

FIDELITY NATIONAL TITLE AGENCY

When recorded return to:

39
ra

Biskind Hunt, PLC
11201 N. Tatum Blvd.
Suite 330
Phoenix, Arizona 85028
Attention: Gordon E. Hunt, Esq.

39000962
5/6

DECLARATION OF BUILDER COVENANTS, AND NOTICE OF RIGHT OF FIRST REFUSAL

This Declaration of Builder Covenants, and Notice of Right of First Refusal (this "Declaration") is made this 8 day of July, 2014, by DMB WHITE TANK, LLC, an Arizona limited liability company ("DMB").

RECITALS

A. Concurrently herewith, pursuant to the Purchase and Sale Agreement between DMB and MATTAMY ARIZONA, LLC, an Arizona limited liability company ("Buyer"), dated May 9, 2013, as amended (collectively, the "Purchase Agreement"), DMB has conveyed to Buyer the single-family residential lots legally described on Exhibit "A" attached hereto (collectively, the "Lots", and each individually, a "Lot") located in the master-planned development commonly known as Verrado® (the "Development") located in the City of Buckeye, Arizona.

B. Pursuant to the Purchase Agreement, and as a material part of the consideration to DMB for the sale of the Lots,

(i) DMB and Buyer entered into a License and Linking Agreement concurrently with this Declaration (the "License and Linking Agreement"), pursuant to which DMB granted to Buyer a limited, non-transferable license to use a marketing name for the Lots featuring the word ""Verrado®" that is to be mutually approved in writing by the parties (the "Name"), but only to refer to the Lots, as well as the Authorized Logo (as defined in the License and Linking Agreement), and a hyperlink from Buyer's website to DMB's website for the Development, but only in connection with marketing of the Lots;

(ii) DMB and Buyer entered into a Lot Premium and Deferred Consideration Agreement concurrently with this Declaration (the "Lot Premium and Deferred Consideration Agreement"), pursuant to which Buyer agreed to pay Lot Premium Consideration and/or the Deferred Consideration, if applicable, to DMB upon the Retail Closing for each Lot (the term "Retail Closing" being defined as the closing of an escrow established in respect of the retail sale of a Lot to a retail homebuyer (as such terminology is customarily used in the homebuilding industry), with a single-family home constructed thereon);

(iii) DMB and Buyer entered into a Marketing Agreement concurrently with this Declaration (the "Marketing Agreement"), pursuant to which Buyer agreed to pay and perform various obligations, including the obligation to pay a Marketing Fee to DMB upon the Retail Closing for each Lot (as those terms are defined in the Marketing Agreement) (collectively, the "Marketing Obligations");

(iv) Buyer is required to pay to Seller, for each Lot on which Buyer pulls a builder permit, the Development Fee Reimbursement, as more fully set forth in the Purchase Agreement (the “Development Fee Obligations”);

(v) Buyer has granted to DMB a right of first refusal (the “Right of First Refusal”) with respect to the Lots, as more fully set forth in the Purchase Agreement;

(vi) Buyer is responsible for certain obligations with respect to construction on or about the Lots, as set forth in Section 9 of the Purchase Agreement and in Exhibit N attached to the Purchase Agreement (collectively, the “Construction Obligations”); and

(vii) Buyer is required to comply with various requirements pertaining to its development of the Lots, as set forth in this Declaration.

C. As a condition to its willingness to sell the Lots to Buyer, DMB requires the establishment and imposition of certain covenants, duties, obligations and responsibilities upon the Lots, in order to provide for the orderly development, operation and maintenance of the Lots, and to enhance, protect and maintain the value, desirability and attractiveness of the Development.

DECLARATION

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, DMB hereby gives notice that the Lots shall be sold, transferred, used, and conveyed subject to this Declaration, which shall run with the title to the Lots and shall be binding upon all persons having any right, title or any interest in the Lots and their respective heirs, legal representatives, successors, successors in title ^{Unofficial Document} and assigns, including trustees in bankruptcy.

