

When recorded return to:

James B. Senften, Esq.
Gammage & Burnham, PLC
Forty North Central Avenue, 20th Floor
Phoenix, AZ 85004

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR MOUNTAIN ENCLAVE**

This **FIRST AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR MOUNTAIN ENCLAVE** (this "**Amendment**") is made and entered into this ___ day of _____, 20__ by **KB HOME TUCSON INC.**, an Arizona corporation (the "**KB**").

RECITALS

A. **CAAD 12 VENTURES LLC**, an Arizona limited liability company ("**CAAD**") previously executed and recorded that certain Declaration of Covenants, Conditions, Restrictions and Easements for Mountain Enclave recorded on January 31, 2020 at Sequence No. 20200310830 in the Official Records of the Pima County Recorder (the "**Declaration**").

B. **CAAD** previously assigned to **KB** all of **CAAD**'s rights and interests under the Declaration, including, without limitation, all of **CAAD**'s rights and interests as the "Declarant" under the Declaration, pursuant to that certain Assignment and Assumption of Declarant's Rights and Obligations recorded on February 14, 2020 at Sequence No. 20200450923 in the Official Records of the Pima County Recorder, such that **KB** is now the sole Declarant under the Declaration

C. **KB** is the fee owner (or holder of the beneficial interest under a subdivision trust) to all of the Property subject to the Declaration. **KB** now desires to amend the Declaration as provided in this Amendment

D. Capitalized terms used but not defined herein have the meaning given to such terms in the Declaration.

NOW, THEREFORE, the Declaration is hereby amended as follows:

AMENDMENTS

1. Amendments to Article 1 - Definitions.

a. Section 1.5 of the Declaration is hereby amended and restated in its entirety as follows:

1.5 "Areas of Association Responsibility" means (i) all Common Areas (Including all water and utility lines located within the Common Areas (unless same are being maintained by the applicable utility companies)); (ii) all entry monuments and related Improvements; (iii) all landscaping within public rights-of-ways abutting the Property's external boundaries to the extent maintenance thereof by the Association is required by the City or any other applicable governmental authority; ~~(iv) the Drainage Improvements and Community Trail as described in Article 10 below; and (v) and (iv)~~ all other land (Including a Lot or a portion thereof), and the Improvements thereon, which the Association is obligated to maintain, repair and replace pursuant to the terms of this Declaration or other Recorded instrument executed by Declarant or the Association. Areas of Association Responsibility also includes any property (and the improvements thereon) located outside of the borders of the Property for which the Association is responsible to maintain pursuant to a separate Recorded ~~Maintenance Agreement~~maintenance agreement or other instrument signed by Declarant (for so long as Declarant owns any portion of the Property) and/or the Association, as permitted pursuant to Section 4.74.8 below.

b. Section 1.16 of the Declaration is hereby amended and restated in its entirety as follows:

1.16 "Common Area" means all real property, together with all Improvements situated thereon, (i) that is designated on the Plat as a "common area", "C.A", or which the Plat otherwise indicates is to be owned by a homeowners association or (ii) that the Association at any time owns in fee or in which the Association has a leasehold interest for as long as the Association is the owner of the fee or leasehold interest, except that Common Area shall not include any Lot that the Association may acquire through foreclosure of the Assessment Lien or any deed in lieu of foreclosure.

c. Section 1.19 of the Declaration is hereby amended and restated in its entirety as follows:

1.19 "Declarant" means ~~CAAD 12 Ventures, LLC~~KB HOME TUCSON INC., an Arizona ~~Limited Liability Company~~corporation, its successors, and any Person to whom it may expressly assign any or all of its rights under this Declaration by a Recorded instrument.

d. Section 1.35 of the Declaration is hereby amended and restated in its entirety as follows:

1.35 "Party Wall" shall collectively mean any fence or wall constructed on or near the property line of any two (2) adjoining Lots; provided, however, that a Party Wall does not include any Residential Unit Wall (as defined herein).

