

**COPY**

When Recorded Mail To:

DESERT HIGHLANDS DEVELOPMENT, LLC  
 16712 N. 106th Way  
 Scottsdale, AZ 85259

**DECLARATION OF COVENANTS, CONDITIONS  
 AND RESTRICTIONS FOR  
 FAIRWAY VIEW ESTATES**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of the 27 day of June, 2000, by Desert Highlands Development, LLC, a Nevada Limited Liability Company (hereinafter referred to as "Declarant").

RECITALS

A. Declarant is the owner of certain real property in the City of West Wendover, County of Elko, State of Nevada, to be known as "Fairway View Estates" described on Exhibit "A" attached hereto and incorporated herein by reference (the "Property"), and

B. It is the desire and intention of Declarant to develop and improve the Property as a detached single family home development and to impose on the Lots (as hereinafter defined) beneficial covenants, conditions and restrictions, as hereinafter set forth, under a general plan or scheme of improvements for the benefit of the Property and the Owners (as hereinafter defined) of the Property.

C. By this Declaration, the Property is not established as a common interest community and therefore the Property shall not be subject to the provisions of the Uniform Common Interest Ownership Act, codified in Chapter 116 of the Nevada Revised Statutes.

NOW, THEREFORE, Declarant hereby declares that all of the Property shall be held, sold and conveyed subject to the covenants, conditions and restrictions set forth herein, for the purpose of protecting the value and desirability of the Property. The covenants, conditions and restrictions created hereunder shall run with the Property, be binding on all the parties having any right, title or interest in the Property and such parties' heirs, successors and assigns, and shall inure to the benefit of each Owner.

ARTICLE I  
DEFINITIONS

1.01. "Declarant" shall mean and refer to Desert Highlands Development, LLC a Nevada Limited Liability Company, and its successors and assigns.

1.02. "Improvements" shall mean all structures and appurtenances thereto of every type and kind, including but not limited to residences, buildings, outbuildings, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees, shrubs, poles, signs, exterior air-conditioning, water softeners, satellite dishes, antennae, fixtures or equipment.

1.03. "Lot" shall mean and refer to any lot shown upon any recorded subdivision map of the Property and any home or residence constructed thereon.

1.04. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot, excluding, however, those persons or entities having such interest merely as security for the performance of an obligation. Notwithstanding anything herein to the contrary, whenever Declarant contracts for the sale of a Lot, the contract purchaser shall be deemed the Owner thereof.

1.05. "Property" shall mean and refer to that certain real property to be known as Fairway View Estates described on Exhibit "A" hereto.

1.06. "Security Interest" shall mean an interest in a Lot, held for the purpose of securing a debt, including any mortgage or deed of trust.

ARTICLE II  
PROPERTY RIGHTS

2.01. Ingress and Egress. Every Owner shall have a right of ingress and egress over the Property to and from his Lot which shall be appurtenant to and shall pass with the title to every Lot.

2.02. Encroachment Easements. Each Lot is hereby declared to have an easement over all adjoining property within the Property (including Lots) for the purpose of accommodating any encroachment due to engineering or surveying errors, errors in original construction, settlement, shifting or movement of a building, or any other cause. Each Owner, on behalf of Owner and Owner's heirs, successors, executors and assigns, agrees to permit free access, at reasonable times and upon reasonable notice by the party for whose benefit an easement has been created hereunder, for the purpose of

maintaining and/or repairing the encroachments herein which give rise to such easements.

2.03. Utilities Easements. Each Lot shall be conveyed to an Owner other than Declarant, and thereafter held by such Owner, subject to any and all easements of record at the time of the initial conveyance of such Lot to an Owner other than Declarant including, but not be limited to, easements of record for public and private utilities such as cable television, sanitary sewers, water, gas, electrical and drainage facilities. No Owner shall damage or interfere with the installation and maintenance of any utilities which are the subject of such easements or change the direction, or obstruct or retard, the flow of water or sewerage through any drainage channels in any such easements.

2.04. Easements Reserved by Declarant. Easements on, over and under the Property for the installation and maintenance of cable television, electric, telephone, water, gas and sanitary sewer lines and facilities, and as may be required or needed hereafter to service the Property, are hereby reserved to the Declarant, together with the right to grant and transfer such easements to other parties as so decided by Declarant in its sole discretion.

