

DC RANCH BUILDER AGREEMENT

THIS BUILDER AGREEMENT (“Agreement”) is made as of the date executed by the undersigned (“Builder”), as indicated below Builder’s signature, for the benefit of The Covenant Commission, Inc., an Arizona non-profit corporation (“Covenant Commission”).

BACKGROUND STATEMENT

Pursuant to The Covenant at DC Ranch, recorded by the Maricopa County Recorder as document 97-0298843 (“The Covenant”), the Covenant Commission is empowered to approve and disapprove development proposals within the planned community located in Maricopa County, Arizona, known as DC Ranch (the “Development”). Builder is engaged in the business of constructing homes for sale to others. Builder desires to build a home (the “Home”) on Lot _____, DC Ranch Parcel _____ (the “Lot”), the street address of which is _____.

STATEMENT OF AGREEMENT

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Builder, intending to be legally bound, hereby agrees as follows:

1. **PLANNED COMMUNITY AND ASSOCIATION MEMBERSHIP.** By signing below, Builder acknowledges that Builder has received and has had an adequate opportunity to read and understand the following materials: (a) the Amended and Restated Declaration of Covenants, Conditions and Restrictions for the Ranch, the Supplemental Tract Declaration applicable to the Lot (collectively, the “Declaration”), and the Articles of Incorporation and By-Laws of DC Ranch Association, Inc. (collectively, the “Association Documents”), (b) the DC Ranch Community Council Amended and Restated Covenants and Easements, the By-Laws and Articles of Incorporation of DC Ranch Community Council, Inc. (collectively, the “Community Council Documents”), and (c) The Covenant at DC Ranch, as amended by the First Amendment to The Covenant at DC Ranch (the Covenant”), the By-Laws and Articles of Incorporation of The Covenant Commission, and the Community Design Book (collectively, the “Covenant Commission Documents”). DC Ranch Association, Inc., DC Ranch Community Council, Inc., and The Covenant Commission, collectively, are referred to herein as the “Governance Organizations”. The Association Documents, the Community Council Documents and the Covenant Commission Documents, as amended from time to time, and all rules, regulations, and design standards and guidelines adopted pursuant to any of the foregoing, collectively, are referred to herein as the “Governance Documents”. Builder acknowledges that the nature and extent of the rights and obligations of Builder in the Development in general, and with respect to the Lot in particular, will be controlled by and subject to the Governance Documents.

2. **COVENANTS OF BUILDER.**

(a) **Compliance with Construction Rules.** Builder acknowledges that the Covenant Commission reserves the right, on behalf of itself and the Governance Organizations, to adopt rules and impose restrictions (and to amend such rules and restrictions from time to time) on conduct and construction activities within the Development (the “Construction Rules”). Builder shall be responsible for the conduct of its employees, agents, subcontractors and suppliers and for ensuring their compliance with the terms and conditions of this Agreement, the Governance Documents and the Construction Rules. The Construction Rules may include, without limitation, the requirement that all employees, subcontractors or suppliers register at a designated point prior to entry into the Development. Builder further acknowledges that if any subcontractor, supplier, employee or agent of Builder, in its capacity as such, violates any of the terms or conditions of this Agreement, the Governance Documents, or the Construction Rules, and such violation is

not cured within five (5) business days after receipt of notice of the violation by Builder, such event shall be a default of Builder under this Agreement, and, in addition to pursuing any other remedies available to the Covenant Commission at law or in equity, the Covenant Commission may, without liability to the Covenant Commission, prohibit the violator from performing any further services for Builder or any other builder or contractor in the Development. Furthermore, Builder acknowledges that the Covenant Commission reserves the right to seek the removal of and prohibit any subcontractor, employee, agent or supplier of Builder from entering or engaging in activities in the Development if the Covenant Commission deems, in its sole discretion, that such person (a) has violated any material term or condition of this Agreement, the Governance Documents, or the Construction Rules; (b) has violated applicable laws within or outside the Development; (c) has committed negligent acts or omissions causing damage to subdivision improvements or other improvements within or adjacent to the Development; or (d) has violated any rules of conduct within the Development, including site requirements and personal behavior standards.