2. Amendments to Article 3 – Use Restrictions.

a. Section 3.12 of the Declaration is hereby amended and restated in its entirety as follows:

3.12 Vehicles and Parking.

~~3.12 Vehicles and Parking. Private, non-commercial, passenger automobiles or pickup trucks may be parked on the Property within a garage or on a driveway appurtenant to a Residential Unit but, except as provided in the next sentence, may not be parked elsewhere on the Property or streets adjoining the Property. The preceding sentence shall not preclude occasional overflow parking for guests on streets provided that no inconvenience is imposed on the Owners or Residents of other Lots. No other vehicle (including~~

3.12.1 Passenger cars, vans, sport utility vehicles, pickup trucks, motorcycles, motorbikes, golf carts, all-terrain vehicles, and other similar motorized vehicles (collectively, “Automobiles”) of each Owner and Resident of a Lot must be parked (i) on the Property within the garage appurtenant to a Residential Unit or (ii) if the garage already contains the maximum number of Automobiles for which it was intended to hold, an Owner or Resident of a Lot may park Automobiles within any designated parking spaces located within the Common Areas (collectively, the “Community Parking Spaces”). Unless otherwise determined by the Board, Automobiles owned by guests or invitees of an Owner or Resident may be parked within the Community Parking Spaces even if there is excess room in such Owner’s or Resident’s garage. All Automobiles of any contractor, subcontractor, supplier, or vendor of an Owner or Resident must, to the extent reasonably feasible, be parked in the Community Parking Spaces; provided the same may not be parked overnight without the prior written approval of the Board. No Automobiles may be parked on a driveway and, unless otherwise permitted by the Board (and subject to such rules and regulations as the Board may designate and adopt in its sole discretion), no Automobiles may be parked on any streets or other Common Areas within the Property other than the Community Parking Spaces. Owners, Residents, and their guests and invitees shall, at all times, comply with all parking markings and signage posted along any streets.

3.12.2 No bus, mobile ~~homes~~home, motor ~~homes~~home, ~~boats~~travel trailer, tent trailer, trailer, camper, camper shell, boat, boat trailer, personal watercraft, recreational ~~vehicles, trailers, trucks, campers, tents~~vehicle, or other similar ~~vehicles~~ ~~or~~ equipment or vehicle (collectively, “Recreational Vehicles”) shall be kept, placed or maintained upon a Lot, the Common Areas, or any other portion of the Property or any ~~roadway~~street adjacent thereto, except: (i) within a fully-enclosed garage appurtenant to a Residential Unit; or (ii) in such areas and subject to such rules and regulations as the Board may designate and adopt in its sole discretion (and the Board in its sole discretion may prohibit ~~such other vehicles and equipment~~Recreational Vehicles completely).

3.12.3 No ~~vehicle~~Automobiles or Recreational Vehicles of any kind shall be constructed, reconstructed or repaired on the Property or any ~~roadway~~street therein or adjacent thereto except within a fully enclosed garage. No ~~vehicle~~Automobiles or Recreational Vehicles of any kind that ~~is~~are not in operating condition shall be

James B. Senften [JBS1]

Let’s discuss to what extent you want to permit or prohibit street parking. Is any street parking, as long as it is not overnight, permitted? Or will any street parking become a problem? See 3.12.4 below.

parked in any ~~unenclosed parking areas (Including private driveways~~ place but a garage appurtenant to a Residential Unit).

3.12.4 Notwithstanding the foregoing, but subject to such rules and regulations as the Board may designate and adopt in its sole discretion, Automobiles and Recreational Vehicles may be temporarily parked in the street for the purpose of loading or unloading.

3.12.5 The Board shall have the right and power to adopt rules and regulations governing and further restricting the parking of Automobiles and Recreational Vehicles within the Property and implementing the provisions of this Section; provided that in the event of any conflict or inconsistency between the provisions of this Section and such rules and regulations, the provisions of this Section shall control.