2.05. Party Walls. Each wall or fence which may be built as part of the original construction or development of the Property which is placed on a dividing line between any two or more Lots shall constitute a party wall. To the extent not inconsistent with the provisions of this Declaration, the general rules of law regarding party walls and liability for property damage thereto due to negligence or willful acts or omissions shall apply to such party walls. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use. The cost of construction of any retaining walls deemed necessary by Declarant shall be the responsibility of the lower side Lot Owner(s).

### ARTICLE III USE RESTRICTIONS

3.01. Residential Purposes. All Lots shall be used for no purpose other than private, one-family residential purposes.

3.02. Improvements. The Improvements constructed on each Lot shall comply with the following restrictions:

(a) Structure and Minimum Size. No structures whatsoever, other than one single-family private residence together with any ancillary buildings which are permitted by the applicable zoning laws of the City of West Wendover, may be erected or maintained on a Lot. Every residence shall be constructed on site and no manufactured, mobile or factory built homes are permitted. Every

residence erected upon a Lot shall contain not less than 1,000 square feet of floor space, exclusive of porches, patios, garages and carports. Every Lot shall have at a minimum a one (1) car garage and one on-site (off-street) parking spaces. No garage or carport shall be used for a living area or used for other purposes other than those uses normally attendant to a garage or carport. All lavatories and toilets shall be built indoors and connected with the sewer system.

(b) Limitations on Construction. Once construction of the Improvements has begun upon a Lot, the construction shall be completed within twelve (12) months from the commencement of the construction.

(c) Materials. The exterior of all structures upon the Property shall be finished in colors tending toward natural and earth tone colors using the following materials: exterior plaster (stucco) finish, brick and concrete masonry, stone or painted concrete. Accent elements of tiles, clay, glass, metal and wood trim are permitted.

(d) Ground Cover. If Declarant has not provided a lawn or other ground cover for a Lot, then the Owner of that Lot shall completely install all landscaping visible from the front of each Lot within six (6) months after notice of completion has been filed on the residence constructed on the Lot. Nothing herein shall operate to prohibit the use of water-efficient landscaping.

(e) Construction of Walls or Fences. No fence or wall shall be installed upon any Lot in the Property except the residence, garage or other improvement permitted to be erected under the provisions of this Declaration, unless such fence or wall was originally constructed by Declarant, is made or constructed of cinder block, stucco, vinyl or wrought iron, or, for so long as Declarant owns any Lot, the appearance of such fence or wall is otherwise approved in advance by the Declarant.

**3.03. Oil, Water and Mineral Operations: Hazardous and Toxic Materials.** No tools or equipment and no derrick or other structure designed for use in boring for oil, gas, or other kindred substances, or designed for use in boring for water, or designed for use in any mining operation or exploration shall hereafter be erected or placed upon the Property or any portion thereof; and no Owner of any Lot shall ever consent to the use of the surface of the land, or any portion of the subsurface thereof, by any lessee under any lease to be negotiated or under any lease now of record affecting any Lot, which lease pertains to the exploration, mining, or operating for oil, gas or other hydrocarbon substances and the taking, storing, removing and disposition of same. No Lot or any portion thereof shall ever be used for the storage or disposal of any hazardous or toxic materials, as such terms are defined by federal, state or local laws now or hereafter in effect.

3.04. Compliance with Laws. No Owner shall permit anything to be done or kept in his or her Lot or any Improvement thereon that violates any of the restrictions contained in this Declaration or any law, ordinance, statute, rule, or regulation of any local, county, state or federal body, including, without limitation, local ordinances relating to zoning and building codes.

3.05. Maintenance. Each Owner shall at all times maintain the Improvements located on such Owner's Lot in good and proper condition and appearance. No rubbish, brush, weeds, undergrowth, debris of any kind or character shall ever be placed or permitted to accumulate upon any Lot, or any portion thereof, so as to render it a fire hazard, unsanitary, unsightly, offensive or detrimental to any other Lot or the occupants of any other Lot.

3.06. Nuisances. No noxious or offensive activity shall be carried on upon the Property nor shall anything be done thereon which may be or become an annoyance or a nuisance to the neighborhood. The activities of the Declarant during the construction and development of the Property shall not constitute a nuisance under this Section 3.06.

3.07. Repair of Improvement. No Improvement on any Lot shall be permitted to fall into disrepair and all Improvements shall be kept at all times in good condition and repair and, if appropriate, painted or otherwise finished.

