

First American Title

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11201 North Tatum Blvd., Suite 330  
Phoenix, Arizona 85028

SUPPLEMENT TO  
COMMUNITY CHARTER FOR MARLEY PARK

568697

1/6

(Parcel 12 – Lots 12093 through 12144)

This Supplement to Community Charter for Marley Park (Parcel 12 – Lots 12093 through 12144) (this “**Supplement**”) is made effective this 17 day of December, 2012, by MARLEY PARK LLC, an Arizona limited liability company (“**Founder**”).

A. Founder executed the Community Charter for Marley Park (the “**Charter**”) and recorded said document in the official records of Maricopa County, Arizona on April 23, 2004, as Document No. 04-0440662; and

B. The real property that is subject to the Charter is being developed as a master planned community located in the City of Surprise, Maricopa County, Arizona, commonly known as Marley Park (the “**Community**”); and

C. The Charter contemplates that Supplements for parcels located within the Community will be executed and recorded periodically as the development of the Community proceeds; and

D. Founder executed a Supplement to Community Charter for Marley Park (Parcel 12) (the “**Parcel 12 Supplement**”) and recorded said document in the official records of Maricopa County, Arizona on December 1, 2005, as Document No. 2005-1820808, reserving the right to further subdivide portions of the real property subject to the Parcel 12 Supplement; and

E. Founder further subdivided portions of the real property subject to the Parcel 12 Supplement, pursuant to the Replat of Lots 12093 through 12192 and Tracts “Q12” and “R12” of Replat of Tract “B12” and “K12” through “N12” of Marley Park Parcel 12, in Book 978 of Maps, Page 38, official records of Maricopa County, Arizona (the “**Prior Replat**”).

F. Founder re-subdivided the portions of the real property subject to the Prior Replat, pursuant to the Replat of Marley Park Parcel 12, according to the plat recorded in Book 1127 of Maps, Page 37, official records of Maricopa County, Arizona (the “**Replat**”).

G. Founder now wishes to cause those portions of the Community described on Exhibit “A” attached hereto (the “**Parcels**”) to be developed in accordance with certain supplemental covenants, conditions and restrictions as set forth herein, with the intent and understanding that the Parcel 12 Supplement shall not apply to the Parcels, effective as of the recording of this Supplement.

NOW, THEREFORE, Founder hereby declares that the Parcels shall be held, sold and conveyed subject to the following restrictions, covenants, conditions, terms and provisions:

1. **Incorporation of Charter.** The Charter is expressly incorporated herein and made a part hereof by this reference. Unless otherwise defined herein, every capitalized term and expression used herein shall have the same meaning as set forth for such terms and expressions in the Charter. In the event of any conflict between the terms of the Charter and the terms of this Supplement, the terms of the Charter shall control.

2. **Calculation of Units.** The Parcels have been subdivided into fifty-two (52) residential lots (collectively, the "Units", and each, individually, a "Unit") pursuant to the Replat. Accordingly, for purposes of the Charter, there shall be fifty-two (52) Units in the Parcels. If Founder duly amends the Replat, such that the number of Units in the Parcels is greater or less than fifty-two (52), then Founder, without obtaining the consent of any Owner of any such Unit or any other portion of the Parcels, may amend this Supplement to correctly specify the total number of Units within the Parcels.

3. **Membership.** Each Owner of a Unit shall be a member of the Association as provided in Section 5.1 of the Charter.

4. **Permitted Uses.** The Parcels shall be used exclusively for single-family residential dwellings and related common areas, and construction on such real property shall be limited to single-family dwelling units and related common area improvements. Notwithstanding the foregoing, however, Founder reserves to itself, and its successors and assigns (including without limitation any homebuilder in whose favor Founder executes, acknowledges and records an assignment of rights), (a) the right to construct and install within the Parcels one or more temporary construction trailers used in connection with the construction of single-family dwellings within the Parcels; provided that all such trailers shall be removed from the Parcels promptly after the completion of all applicable construction activity, and (b) the right to use specified portions of the Parcels for materials storage in connection with the construction of single-family dwellings within the Parcels; provided that all such materials shall be removed from the Parcels promptly after the completion of all applicable construction activity.