3.12.6 The provisions of this Section 3.12 shall not apply to (a) ~~vehicles~~Automobiles and Recreational Vehicles of Declarant, an Affiliate of Declarant or a Builder or their employees, agents, contractors or subcontractors during the course of construction activities or sales activities upon or about the Property, (b) ~~vehicles~~Automobiles and Recreational Vehicles used by the Association in repairing, maintaining and replacing the Common Areas and all Improvements thereon, and in performing all other rights, duties and obligations of the Association under this Declaration, and (c) ~~motor vehicles~~Automobiles and Recreational Vehicles that by applicable law cannot be prohibited from parking on a driveway or a street. ~~No vehicle, regardless of where parked, shall park across, upon or over a sidewalk, or interfere with the safe usage of sidewalks.~~

3.12.7 Notwithstanding anything to the contrary contained herein or elsewhere in this Declaration, neither the provisions of this Section 3.12 nor any other provision of this Declaration shall be deemed to preclude or regulate overflow parking on any public streets or public rights of way ~~within or~~ adjacent to the Property; rather, all public street parking is subject to and shall be regulated and governed by the applicable laws, statutes, codes, ordinances, rules and regulations of the City and/or any other applicable governmental authorities (including, all applicable parking restrictions, markings and signage posted along such public or private streets and rights of way).

b. Section 3.32.1 of the Declaration is hereby amended and restated in its entirety as follows:

3.32.1 Model Homes. Nothing contained herein shall prohibit the construction and maintenance of model homes, sales offices, and parking and signage incidental thereto by Declarant or other persons engaged in the construction, marketing, rental or management of Residential Units within the ~~Covered~~ Property with the consent of the Declarant, provided, however ~~models~~model homes are open only during ~~that the~~ reasonable hours determined by Declarant or the Board and otherwise are in compliance with the provisions of this Declaration and ordinances of the City of Tucson. Except as otherwise approved in writing by the Board, all model homes and sales offices shall cease to be used ~~as~~at such ~~at any time~~that the Owner or the nominee thereof is not actively engaged in the construction or sale

of Residential Units. Nothing contained herein shall prohibit the lease of a Residential Unit pursuant to Section 3- hereof.

c. Section 3.36 of the Declaration is hereby added to the Declaration as follows:

3.36 Crime and Drug Free Community; Restriction on Offenders. To the extent not prohibited by A.R.S. § 33-1806.01 and other applicable law, the Association shall have the right and power to (i) enact rules prohibiting criminal and drug activity on the Property, including the right to assess fines and evict tenants who engage in such activity and (ii) require Residents and Owners to sign reasonable contracts and forms that assure there is no criminal and drug related activity on the Property. Notwithstanding the foregoing to the contrary, neither Declarant nor the Association shall have any obligation or responsibility for enforcing the law, or liability for the occurrence of such activity on the Property. Further, neither Declarant nor the Association makes any guaranty that such activity will not occur on the Property. Finally, pursuant to the authority granted to the Association in A.R.S § 33-1806.01 or other applicable law, no Person who is required to be registered pursuant to A.R.S. § 13-3821 or other applicable law, and who is classified as a level two or level three offender may be a Resident of any portion of the Property. The foregoing provision shall only be applicable and enforceable to the extent allowed by applicable law.

3. Amendments to Article 4 – Easements and Development Rights.

a. The “first” Section 4.7 of the Declaration is hereby amended and restated in its entirety as follows:

4.7 Side Yard Easements. ~~Certain Lots within the Covered Property may be developed and constructed with building walls, patio walls~~ Including the exterior wall of a Residential Unit, roofs, eaves, overhangs, and other improvements (“Boundary Area Improvements”) located for certain Lots may be constructed on or adjacent to the property boundary line between Lots such Lot and/ an adjoining Lot or a Common Area, which (or encroach upon onto such adjacent Lots adjoining Lot or Common Area for which access to such adjacent Lots or Common Area may be necessary or convenient for maintenance and repair. Except for the second floor eaves and/or overhangs, no such encroachments shall impact the common area streets and the twenty four (24) foot clear travel lanes thereof. Accordingly) (each a “**Boundary Line Improvement**” and collectively, “**Boundary Line Improvements**”), such that exterior wall of such Residential Unit (and potentially certain other Boundary Line Improvements) will serve as part of, or be located immediately adjacent to, the boundary wall between the applicable Lots or between the applicable Lot and the applicable Common Area. In order to preserve and allow maintenance of such Boundary Line Improvements, and notwithstanding anything in this Declaration to the contrary, there is hereby created ~~an exclusive and perpetual easement (the “Boundary Area Easement”),~~ for the benefit of each the Owner of such Boundary Line Improvements and such Owner’s Lot (the each a “Benefitted Lot”) an exclusive and perpetual easement over and across the first three (3) feet of each Lot and/or Common Area, as applicable, that is adjacent Lot to such Boundary Line Improvements (the each a “Burdened Lot”) and adjacent Common Area, solely for the encroachment, maintenance,

repair and replacement of the Boundary Line Improvements for such Benefitted Lot (each a "Boundary Area Improvements. The Easement"). For illustrative purposes only, (1) if Boundary Line Improvements are constructed along the west boundary line of Lot 59, then as between Lot 59 and 58, Lot 59 would be a Benefitted Lot, Lot 58 would be a Burdened Lot, and Lot 59 would have a Boundary Area Easement over the eastern three (3) feet of Lot 58 and (2) if Boundary Line Improvements are constructed along the west boundary line of Lot 58, then as between Lot 58 and C.A. "B", Lot 58 would be a Benefitted Lot, C.A. "B" would be a Burdened Lot, and Lot 58 would have a Boundary Area Easement over the eastern three (3) feet of C.A. "B" abutting Lot 58. Each Boundary Area Easement is subject to the following terms and conditions:

~~(a) — No Owner of a Lot may construct any structure or improvements within the Boundary Area Easement that would reasonably preclude an Owner of a Benefitted Lot from maintaining or repairing Boundary Area Improvements.~~

~~(b)(a) No Owner of a Burdened Lot may (i) modify a building wall or patio wall in the Boundary Area Easement benefitting another Lot, any Boundary Line Improvements, including painting, stuccoing, or otherwise altering the aesthetic appearance of any Boundary Line Improvements or (ii) install or construct any Improvements or other tangible object, including, without limitation, (Including art objects, barbeques, or other attachments,) to a building wall or patio wall in the Boundary Area Easement benefitting another Lot, or (iii) paint, stucco or otherwise alter the aesthetic appearance of such building wall or patio wall any Boundary Line Improvements or within the Boundary Area Easement, without, in each case, obtaining the prior written approval of the ARC (which shall consult with the Owner of the Boundary Line Improvements and the Architectural Review Committee.~~

~~(b) No Owner of the Benefitted Property as appropriate) Lot may install or construct any additional Improvements within the Boundary Area Easement benefitting such Benefitted Lot beyond the Boundary Line Improvements originally constructed by the Declarant or a Builder, except if such additional Improvements are subsequently approved by both the Owner of the Burdened Lot and the Architectural Review Committee.~~(e)

~~(c) Notwithstanding the limitations in subparagraph (ba), the Owner of a Burdened Lot may place ground, eve, rock, gravel, stone, and/or other inert materials within the Boundary Area Easement so long as that the such area remains level and there is no alteration to or impairment of drainage and provided further that no plants shall be permitted within the Boundary Area Easement.~~

~~(d) (d) The Owner of a Burdened Lot shall not: (i) permit or cause any nuisance to occur in the Boundary Area Easement, or (ii) permit or cause any damage to Boundary Area Improvements, or (iii) permit or cause any material of any kind to be placed, located or stored within one foot of the wall of the any building on the Benefitted Lot.~~

~~(e) (c) An Owner of a Benefitted Lot must provide at least 30 14 days written notice to the Owner of the Burdened Lot before entering the Burdened Lot to perform maintenance, repairs or replacements of any Boundary Line Improvements;~~

provided, however, that in the case of an emergency involving either the safety of the occupants of either Lot or the interruption of utility services (such as gas or water leak), the Owner of a Benefitted Lot shall only be required to provide such notice as is reasonable under the circumstances acting in good faith.