(b) **Appearance and Maintenance of Property During Builder's Construction.**

Builder shall: (i) keep, or cause to be kept, the Lot in a neat, orderly and clean condition, free of all weeds and other debris; (ii) during construction on the Lot, employ effective dust control procedures; (iii) comply with any reasonable requests made by the Covenant Commission with respect to the appearance of the Lot during construction thereon within five (5) business days following receipt of such request; (iv) protect the Development (including, without limitation, the two privately owned and operated golf courses which have been constructed within the Development (the "Golf Courses")) from damage caused by Builder, or its agents, employees, contractors or subcontractors to (or promptly repair once damaged) all pavement, curbs, gutters, sidewalks, streets, shoulders, utility lines and appurtenances, grade stakes, surveyor markers, landscaping, drainage facilities, hydrants, and other property within the Development; (v) keep all such property, and all pedestrian and road rights-of-way and drives, reasonably clean and clear of equipment, building materials, dirt, debris and similar materials; (vi) not bury or cover trash or debris on any property in the Development; (vii) clean plaster or concrete equipment only at designated sites; (viii) not store any construction materials on property within the Development except materials to be used in the construction of the Home on the Lot where stored; (ix) keep roadways, easements, and other property within the Development clear of silt, construction materials and trash from its activities and the activities of its agents, employees, contractors and subcontractors, at all times; (x) not enter into or cross over any portion of either of the Golf Courses to access any portion of the Development; and (xi) during the construction period, comply with all applicable laws, rules and regulations pertaining to construction and safety and with the Construction Rules, as amended from time to time. If Builder fails to comply with its obligations under this subparagraph, and such failure is not cured within five (5) business days of Builder's receipt of notice of such failure from the Covenant Commission, the Covenant Commission or its agents may enter the Lot to cure such failure, at Builder's expense, and Builder shall reimburse the Covenant Commission for all actual and reasonable costs so incurred by the Covenant Commission within five (5) business days following receipt of an invoice relating to all such costs so incurred by the Covenant Commission. If such sums are not paid within such five (5) business day period, Builder shall pay interest on such sums which shall accrue at the rate of fifteen percent (15%) per annum from the date of Builder's receipt of the invoice from the Covenant Commission until all such sums and all accrued interest thereon has been paid. As an alternative, the Covenant Commission may also utilize funds on deposit from the Builder to cover such expenses incurred by the Covenant Commission.

(c) **Insurance Coverage.** Builder shall procure, pay the premiums for, and maintain in full force and effect, during its construction activities with respect to the Lot, the following insurance, and such other insurance as the Covenant Commission may, from time to time, reasonably request with such companies and under such policies as are approved by the Covenant Commission in its reasonable discretion, which policies shall insure the Covenant Commission against the acts and omissions of Builder, its subcontractors, and their respective employees, agents, subcontractors and suppliers, and all other persons involved in such construction activities:

(i) Workers' compensation insurance to cover statutory limits of the workers' compensation laws of Arizona with supplemental Coverage B Employer's Liability Coverage (providing protection should the employee elect against workers' compensation pursuant to law) in the minimum amount required by applicable law. This insurance must include or be accompanied by a Master and Servant Endorsement. If any class of employees engaged in the construction of the Home is not protected by the workers' compensation statute, Builder shall provide and similarly shall cause each of its tier subcontractors to provide special insurance for the protection of such employees not otherwise protected similar to the coverage required above.

(ii) Comprehensive general liability insurance, including completed operations, products and contractual liability coverage, with minimum combined single limit of \$2,000,000 for each occurrence and \$2,000,000 in the aggregate. Coverage shall also include a "Broad Form Property Damage" endorsement and contractual liability applicable to both written and oral contracts, as well as coverage for (i) damage caused by collapse or structural injury, (ii) damage to underground utilities, and (iii) liability assumed in construction agreements and other types of contracts or agreements in effect in connection with insured operations.

(iii) Comprehensive automobile liability insurance for all motor vehicles owned or leased by Builder with minimum combined single limit of \$2,000,000 for each occurrence. Builder shall also require each subcontractor to provide the insurance described in this subparagraph for all vehicles owned or leased by such subcontractor.

