

PETITION TO AMEND COVENANTS, CONDITIONS AND RESTRICTIONS

DO NOT REMOVE

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90 036898

A Petition to Amend Moon Mountain Vista Homeowner's Association Covenants, Conditions and Restrictions

In order to minimize the visibility of large trucks, mobile homes, trailer, camper, boats with trailers and similar equipment, within the community, the conveyance made by title deeds are conditioned upon and subject to the Moon Mountain Vista Homeowner's Association order to minimize the visibility of large trucks, mobile homes, trailer, camper, boats with trailers and similar equipment, within the community, the conveyance made by title deeds are Covenants, Conditions and Restrictions, hereafter known as Exhibit "A". The intent of this petition is to amend Exhibit "A", which would allow homeowner the opportunity to park, store, maintain, construct, reconstruct, or repairs; motor vehicle up to $\frac{3}{4}$ ton, motorcycle, motor bike, mobile homes, trailer, camper shells, boats with trailers and similar equipment within the lots of Moon Mountain Vistas Unit Three. Phoenix City ordinances would prevail regarding inoperable vehicle found on lots.

The pertinent part In order to minimize the visibility of large trucks, mobile homes, trailer, camper, boats with trailers and similar equipment, within the community, the conveyance made by title deeds are conditioned upon and subject to the Moon Mountain Vista Homeowner's Association of Exhibit "A", which is Article VIII, section 8.1, subsection (o) reads as follows "Trailers, Boats, Aircraft and Motor Vehicles. No motor vehicle class by manufacturer rating as exceeding $\frac{3}{4}$ ton, mobile home, trailer, camper shell, boat, boat trailer or hang glider or similar equipment or vehicle may be parked, stored, maintained, constructed, reconstructed or repaired on any Lot, Street or common Area, Visible From Neighboring Property within the property, provided, however, the provisions of this section do not preclude the parking in garages or on driveways of (i) pickup trucks of less than $\frac{3}{4}$ ton capacity (with or without camper shells) provided the height of such pickup truck and camper shell not exceed seven (7) feet, or (ii) mini motor home or other recreational vehicle which does not exceed seven (7) feet in height or 18 feet in length, if those vehicles describe in (i) and (ii) are used on a regular and recurring basis for basic transportation. No automobile, motorcycle, motor bike, motorized hang glider, or other vehicle shall be constructed, reconstructed or repaired on any Lot, street or Common Area within the Property and no in operable vehicle may be stored or parked so as to be visible from neighboring property, except in the event of an emergency."

This petition in effect strikes out all the language in of Article VIII, section 8.1, subsection (o) in its entirety. To avoiding to remunerating the remaining subsections of Section 8.1, the following language will be inserted, "This restriction was removed by a petition which was filed and recorded with the Maricopa County Recorder as an amendment to this document."

THE FOREGOING AMENDMENT TO THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (Exhibit "A") FOR MOON MOUNTIAN VISTA HOMEOWNERS ASSOCIATION HAS BEEN APPROVED BY THE FOLLOWING OWNERS OF LOTS WITHIN MOON MOUNTIAN VISTAS UNIT 3. THE OWNERS-OF-RECORD OF THE LOT MUST SIGN BELOW IN ORDER FOR THE OWNER TO BE COUNTED IN SUPPORT OF THE AMENDMENT.

To all parties concerned with this petition:

We, the undersigned homeowners of the Moon Mountain Vista Homeowner's Association, respectfully order that Exhibit "A" be amended as described above. I have personally signed this petition with my first and last names. I have not signed any other petition for this same amendment. I am qualified homeowner of the Moon Mountain Vista Homeowner's Association. (See attached signature sheets)

State of Arizona

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ss.:

County of Maricopa

I, Michael Chunko, John West and John Warren, persons who are qualified homeowners of the Moon Mountain Vista Homeowner's Association, during my circulation of this petition sheet, and under the penalty of a class 1 misdemeanor, depose and say that each individual signed this sheet of the foregoing petition in the presence of at least one of us on the date indicated, and we believe that each signer's name and residence address or post office address are correctly stated and that each signer is a qualified homeowners of the Moon Mountain Vista Homeowner's Association and that at all time during circulation of this signature sheet a copy of the title and text was attached to the signature sheet.

