibit purposes pursuant to Section 8.1(c) of the Declaration.

Except as amended hereby, the Declaration shall remain unmodified and in full force and effect.

IN WITNESS WHEREOF, Declarant has executed this Second Amendment as of the date set forth above.

MANDALAY AT SOUTH MOUNTAIN, L.L.C.
An Arizona Limited Liability Company

By: **Mandalay Homes, Inc.**
An Arizona Corporation, its Managing Member

By: _____
Its: President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 17 day of February 2010, by David Everson, the President of Mandalay Homes, Inc., an Arizona corporation, the managing member of Mandalay at South Mountain, L.L.C., an Arizona limited liability company, on behalf of company.



[Signature]
Notary Public

My Commission expires: 11.13.12