Prior to the commencement of the construction of the Home, Builder shall deliver to the Covenant Commission, without expense to the Covenant Commission, appropriate certificates from Builder's insurance companies which shall certify that (i) each said policy is then in full force and effect and the expiration date thereof; (ii) each said policy shall not be canceled without thirty (30) days prior written notice to the Covenant Commission; and (iii) the Covenant Commission is covered as additional insured under each said policy.

(d) **Compliance with Laws.** Builder shall comply (and shall be responsible for ensuring that its employees, agents, contractors and subcontractors comply) with all applicable federal, state and local laws, rules, regulations, permit conditions and requirements, and court orders, pertaining to all activities of Builder, or on behalf of Builder, with respect to the Development.

(e) **Notice of Litigation.** Builder shall promptly inform the Covenant Commission of any litigation, or of any claim or controversy which might become the subject of litigation, against Builder or affecting the Lot, the Home or any property owned by Builder in the Development, if such litigation or potential litigation might, in the event of an unfavorable outcome, have a material adverse effect on Builder's capability to perform its obligations hereunder.

(f) **Licenses.** Builder shall obtain and maintain all licenses, privileges, franchises, certificates and the like necessary for the operation of Builder's business.

(g) **Good Construction.** All improvements to be built by Builder in the Development shall be constructed in accordance with standard industry practices and in a timely manner consistent with all building codes, covenants, conditions and restrictions applicable thereto.

3. **CONSTRUCTION DEPOSIT.** To ensure compliance with the provisions of this Agreement, the Governance Documents, the Construction Rules, and any and all approvals granted by the Covenant Commission with respect to the Home (collectively, the "Requirements"), Builder shall deposit with the Covenant Commission a deposit (the "Construction Deposit") prior to commencement of

construction of the Home, in the amount of \$10,000. Such deposit may be waived by the Covenant Commission on a case by case basis in the Covenant Commission's sole and absolute discretion. The Construction Deposit shall be held by the Covenant Commission until completion of construction of the Home in compliance with the Requirements. Upon completion of construction of the Home in compliance with the Requirements, provided Builder is not then in default hereunder or under any other agreement with the Covenant Commission, the Covenant Commission shall release to Builder the Construction Deposit, less any funds expended by the Covenant Commission pursuant to this Agreement and not restored by Builder. The Covenant Commission may draw upon the Construction Deposit as necessary to cover, among other things, the cost of repairing damage to property and subdivision improvements caused by Builder or its subcontractors, employees or agents, and the cost of trash removal and maintenance, if not performed by Builder in compliance with the Requirements. If any part of the Construction Deposit is applied by the Covenant Commission pursuant to this Agreement, Builder shall, immediately upon demand, deposit with the Covenant Commission, a sum equal to the amount so applied in order to restore the Construction Deposit to its original sum. Nothing in this Section or this Agreement shall be construed as limiting the Covenant Commission's rights to seek reimbursement from Builder for the total amount expended on Builder's behalf if the amount expended exceeds the amount of the Construction Deposit and any provision in this Agreement granting the Covenant Commission the right to draw on or charge the Construction Deposit shall be deemed also to provide that the Covenant Commission shall have a right to reimbursement for any amount in excess of the Construction Deposit. If Builder ceases construction activities on the Home without having fully complied with the Requirements, whether or not the Builder deems the Home to be complete, and if Builder fails to cure such non-compliance within thirty (30) days after the Covenant Commission gives the Builder notice of such failure, then, notwithstanding any contrary provision in this Agreement, and without being required to give any further notice (including without limitation any further notice pursuant to Section 6 below) the Covenant Commission may retain the Construction Deposit without any obligation to apply all or any part of the Construction Deposit to cure such non-compliance. Nothing in this Section is intended to limit any of the rights or remedies granted to the Association by the Declaration to enforce the Declaration, or granted to the Community Council by the Covenants and Easements to enforce the Covenants and Easements, or granted to The Covenant Commission by The Covenant to enforce The Covenant.