Signatures:

Michael Chunko

Michael Chunko, 1612 W Acoma Dr, Phoenix, AZ 85023

John West

John West, 1670 W Acoma Dr, Phoenix, AZ 85023

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John Warren

John Warren, 1634 W Acoma Dr, Phoenix, AZ 85023

Subscribed and sworn to before me on March 2, 2018.*Karri Fellars**Karri Fellars*

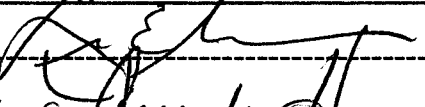
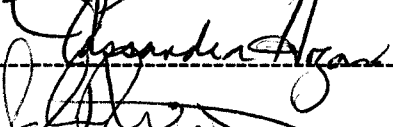
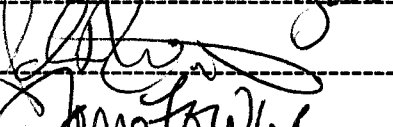



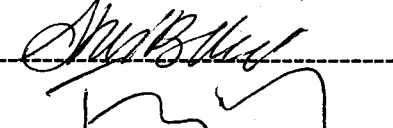
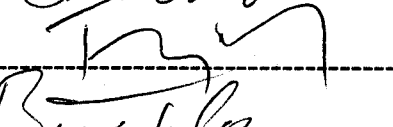
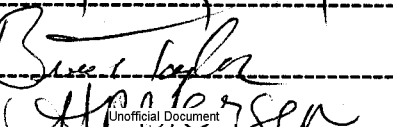
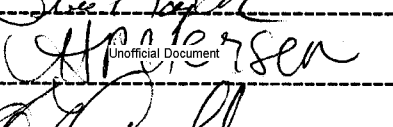
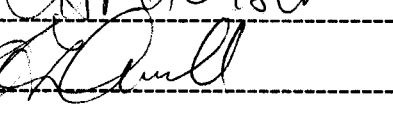
Notary Public, Phoenix, Arizona.


My commission expires on 11/14/2021.

Petition to Moon Mountain Homeowners Association to repeal CC&R Article VIII Use Restrictions Section 8.1.O which restricts storage of recreational equipment behind RV gates. I support the repeal of CC&R 8.1.O:

| Printed name | Signature | Lot # | Date |
|--------------------|--------------------|-------|----------|
| Michael Chunks | Michael Chunks | 39 | 12/5/17 |
| Bruce Hudson | Bruce Hudson | 40 | 12/6/17 |
| Sandi Brewer | Sandi Brewer | 38 | 12/8/17 |
| GERHARD SCHROEDER | Gerhard | 26 | 12/8/17 |
| Annabelle T Daniel | Annabelle Daniel | 30 | 12/9/17 |
| Debbie Coolidge | Debbie Coolidge | 36 | 12/9/17 |
| Jenni Bayard | Jenni Bayard | 31 | 12/9/17 |
| JOHN McDONALD | John McDonald | 14 | 12/9/17 |
| Debra Sledge | Debra Sledge | 15 | 12/9/17 |
| JOHN WALKER | John Walker | 44 | 12/9/17 |
| Rigel Maclean Hahn | Rigel Maclean Hahn | 11 | 12/9/17 |
| Trish McLean | Trish McLean | 12 | 12/9/17 |
| Dal Toler | Dal Toler | 37 | 12/9/17 |
| Jay Shetter | Jay Shetter | 29 | 12/9/17 |
| PHILLIP BUCKNER | Phillip Buckner | 32 | 12/9/17 |
| LEAH KEN FRENCH | Leah French | 16 | 12/9/17 |
| Mary Fontana | Mary Fontana | 43 | 12/9/17 |
| Robert Teddy Olney | Robert Teddy Olney | 47 | 12/9/17 |
| Kristin Larsen | Kristin Larsen | 10 | 12/9/17 |
| ROBERT CREVIER | Robert Crevier | 27 | 12/10/17 |

Petition to Moon Mountain Homeowners Association to repeal CC&R Article VIII
Use Restrictions Section 8.1.O which restricts storage of recreational equipment
behind RV gates. I support the repeal of CC&R 8.1.O:

| Printed name | Signature | Lot # | Date |
|--------------------|--|-------|------------|
| LEON E GRASS |  | 46 | 12/7/2017 |
| CASSANDRA Y HOGANS |  | 7 | 12/8/2017 |
| John Warren |  | 45 | 12-8-2017 |
| Jane Fowler |  | 50 | 12-8-2017 |
| Kelly Freeman |  | A | 8 Dec 17 |
| Firas Al-shamari |  | 1 | 8 Dec 17 |
| Sheri B. Veit |  | 49 | 12.10.2017 |
| LARRY WENB |  | 2 | 12/15/17 |
| BRUCE TAYLOR |  | 51 | 12/15/17 |
| Heidi Petersen |  | 3 | 12.16.17 |
| Gregg Dannel |  | 25 | 12/16/17 |