(f) If any Boundary Line Improvements are damaged or destroyed through the act or omission of an Owner or Resident of a Lot or any of their agents, contractors, guests or invitees (whether or not such act is negligent or otherwise culpable and Including any act or omission done in violation of this Declaration), the Owner of such Lot shall be obligated to rebuild and repair the applicable Boundary Line Improvements at such Owner's sole expense (provided that this shall not bar such Owner from recovering, or seeking to recover, all or any part of such expense from any insurer, Lessee, Resident, agent, guest or other Person who otherwise may be liable to such Owner). Otherwise, except for any Party Walls, any other Boundary Line Improvements shall be maintained and repaired by the Owner of such Boundary Line Improvements.

(g) If any portion of the exterior wall of a Residential Unit (including any garage associated with a Residential Unit) constitutes Boundary Line Improvements (e.g. such exterior wall constitutes part of the boundary wall with another Lot) (each such wall, a "Residential Unit Wall"), the Owner of the Burdened Lot adjacent to such Residential Unit Wall shall not, without the written approval of the Owner of the Benefitted Lot, do any of the following: (i) use the Residential Unit Wall for recreational purposes (e.g., bouncing balls); (ii) use the Residential Unit Wall as part of an enclosure for pets; (iii) allow water sprinklers to spray directly on such Residential Unit Wall; or (iv) otherwise take any action regarding the Residential Unit Wall that a reasonable person would conclude has a substantial likelihood of disturbing the peaceful and undisturbed use of the interior of the Residential Unit of which the Residential Unit Wall forms a part.

b. The second Section 4.7 of the Declaration is hereby amended to be Section 4.8.

c. Section 4.9 is hereby added to the Declaration as follows:

4.9 **No Merger.** The easements granted and reservations made to Declarant and other Owners in this Declaration shall not terminate or merge and shall continue to run with the land, notwithstanding the common law doctrine of merger.

4. Amendments to Article 5 – The Association; Organization; Membership and Voting Rights; Common Area.

a. Section 5.14 is hereby added to the Declaration as follows:

5.14 Managing Agent. All powers, duties, and rights of the Association, the President of the Board or the Board as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no delegation shall relieve the Association of its obligation to perform any delegated duty. Any agreement for

professional management, or any other contract providing for management or maintenance services (excluding utility services) to the Association, shall not exceed a term of five (5) years, subject to renewal by agreement of the parties for successive one (1) year periods, and shall further provide for termination by the Association with or without cause and without payment of a termination fee upon thirty (30) days written notice.

James B. Senften [JBS2]
[Optional language. Thoughts?](#)

5. Amendments to Article 6 – Covenant for Assessments and Creation of Lien.

a. The following is hereby added to the end of Section 6.13 of the Declaration:

No payment due under this Section 6.13 (i.e. the working capital contribution) shall be payable with respect to (i) the transfer or conveyance of a Lot by devise or intestate succession; (ii) a transfer or conveyance of a Lot to a family trust, family limited partnership or other Person for bona fide estate planning purposes; (iii) a transfer or conveyance of a Lot to a corporation, partnership or other entity in which the grantor owns a majority interest unless the Board determines, in its sole discretion, that a material purpose of the transfer or conveyance was to avoid payment of such working capital contribution; or (iv) the transfer or conveyance of a Lot as a result of a trustee's sale under a deed of trust, the foreclosure of a realty mortgage or the forfeiture or foreclosure of a purchaser's interest under a Recorded contract for the conveyance of real property subject to A.R.S. § 33-741 et sue.