4. **REPRESENTATIONS AND WARRANTIES OF BUILDER.** Builder hereby represents and warrants to the Covenant Commission that:

(a) **Organization and Good Standing.** Builder is duly organized, validly existing and in good standing under the laws of the State of Arizona, and has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, and to enter into and perform its obligations under this Agreement which is a legal, valid and binding obligation of Builder, enforceable against Builder in accordance with its terms.

(b) **No Legal Bar.** The execution, delivery and performance of this Agreement are not and shall not be in violation of or conflict with any contract, law or governmental ruling or regulation, or any order applicable to Builder.

(c) **Disclosure.** Neither this Agreement nor any other document, certificate or statement furnished to the Covenant Commission by or on behalf of Builder pursuant to this Agreement or in connection with the matters described herein contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading.

Each of the foregoing representations and warranties shall be true as of the execution of this Agreement and for so long as any provision of this Agreement remains enforceable against Builder.

5. **INDEMNIFICATION.** To the fullest extent permitted by law, in addition to and not in limitation of all other covenants of Builder under this Agreement, Builder does and shall indemnify, defend and hold harmless, the Covenant Commission, its respective directors, officers, agents, employees, managers, and any successors or assigns of any of the foregoing (collectively, the "Covenant Commission-Related Parties") for, from and against all injuries, losses, liens, claims, demands, judgments, liabilities, damages, costs and expenses (including but not limited to court costs and reasonable attorneys' fees and expenses) sustained by or made or threatened against the Covenant Commission or any Covenant Commission-Related Party, which result from or arise out of or in connection with (a) any work, occurrence, conduct, act, error or omission (whether or not negligent or in violation of any applicable law, rule, regulation or order) maintained, performed, permitted or suffered by Builder or any representative, subcontractor or supplier of Builder, or any employee, agent, invitee or licensee of any of the foregoing, on or about or pertaining to the Development or any portion thereof, (b) any design defect or construction defect in the Home or any improvement, fixture or other property constructed, installed or otherwise provided by Builder in, at or on the Home or the Lot, or (c) any covenant, representation or warranty made by Builder to any third party pertaining to the Development or any portion thereof. Notwithstanding the foregoing, nothing in this paragraph shall require Builder to indemnify, defend or hold harmless the Covenant Commission or any or any Covenant Commission-Related Party for, from or against any such injury, loss, lien, claim, demand, judgment, liability, damage, cost or expense to the extent resulting from any negligent or willful act of the Covenant Commission or any of the Covenant Commission-Related Parties.

6. **DEFAULT BY BUILDER.**

(a) Upon the failure of Builder or any of its employees, agents, suppliers or subcontractors to perform or observe any term, provision, covenant, agreement or condition contained herein or in any other agreement executed by Builder with or in favor of the Covenant Commission, either directly or through its agents, employees, or subcontractors, the Covenant Commission shall be entitled to any or all of the following: (i) to cure the default and apply the Construction Deposit paid by Builder toward the cost of correcting any such default or breach and, if the Construction Deposit is insufficient, to file a lien against any property in the Development owned by Builder to secure the amounts expended in excess of the Construction Deposit; (ii) to bring suit at law to foreclose such lien, if any, and to recover all damages; (iii) to avail itself of the equitable remedy of specific performance as to any obligations not compensable by monetary damages; (iv) to avail itself of any other remedies set forth in this Agreement.

(b) In any action at law or in equity by the Covenant Commission occasioned by a default hereunder, the Covenant Commission, if the prevailing party, shall be entitled to collect from Builder its reasonable attorneys' fees and costs actually incurred in the action. As used herein, the term "prevailing party" shall mean the party who receives substantially the relief sought.

(c) Notwithstanding anything in this Agreement to the contrary, the Covenant Commission may not declare Builder in default until the Covenant Commission has delivered to Builder written notice of the alleged default and Builder has failed to cure such default within five (5) days thereafter.