1. Builder Covenants Running With the Land. DMB hereby declares that the Lots, and all interests therein, shall be owned, held, conveyed, leased, used and improved subject to the covenants, duties, obligations and responsibilities set forth in this Declaration (collectively, the “Builder Covenants”), and that all Builder Covenants are hereby imposed as covenants running with the land and equitable servitudes pursuant to a general plan for the development of the Development, and which shall run with the land within the Development and all interests in the Development and be binding on all parties having or acquiring any right, title or interest in or to the Development or any part thereof, their heirs, personal representatives, successors and assigns; provided that (a) the Covenants shall not be binding on any person who acquires a Lot at a Retail Closing, and (b) the Covenants shall not be binding on any owners association or similar entity that acquires any of common area tracts, all as set forth in more detail in Section 8 below.

2. Notice of License and Linking Agreement. DMB hereby gives notice of the provisions of the License and Linking Agreement, which are incorporated into this Declaration as fully set forth herein, and hereby declares that all obligations of Buyer under the License and Linking Agreement are Builder Covenants. By taking title to the Lots, Buyer acknowledges and agrees (on behalf of itself and its successors and assigns) that Buyer’s obligations contained in the License and Linking Agreement are Builder Covenants, and that DMB shall have all rights and remedies specified in the License and Linking Agreement in the event of a breach of any such Builder Covenants. Without limiting the generality of the foregoing, except as set forth in the License and Linking Agreement, all use of the Name and Authorized Logo is reserved to DMB for its own exclusive use and benefit.

3. Notice of Lot Premium and Deferred Consideration Agreement. DMB hereby gives notice of the provisions of the Lot Premium and Deferred Consideration Agreement, which are incorporated into this Declaration as if fully set forth herein, and hereby declares that all obligations of Buyer under the Lot Premium and Deferred Consideration Agreement are Builder Covenants. By taking title to the Lots, Buyer acknowledges and agrees (on behalf of itself and its successors and assigns) that Buyer's obligations contained in the Lot Premium and Deferred Consideration Agreement are Builder Covenants, including without limitation Buyer's obligation to pay the Lot Premium Consideration and the Deferred Consideration, if applicable, at each Retail Closing, and that DMB shall have all rights and remedies specified in the Lot Premium and Deferred Consideration Agreement in the event of a breach of any such Builder Covenants.

4. Notice of Marketing Obligations. DMB hereby gives notice of the provisions of the Marketing Agreement, which are incorporated into this Declaration as if fully set forth herein, and hereby declares that all Marketing Obligations are Builder Covenants. By taking title to the Lots, Buyer acknowledges and agrees (on behalf of itself and its successors and assigns) that the Marketing Obligations are Builder Covenants, including without limitation Buyer's obligation to pay the Marketing Fee at each Retail Closing, and that DMB shall have all rights and remedies specified in the Marketing Agreement in the event of a breach of any such Builder Covenants.

5. Notice of Development Fee Obligations. DMB hereby gives notice of the Development Fee Obligations set forth in the Purchase Agreement, which are incorporated into this Declaration as if fully set forth herein, and hereby declares that the Development Fee Obligations are Builder Covenants. By taking title to the Lots, Buyer acknowledges and agrees (on behalf of itself and its successors and assigns) that the Development Fee Obligations are Builder Covenants, and that DMB shall have all rights and remedies specified in the Purchase Agreement in the event of a breach of any such Builder Covenants.

6. Notice of Construction Obligations. DMB hereby gives notice of the provisions of the Construction Obligations, which are incorporated into this Declaration as if fully set forth herein, and hereby declares that all Construction Obligations are Builder Covenants. By taking title to the Lots, Buyer acknowledges and agrees (on behalf of itself and its successors and assigns) that the Construction Obligations are Builder Covenants, and that DMB shall have all rights and remedies specified in the Purchase Agreement in the event of a breach of any such Builder Covenants.