3.08. Animals. No animals or fowl, other than commonly recognized household pets, shall be kept or maintained on a Lot or any portion thereof; no animal shall be kept, bred or maintained for any commercial purpose; and no animals or fowl, including household pets, which are determined to be dangerous, may be kept or maintained on any Lot.

3.09. Surface Water Drainage and Easement. Lots situated on higher elevations shall have surface water drainage easements over adjacent Lots with lower elevations for the drainage of rainfall, runoff, or other surface waters. Except with the prior approval of the Owner of the lower Lot, the grade along or close to any side line of the Lot situated on the higher elevation shall not be altered nor shall any Improvement be placed along or close to any Lot line of the higher elevation Lot so as to unduly concentrate the flow of surface waters or locate such flow in a manner that will be hazardous to the life or cause material damage to the property of the Owner of the Lot situated on the lower elevation. Except with the prior approval of the Owner of the higher Lot, no Improvement shall be erected, made or maintained on the Lot in a manner hazardous or detrimental to the Lot situated on a higher elevation.

3.10. Vehicles, Boats. No disabled vehicle, mobile home, truck over one ton, commercial van or similar vehicle, or recreational vehicle, including but not limited to boats, trailers, campers or motor homes, may be parked within

the Property at any time unless such vehicles are parked within a completely enclosed garage or otherwise screened from the view of neighboring Lots; provided, however, that the foregoing shall not be deemed to exclude parking for temporary deliveries, loading, repairs, landscaping maintenance, and similar purposes.

3.11. Signs. No sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than one (1) square foot, one sign of not more than five (5) square feet advertising the property for sale or rent, or construction and sales period. All signs shall conform to current City or County ordinances.

3.12. Declarant's Exceptions. Notwithstanding any provision to the contrary contained in this Article III, Declarant (its employees, sales agents and representatives) shall have the right to maintain signs, offices for sales and management and models on any Lot which is owned by Declarant. No provision contained in this Article III shall be applicable to or prohibit any acts or activities by Declarant (its employees, agents, suppliers, contractors and representatives) in connection with or incidental to Declarant's improvement and development of the Property.

3.13. Security Interest Liens Breach of any of the covenants in this Article V shall not defeat or render invalid the lien of any first position Security Interest made in good faith and for value as to a Lot, but such provisions, restrictions or covenants shall be binding upon any Owner whose title is acquired by foreclosure.

#### ARTICLE IV

##### GOLF COURSE DISCLAIMER

4.01. Golf Course Disclosure. Declarant hereby discloses the following matters which relate to the existence of a golf course, which includes a clubhouse, driving range and other facilities now or hereafter constructed (collectively, the "Golf Course Facilities"), adjacent to the Property. The Golf Course Facilities are not owned or operated by Declarant and Declarant makes no representations or warranties regarding the Golf Course Facilities. It shall be the sole responsibility of each Owner to notify all assigns and successors in interest of a Lot of the following disclosures and the exact rights and concerns of each Owner with respect to such matters.

(a) No Right to Use Golf Course Facilities. Each Owner acknowledges that the purchase of a Lot by an Owner does not confer upon an Owner the right to use the Golf Course Facilities or grant to such Owner, by virtue of ownership of a Lot, a right of access, entry or other use of the Golf Course Facilities or any right to join or become a member of any membership club established in connection with the Golf Course Facilities. Furthermore,

ownership of a Lot shall not confer upon any Owner any right to claim or require that the Golf Course Facilities continue to be used as a golf course by any person or entity or that the Golf Course Facilities be maintained to certain standards.

(b) Irrigation. Declarant discloses that the Golf Course Facilities are or may be irrigated with reclaimed effluent water. Such irrigation is not under the control of the Declarant.

(c) Waiver of Liability for Errant Golf Balls. Due to the proximity of the Property to the Golf Course Facilities, it is possible that errant golf balls will come upon and may damage improvements located upon a Lot. Such errant golf balls are not the responsibility of Declarant. By acceptance of a deed or lease to a Lot, each Owner, for himself and on behalf of his family, guests and tenants, releases Declarant and its respective agents, employees, directors, members, managers, officers, shareholders, partners, and contractors, from all claims, demands, expenses, damages, costs, causes of action, obligations and liabilities, including, without limitation, damage to his residence and damages for personal injury or death, which in any way arise from or relate to the impact of a golf ball which enters upon a Lot from the Golf Course Facilities, whether or not the golf ball is struck in a negligent manner.