7. **NOTICE.** Any and all notices required or permitted hereunder shall be given in writing and sent by personal delivery, facsimile transmission or registered or certified mail, return receipt requested, postage prepaid, addressed as follows:

To Covenant
Commission: The Covenant Commission
20551 N. Pima Road, Suite 180

Scottsdale, AZ 85255
Attn: Jenna Kohl, Executive Director

To Builder: _____

or at any other address or facsimile number designated in a written notice sent pursuant to this Section 7, and any such notice shall be deemed to have been given as of the date of receipt, if sent by facsimile transmission, as of the date of delivery, if hand delivered, or as of three (3) days after the date of mailing, if mailed within the continental United States, or seven (7) days after mailing, if mailed outside the continental United States.

8. **SUCCESSORS AND ASSIGNS.** This Agreement shall be binding upon Builder’s heirs, representatives, successors and assigns. Builder shall not assign this Agreement or any interest hereunder, in whole or in part, without the prior written consent of the Covenant Commission, which consent may be withheld for any reason or for no reason. Any attempted assignment which is not approved in writing by the Covenant Commission shall be null and void. The Covenant Commission may assign its rights and obligations hereunder without the approval or consent of Builder.

9. **ENTIRE AGREEMENT.** This Agreement, together with any written agreement between Builder and the Covenant Commission for the purchase and sale of the Home, embodies the entire agreement concerning the subject matter hereof and cannot be waived or amended except by written instrument executed by Builder and the Covenant Commission. Builder has not relied upon or been induced by any information, representation, warranties or statements, whether oral or written, express or implied, made by the Covenant Commission or any other person representing or purporting to represent the Covenant Commission.

10. **APPLICABLE LAW.** This Agreement shall be construed and interpreted under the laws of the State of Arizona.

11. **SURVIVAL.** All provisions of this Agreement shall survive the expiration of this Agreement.

12. **NO WAIVER.** Failure of either party to insist upon compliance with any provision hereof shall not constitute a waiver of the rights of such party to subsequently insist upon compliance with that provision or any other provision of this Agreement.

13. **SEVERABILITY.** The provisions of this Agreement are intended to be independent, and in the event any provisions of this Agreement is declared by a court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason whatsoever, such illegality, unenforceability, or invalidity shall not affect the remainder of this Agreement.

14. **CONSTRUCTION OF AGREEMENT.** Builder acknowledges that it has read, understood and had the opportunity to be advised by legal counsel as to each and every one of the terms, conditions, and restrictions, and as to the effect of all the provisions, of this Agreement. Should any provision of this Agreement require judicial interpretation, it is agreed that the court interpreting or construing the provision shall not apply a presumption that the terms hereof shall be more strictly construed against any person by reason of the rule of construction that a document is to be construed more strictly against the person who itself or through its agent prepared the document. Titles or captions of Sections

contained in this Agreement are inserted only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Agreement or the intent of any provision hereof.

15. **TIME OF ESSENCE.** Time is of the essence for this Agreement.

16. **TERM.** The term of this Agreement shall commence on the Effective Date hereof and shall continue until construction of the Home is complete, a certificate of occupancy has been issued therefor, and Builder had fulfilled all of its obligations hereunder.

17. **NO JOINT VENTURE.** Builder and the Covenant Commission acknowledge that the relationship between them created hereby is not intended to be and shall not in any way be construed to be that of a partnership, joint venture, or principal and agent unless otherwise acknowledged by separate agreement. Any control exercised by the Covenant Commission with respect to any property within the Development or any document or matter related thereto is solely for the purpose of protecting the quality and desirability of the Development. Any approval granted by the Covenant Commission pursuant to this Agreement is solely for the Covenant Commission's benefit and no person or entity may rely upon the Covenant Commission's approval for any other purpose.

18. **NO THIRD PARTY RIGHTS.** This Agreement shall be for the sole benefit of the Covenant Commission, and no mutual covenants or agreements herein shall be for the benefit of or create any rights in favor of any third parties.

IN WITNESS WHEREOF, the undersigned has executed the foregoing instrument as of the day and year indicated under its signature (the "Effective Date").

BUILDER: _____
By: _____
Name: _____
Title: _____
Dated Signed: _____
Arizona License No.: _____