5. **Commencement of Assessments.** The Units are subject to all assessments, fees and other charges duly imposed pursuant to the Charter. The obligation to pay assessments, fees and other charges under the Charter shall commence as to all Units effective as of the recording of this Supplement in the official records of Maricopa County, Arizona; provided that, for the period from the date of the recording of this Supplemental Declaration through the last day of the calendar month in which the eighteenth (18th) monthly anniversary of such recording occurs, the Base Assessments (under the Charter) and the Annual Assessments (under the Covenant) for any and all Lots within the Parcel that are owned by a Builder shall be reduced to twenty-five percent (25%) of the Base Assessment otherwise payable.

6. **Installation of Landscaping.** Unless a written variance is obtained from the Reviewer, prior to the conveyance of fee title to a Unit to the buyer of a dwelling unit constructed thereon, the Builder that is constructing a residence on the Unit shall be required at

its sole cost and expense to complete the landscaping (including all related irrigation systems) of the front yard, side yard and all other landscape areas visible from any streets and/or private street tracts adjoining the Unit, all within sixty (60) days after the close of escrow regarding the sale of the Unit to the retail home buyer. All landscaping shall be installed in a manner consistent with the applicable plans and specifications approved by the City of Surprise and the Reviewer, the Community-Wide Standard and the Design Guidelines. Founder hereby declares that all Units shall be subject to an easement as provided in Section 15.5 of the Charter in favor of the Association to enter upon any Unit on which the applicable Builder has failed to properly install such landscaping in order to cause the landscaping to be installed at the expense of the Builder. Each Builder understands and acknowledges that it is subject to a potential fine in such amount as may be established by the Board, to be imposed by, and payable to, the Association for any violation of the provisions of this Paragraph 6. Any such fine shall be considered a Specific Assessment levied against any and all property owned by the applicable Builder within the Community pursuant to Section 14.4 of the Charter.

7. **Maintenance of Streetscape Areas.**

a. **General.** Any area that is located within public right-of-way or any private street tract as shown on the Replat but outside of the private street improvements built within such public right-of-way or any private street tract, including any landscaping improvements located in such area (a "**Streetscape Area**"), shall be maintained by the Owner of the adjacent Unit or common area tract (as applicable) in accordance with the Community-Wide Standard, all other requirements of the Governing Documents, and all other standards imposed by applicable law, except that the Street Trees (as defined in Paragraph 7(b) below) shall be maintained in accordance with Paragraph 7(b) below, and sidewalks running parallel to adjacent streets shall be maintained by the City of Surprise. The determination as to which Unit or common area tract is adjacent to a particular Streetscape Area shall be made by reference to the prolongation of the relevant Unit boundaries and/or common area tract boundaries. If an Owner shall fail to meet its maintenance obligations under this Paragraph 7, the Association shall have the right to perform such maintenance on behalf of such Owner and to enter upon such Owner's Unit to the extent reasonably necessary do so.

b. **Street Trees.** Founder intends to install (or to cause Builders or other third parties to install) trees and irrigation facilities serving such trees in the areas located between the outside edge of the street improvements to be constructed within the Parcels and the sidewalks to be constructed generally parallel to such street improvements. Some of such trees and facilities may be within the boundaries of the Units and some may be in the adjacent Streetscape Areas. Notwithstanding anything to the contrary in this Supplement, the Builder of the adjacent Units shall maintain all such trees (the "**Street Trees**") until such time as the Association assumes responsibility for their maintenance. So long as Founder is responsible to perform such maintenance, Founder shall pay for all costs incurred in connection with such maintenance; once the Association assumes responsibility for such maintenance, the Association shall pay such costs. Individual Unit owners shall pay all costs for irrigating each street tree that is within or adjacent to such owner's Unit; the irrigation lines shall be installed by the Builder of the Unit and thereafter maintained by the Unit Owner. Founder reserves to itself, and hereby grants to the Association, a permanent, non-exclusive easement to enter upon all Units as may be reasonably necessary to perform such maintenance.