 Petition to Moon Mountain Homeowners Association to repeal CC&R Article VIII
 Use Restrictions Section 8.1.O which restricts storage of recreational equipment
 behind RV gates. I support the repeal of CC&R 8.1.O:

| Printed name | Signature | Lot # | Date |
|-----------------|-----------|-------|------------|
| John West | | 53 | 12-9-17 |
| Rozzie Yates | | 5 | 12-9-17 |
| D. Gray Young | | 23 | 12/9/2017 |
| Shirley | | 20 | 12/9/2017 |
| John E. Lee | | 12 | 12-9-2017 |
| Paul Maloney | | 17 | 12-9-2017 |
| Andrew Gerts | | 54 | 12-9-2017 |
| Tristess Carter | | 54 | 12-9-2017 |
| Richard Simmer | | 41 | 12-16-2017 |

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Petition to Moon Mountain Homeowners Association to repeal CC&R Article VIII Use Restrictions Section 8.1.O which restricts storage of recreational equipment behind RV gates. I support the repeal of CC&R 8.1.O:

| Printed name | Signature | Lot # | Date |
|-----------------|-------------|-------|-------|
| Kelly Bode | [Signature] | 35 | 12/10 |
| Tan Bode | [Signature] | 34 | 12/10 |
| Sherman Howard | [Signature] | 9 | 12/10 |
| Svetlana Brooks | [Signature] | 28 | 12/12 |
| Chris Hecker | [Signature] | 42 | 12/12 |
| Gina Bode | Gina Bode | 55 | 12/15 |

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(i) Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon the Property except usual and customary equipment and machinery used in connection with the use, maintenance or construction of permitted improvements, and except that which Declarant or the Association may require for the operation and maintenance of the Common Area.

(j) Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller Lots or parcels 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. No Lot may be converted into a condominium or cooperative or other similar type of entity without the prior written approval of the Board. No further covenants, conditions, restrictions or easements shall be recorded against any Lot without the written consent of the Board being evidenced on the recorded instrument containing such restrictions and without such approval such restrictions shall be null and void. No applications for rezoning, variances, or use permits shall be filed without the written approval of the Board and then only if such proposed use is in compliance with this Declaration.

(k) Signs. No sign of any nature (other than a name and address sign, not exceeding 9" x 30" in size) shall be permitted on any Lot; provided, however, that one sign of not more than five square feet may be temporarily erected or placed on a Lot for the purpose of advertising the Lot for sale or rent; and provided further the Declarant may erect any signs during construction. Restriction shall not apply to the Association in furtherance of its powers and purposes herein set forth.

(l) Utility Easements. There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewer, gas, telephone, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and use ^{Unofficial Document} utilities and equipment, and to affix and maintain wires, circuits and conduits on, in and under roofs and exterior walls. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated except as initially developed and approved by the Declarant or thereafter approved by the Board. This easement shall in no way affect any other recorded easements. This easement shall be limited to improvements as originally constructed and no common utility shall be permitted to pass over any improvements on the Lots and no connection line shall be permitted to pass over any improvement on the Lot other than the one it serves.

(m) Animals. No animal or fowl, other than a reasonable number of generally recognized house or yard pets, shall be (i) maintained on any Lot covered by this Declaration and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes; or (ii) be permitted to make unreasonable amount of noise, or create a nuisance. No structure for the care, housing or confinement of any animal or fowl, shall be maintained so as to be Visible From Neighboring Property.

(n) Temporary Occupancy. No temporary building, structure or vehicle of any kind shall be used as a residence either temporary or permanent. Temporary buildings or structures used during construction periods shall be removed immediately after completion of such construction.

(o) Trailers, Boats, Aircraft, and Motor Vehicles. No motor vehicle classed by manufacturer rating as exceeding 3/4 ton, mobile home, trailer, camper shell, boat, boat trailer or hang glider or other similar equipment or vehicle may be parked, stored, maintained, constructed, reconstructed, or repaired on any Lot.