(d) Constructive Notice and Acceptance. Every Owner and any other person who owns, occupies or acquires any right, title, estate or interest in or to any Lot shall be conclusively deemed to have consented and agreed to every limitation, restriction, easement, reservation, condition and covenant contained in this Article IV and elsewhere in this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Lot.

## ARTICLE V GENERAL PROVISIONS

5.01. Right to Enforce Declaration. Any Owner, including Declarant, shall have the right to enforce, by any proceeding at law or in equity, all conditions, covenants and restrictions now or hereafter imposed by this Declaration. Failure by any Owner to enforce any covenants, conditions or restrictions shall in no event be deemed a waiver of the right to do so thereafter.

5.02. Violation of Declaration. The violation of any covenant, condition or restriction created by this Declaration is hereby declared to be a nuisance, and any Owner shall have the right to seek equitable relief against such nuisance. All costs incurred in such enforcement, including a reasonable fee for counsel, shall be paid by the Owner of such Lot or Lots.

**5.03. No Waiver.** No delay or omission on the part of any Owner, including the Declarant, in exercising any rights, power, or remedy herein provided in the event of any breach of the covenants, conditions or restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against the Declarant for or on account of its failure to bring any action on account of any breach of these covenants, conditions or reservations, or for imposing restrictions herein which may be unenforceable by the Declarant.

**5.04. Covenants Run with Land.** The covenants, conditions and restrictions created by this Declaration shall run with and bind every Lot for a period of thirty (30) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by the current Owners of at least a majority of the Lots has been recorded, agreeing to change the Declaration in whole or in part.

**5.05. Amendments.** Except as otherwise provided herein, any amendment must be consented to by Owners of no less than fifty-one (51%) of the Lots. Any amendment to this Declaration shall be invalid if it would tend to defeat the priority position of a mortgagee with respect to said mortgagee's lien or would make any mortgage illegal under then applicable governmental regulations, unless consent is obtained in writing from such mortgagee. Any amendment to this Declaration must be recorded.

**5.06. Governmental Rights.** The Property shall be subject to any and all rights and privileges which the City of West Wendover and/or the County of Elko, Nevada, may have acquired through dedication or the filing or recording of maps or plats of such premises.

**5.07. Remedies Cumulative.** The remedies provided herein are cumulative, and no such remedy shall be construed as exclusive of any other remedy herein, or of any right, option, election or remedy provided by law.

**5.08. Partial Invalidity.** The invalidation of any one of the covenants, conditions or restrictions created hereunder, or any application thereof by judgment or court order, shall in no manner affect any other covenant, condition or restriction created hereunder or any application thereof.



IN WITNESS WHEREOF, the undersigned, being the Declarant herein has hereunto executed these covenants, conditions and restrictions this 27th day of June 2000.

"DECLARANT"

DESERT HIGHLANDS DEVELOPMENT, LLC, a Nevada Limited Liability Company

By: Paul J Bencoter

Name: Paul J. Bencoter

Title: Manager

By: Ethan S Day

Name: Ethan S. Day

Title: Manager

STATE of Arizona  
COUNTY of Maricopa



This instrument was acknowledged before me on 6/27/00 by Paul Bencoter as Manager of Desert Highlands Development, LLC.

Jo Anne Vaughn  
Notary Public

STATE of Arizona

COUNTY Of Maricopa

This instrument was acknowledged before me on 6/27/00 by Ethan Day as Manager of Desert Highlands Development, LLC.

Jo Anne Vaughn  
Notary Public



EXHIBIT A

Property  
Legal Description

All that real property identified as Lots 1 through 33 on the Final Map of Fairway View Estates Subdivision, recorded as FILE NO. 459472 on June 23, 2000 in the Office of the County Recorder of Elko County, Nevada.

I have read the foregoing Declaration of Restrictions consisting of eleven (11) pages, including this page, and agree to comply with each every and all enclosed covenants, conditions and restrictions.

Lot # purchased: \_\_\_\_\_.

\_\_\_\_\_  
Signature of Buyer:

\_\_\_\_\_  
Print name of Buyer:

\_\_\_\_\_  
Date:

\_\_\_\_\_  
Signature of Buyer:

\_\_\_\_\_  
Print name of Buyer:

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Date:

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REQUEST OF

*Desert Highlands Development*

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JERRY D. REYNOLDS  
CLIKO CO. RECORDER