James B. Senften [JBS3]
[This language was present for the Reserve Contribution under Section 6.14, but not in Section 6.13 for the Working Capital Contribution. Typically these fees are treated the same.](#)

b. Section 6.17 is hereby added to the Declaration as follows.

Section 6.17 **Additional Payments and Assessment Lien.** To the extent permitted by applicable law, each applicable Person's obligation to pay any amounts due under Sections 6.13, 6.14, or 6.16 shall also be secured by the Assessment Lien.

6. Amendments to Article 7 – Maintenance.

a. Section 7.7 is hereby amended and restated in its entirety as follows:

~~7.7.7~~ **Installation of Landscaping.** Unless previously installed by Declarant or a Builder, each Owner of a Lot shall install ~~trees,~~ plants or other landscaping Improvements (together with any sprinkler system or drip irrigation system sufficient to adequately water the ~~trees, grass,~~ plants or other landscaping Improvements) on the Lot within sixty (60) days after acquiring title to such Lot from the Declarant, an Affiliate of Declarant or a Builder; provided, however, and notwithstanding anything to the contrary contained in the Declaration, (1) no trees may be planted on a Lot except in the front yard of a Lot and then only with the prior written approval of the Architectural Review Committee and (2) no plants or sprinkler system or drip irrigation system shall be permitted within, or be permitted to operate within, any Boundary Area Easement. Unless otherwise exempt pursuant to the express terms of this Declaration or any other applicable Project Documents (Including the Design Guidelines), all landscaping to be installed by an Owner or such Owner's contractors on a Lot, which will be Visible From Neighboring Property at the time of installation, must

be approved by the Architectural Review Committee prior to the installation thereof on a Lot.

James B. Senften [JBS4]
[Discuss](#)

7. Amendments to Article 8 – Insurance.

a. All references to “Common Area” in Section 8.3 are hereby amended to be “Areas of Association Responsibility”. The reference in Section 8.3 to “Section 8.5” is hereby amended to be “Section 8.4”

8. General Amendments. For the avoidance of doubt, to the extent that any portion of the Property is now or hereafter owned by a trustee pursuant to a subdivision trust agreement or similar agreement in which KB or one of its Affiliates is the beneficiary, such Property shall be deemed to be owned by KB, as the Declarant, for all purposes under the Declaration.

9. Effect as an Amendment; Recitals. Except as expressly modified hereby, the Declaration shall remain in full force and effect. In the event of a conflict between this Amendment and the Declaration, this Amendment shall control. The Recitals hereof are incorporated herein.

10. Counterparts. This Amendment may be executed in counterparts, all of which taken together shall constitute one and the same instrument.

[Signature pages follow]

IN WITNESS WHEREOF, _____ has caused this First Amendment to Declaration of Covenants, Conditions, Restrictions and Easements to be duly executed.

KB HOME TUCSON INC., an Arizona corporation

By: _____
Amy McReynolds, Division President

STATE OF ARIZONA)
) ss.
County of Pima)

This instrument was acknowledged before me this ____ day of _____, 2021 by Amy McReynolds, as Division President of **KB HOME TUCSON INC.**, an Arizona corporation, on behalf of the corporation.

Notary Public

My Commission Expires:

Document comparison by Workshare Compare on Monday, July 19, 2021
4:39:52 PM

Input:	
Document 1 ID	iManage://gblaw-mobility.imatech.com/Active/2805864/1
Description	#2805864v1<gblaw-mobility.imatech.com> - First Amendment to CCRs - Mountain Enclave
Document 2 ID	iManage://gblaw-mobility.imatech.com/ACTIVE/2805864/2
Description	#2805864v2<gblaw-mobility.imatech.com> - First Amendment to CCRs - Mountain Enclave
Rendering set	Standard

Legend:	
	<u>Insertion</u>
	Deletion
	Moved from
	<u>Moved to</u>
	Style change
	Format change
	Moved deletion
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	110
Deletions	80
Moved from	2
Moved to	2
Style changes	0
Format changes	0
Total changes	194