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street, or Common Area, Visible From Neighboring Property within the Property, provided, however, the provisions of this section do not preclude the parking in garages or on driveways of (i) pickup trucks of less than 3/4 ton capacity (with or without camper shells) providing the height of such pickup truck and camper shall not exceed seven (7) feet, or (ii) mini motor homes or other recreation vehicles which do not exceed seven (7) feet in height or eighteen (18) feet in length, if those vehicles described in (i) and (ii) are used on a regular and recurring basis for basic transportation. No automobile, motorcycle, motor bike, motorized hang glider, or other motor vehicle shall be constructed, reconstructed or repaired on any Lot, street, or Common Area within the Property and no inoperable vehicle may be stored or parked so as to be Visible From Neighboring Property, except in the event of an emergency.

(p) Nuisances/Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to a Lot and no odors or loud noises shall be permitted to arise or emit therefrom, so as to create a nuisance, render any such Property or any portion thereof or activity thereon unsanitary, unsightly, offensive or detrimental to the Lot or person in the vicinity thereof. Without limiting the generality of any of the foregoing provisions, no 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. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Property. The Board in its sole discretion shall have the right to determine the existence of any violation of this Section and its determination shall be final and enforceable as provided for in Section 9.3 hereof. Normal construction activities shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods. Supplies or building materials and construction equipment shall be stored only in such areas and in such manner as may be approved by the Architectural Committee or the Declarant.

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(q) Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Property unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise not Visible From Neighboring Property.

(r) 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.

(s) Diseases and Insects. No Owner or resident shall permit any thing or condition to exist upon the Property which shall induce, breed or harbor infectious plant diseases or noxious insects.

(t) Party Walls and Fences. The rights and duties of Owners with respect to party walls or party fences shall be as follows:

(1) Each Owner of contiguous Lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use does not interfere with the use and enjoyment thereof by the other Owner.

(2) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner, his agents, guests, or family members, it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the other adjoining Lot Owner or Owners. Any dispute over an Owner's liability shall be resolved as provided in subsection (5) below.



Jonathan A. Dessaulles
 Direct Line: 602.274.2360
jdessaulles@dessaulleslaw.com

November 15, 2018

To Whom It May Concern:

We have been asked to provide a legal opinion regarding the validity of the attached Petition signed by forty-six (46) lot owners to amend the Declaration of Covenants, Conditions & Restrictions of Moon Mountain (the "Declaration").

We understand that Moon Mountain Vistas Homeowners Association ("the Association") is comprised of fifty-five (55) members. Forty-six (46) of the fifty-five (55) lot owners have signed the Petition which seeks to repeal Section 8.1(o) of the Declaration (regarding the storage of recreational equipment and RVs behind RV gates). This represents 83.6% of the membership.

Section 9.5 of the Declaration, which is recorded Unofficial Document in the Maricopa County Recorder at Recorder No. 1990-036898, states:

"The covenants and restrictions of this Declaration shall run with and bind the land, for a term of thirty years (30) years from the date of this Declaration is recorded, after which time shall be extended for successive periods of ten (10) years. This Declaration may be amended during the first thirty (30) year period by an instrument signed by not less than seventy-five percent (75%) of the Lot Owners, and thereafter by an instrument signed by not less than two-thirds (2/3) of the Lot Owners. Any amendment must be recorded."

It is our opinion that the Petition constitutes an "instrument signed by not less than seventy-five (75%) of the Lot Owners" and, as such, constitutes a valid amendment of the Declaration once it is recorded. Neither the Declaration nor Arizona law generally define "instruments." However, we note that the term is also used in A.R.S. § 33-1802(3) as part of the definition of a "declaration." An "instrument," generally, is simply any document in writing, such as the Petition, and we have found no support for the proposition that the Petition would not constitute an instrument. As the Petition is "an instrument signed by not less than seventy-five (75%) of the Lot Owners," it is our conclusion that the Petition properly amends the Declaration to remove Section 8.1(o).

We do note that amendments "must be recorded." An association cannot avoid the legal effect of the Petition by refusing to record it and we believe the board of directors has an affirmative obligation to honor the mandate of the members by preparing a cover document to accompany the Petition to complete the amendment process.

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November 15, 2018

However, we note that the Declaration does not require that an officer of the Association record the instrument. Should the Association's board of directors refuse to record the Petition, we believe that any owner should be able to record the Petition with an appropriate cover page.

Thank you for your prompt attention to this matter.

Sincerely,

Jonathan A. Dessaulles

Jonathan A. Dessaulles

Enclosure