7. Notice of Right of First Refusal; Exemptions. DMB hereby gives notice of the Right of First Refusal, and hereby declares that all obligations of Buyer with respect to the Right of First Refusal are Builder Covenants. By taking title to the Lots, Buyer acknowledges and agrees (on behalf of itself and its successors and assigns) that its obligations with respect to the Right of First Refusal are Builder Covenants, and that DMB shall have all rights and remedies specified in the Purchase Agreement in the event of a breach of any such Builder Covenants. DMB also gives notice that the Right of First Refusal shall not apply to the following transactions:

- (i) Any sale by Buyer of a single Lot through a Retail Closing;
- (ii) A foreclosure sale (including trustee sale of some or all of the Lots, deed-in-lieu or other similar transfer) by a lender who has lent funds to Buyer for acquisition of the Lots or the construction of residential dwellings on the Lots;
- (iii) Any transfer between Buyer and an affiliate of Buyer (meaning any entity controlling, controlled by or under common control with Buyer);

(iv) Any transfer that is consummated more than five (5) years from the date of the recording of this Declaration; and

(v) Any Qualified Landbanker Transfer (as defined below).

As used herein, (a) "Landbanker" shall mean any entity holding the Lots pursuant to an option agreement or similar agreement whereby Buyer has the right to acquire the Lots from such Landbanker, and (b) "Qualified Landbanker Transfer" means either (1) the transfer of the Lots from Buyer to the Landbanker in a single transaction that includes the execution by Buyer and the Landbanker of the foregoing option agreement or similar agreement, or (2) the transfer of one or more Lots from the Landbanker to Buyer pursuant to the terms of such option agreement or similar agreement. Any other transfer to or from a Landbanker is not a Qualified Landbanker Transfer and is subject to the Right of First Refusal.

8. Partial Release of Declaration.

a. As set forth in Section 1 above, Builder Covenants are not binding on any person who acquires a Lot at a Retail Closing, which is a closing of the sale of a Lot to a retail homebuyer, with a single-family home constructed thereon, and all conveyances of the Lot thereafter. Any title insurer may rely on this Section 8(a) when issuing any commitment to insure or when issuing a title insurance policy in connection with a Retail Closing, and, accordingly, need not show this Declaration as an exception to title on any commitment or title policy issued in connection with a Retail Closing. If a homebuyer requests that this Declaration be released of record at or after its Retail Closing, DMB shall promptly execute and record such a partial release. Notwithstanding any such partial release, any and all Builder ^{Unofficial Document} Covenants that are not fully satisfied at the time of the Retail Closing shall survive the Retail Closing and such partial release until satisfied in full, and such partial release shall not constitute evidence of satisfaction of any Builder Covenant.

b. As set forth in Section 1 above, Builder Covenants are not binding on any owners association or similar entity that acquires any common area tracts ("Tracts"). Any title insurer may rely on this Section 8(b) when issuing any commitment to insure or when issuing a title insurance policy in connection with a conveyance of any Tracts to any owners association or similar entity, and, accordingly, need not show this Declaration as an exception to title on any commitment or title policy issued in connection with a conveyance of any Tracts to any owners association or similar entity. If such an association or similar entity requests that this Declaration be released of record at or after its acquisition of a Tract, DMB shall promptly execute and record such a partial release. Notwithstanding any such partial release, any and all Builder Covenants that are not fully satisfied at the time of such acquisition shall survive the acquisition and such partial release until satisfied in full, and such partial release shall not constitute evidence of satisfaction of any Builder Covenant.

9. Miscellaneous.

a. Notices. All notices or other communications pursuant to this Declaration by DMB or Buyer shall be made and shall be effective in the same manner as required in the Purchase Agreement.

b. Attorneys' Fees. If it becomes necessary for either party to employ legal counsel or to initiate a proceeding to enforce any of the terms, covenants or conditions of this

Declaration, the prevailing party in such proceeding shall be entitled to recover its reasonable costs and expenses incurred in such proceeding from the other party, including, without limitation, reasonable attorneys' fees, set by the presiding authority at such proceeding, at both trial and appellate levels, and if any judgment or award is obtained by the prevailing party, all such costs, expenses and fees shall be included in the judgment. If both parties are awarded relief, then the award for attorneys' fees shall be apportioned in the discretion of the party presiding at such proceeding.

c. Assignment or Transfer. DMB may assign its rights and interests under this Declaration only in connection with a sale of all or substantially all of the Development (to the extent then owned by DMB). Except as provided in the Purchase Agreement, Buyer shall not voluntarily or by operation of law assign or transfer any rights or interests under this Declaration without DMB's express prior consent in writing, provided however, such consent shall be deemed to have been given by DMB for any transfer as to which DMB does not or cannot exercise the Right of First Refusal (as defined in the Purchase Agreement).

d. Amendments. No modification of this Declaration shall be deemed effective unless in writing and signed by DMB and Buyer, and any waiver granted shall not be deemed effective except for the instance and in the circumstances particularly specified therein and unless in writing and executed by the party against whom enforcement of the waiver is sought.

e. Successors. Except as otherwise provided herein, the provisions and covenants contained herein shall inure to and be binding upon the heirs, successors and assigns of the parties hereto. The right to use the names does not inure to successors-in-title to Buyer, except as expressly set forth in the License and Linking Agreement.

Unofficial Document

f. Validity of Provisions. If any one or more of the provisions contained in this Declaration shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity or unenforceability shall not affect any other provisions of this Declaration but this Declaration shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein and the same shall be enforceable to the fullest extent permitted by law.

g. Construction. In all cases, the language in all parts of this Declaration shall be construed simply, according to its fair meaning and not strictly for or against either party.

h. Counterparts. This Declaration may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

i. Agreements. A copy of each of the Purchase Agreement, the Lot Premium and Deferred Consideration Agreement, the Marketing Agreement and the License and Linking Agreement is available at DMB's office for persons with an interest or potential interest in the Lots.

j. Governing Law; Venue. This Declaration shall be governed by, construed under, and enforced in accordance with the laws of the State of Arizona, without regard to conflicts of law principles. Buyer (on behalf of itself and its successors and assigns), by accepting fee title to, or any other interest in, any portion of the Development, consents to the jurisdiction of the courts of the State of Arizona and the United States of America, and agrees that venue properly lies in the Superior Court of Maricopa County and the United States District Court for the District of Arizona, as appropriate.

IN WITNESS WHEREOF, DMB has executed this Declaration, to become effective as of the date first set forth above.

DMB: DMB WHITE TANK, LLC, an Arizona limited liability company

By: DMB Associates, Inc., an Arizona corporation, its Manager

By: [Signature]

Its: Sr. Vice President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 8th day of July, 2014, by Daniel T. Kelly, the Sr Vice President of DMB Associates, Inc., an Arizona corporation, in its capacity as Manager of DMB WHITE TANK, LLC, an Arizona limited liability company.

[Signature]
Notary Public

My commission expires:
9-20-2016

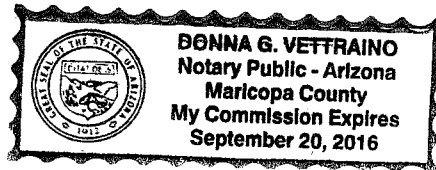


Exhibit A
to
Declaration of Builder Covenants,
and Notice of Right of First Refusal

Legal Description of Lots

Lots 201 through 242, inclusive, as set forth on the Final Plat for Verrado Phase 3 South, Phase C, recorded in Book 1166, page 44, and Affidavit of Correction recorded in Document No. 2014-050022, official records of Maricopa County, Arizona; EXCEPT all oil and gas as reserved in Patent from the United States of America.

Unofficial Document