8. **Boundary Walls and Common Yard Walls.** For purposes of this Supplement, the term "**Boundary Wall**" shall mean a privacy wall constructed on, or immediately adjacent to, the common boundary of an Area of Common Responsibility and an adjoining Unit, and the term "**Common Yard Wall**" shall mean a privacy wall constructed on, or immediately adjacent to, the common boundary of two adjoining Units. Any retaining wall that lies under and supports a Boundary Wall or a Common Yard Wall shall be deemed a part of such Boundary Wall or Common Yard Wall for purposes of this Paragraph 8. The rights and duties of Owners and the Association with respect to Boundary Walls and Common Yard Walls shall be as follows:

a. **Use of Walls.** The Association and the Owner who have a Boundary Wall on or adjacent to their common boundary shall both equally have the right to use such Boundary Wall, provided that such use by one such party does not interfere with the use and enjoyment of such Boundary Wall by the other, and two Owners who have a Common Yard Wall on or adjacent to their common boundary shall both equally have the right to use such Common Yard Wall, provided that such use by one such party does not interfere with the use and enjoyment of such Common Yard Wall by the other.

b. **Repair of Walls.**

(1) If any Common Yard Wall is damaged or destroyed through the act of an adjacent Owner or any of such Owner's tenants, invitees, agents, contractors, guests or family members (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the Common Yard Wall to its pre-existing condition (including restoration of any affected landscaping and compliance with all applicable municipal code requirements) without cost to the Association or the other Owner provided that any liability imposed on an Owner hereunder shall not limit or prejudice the right of the Owner to pursue any available legal remedies against the person(s) causing such damage or destruction.

(2) If any Common Yard Wall is destroyed or damaged (including by deterioration from ordinary wear and tear), other than by the act of an adjacent Owner or any tenant, invitee, agent, contractor, guest or family member of an adjacent Owner (or if it cannot be determined who caused such destruction or damage), it shall be the joint obligation of the two Owners to rebuild and repair such wall to its pre-existing condition (including restoration of any affected landscaping and compliance with all applicable municipal code requirements) at their joint expense, such expense to be divided equally between them (and, in event that one such Owner fails or refuses so to act, the other Owner may undertake the rebuilding or repair of such Party Wall, and thereupon shall have the right to obtain contribution from the Owner who failed or refused to act, in the amount of one-half of the cost of such rebuilding or repair); provided, however, that if such damage or destruction is limited to the surface of a Common Yard Wall, then the obligation to repair such damage or destruction shall be the sole responsibility of the Owner of the adjacent property toward which such surface faces, at such party's sole expense.

(3) If any Boundary Wall or Common Yard Wall is damaged or destroyed through the act of the Association or any of its invitees, agents or contractors (whether

or not such act is negligent or otherwise culpable), it shall be the obligation of the Association to rebuild and repair the Boundary Wall or Common Yard Wall to its pre-existing condition (including restoration of any affected landscaping and compliance with all applicable municipal code requirements) without cost to the adjacent Owner(s) provided that any liability imposed on the Association hereunder shall not limit or prejudice the right of the Association to pursue any available legal remedies against the person(s) causing such damage or destruction.

(4) If any Boundary Wall is damaged or destroyed through the act of an adjacent Owner or any of such Owner's tenants, invitees, agents, contractors, guests or family members (whether or not such act is negligent or otherwise culpable), the Association shall rebuild and repair the Boundary Wall to its pre-existing condition (including restoration of any affected landscaping and compliance with all applicable municipal code requirements) and shall be entitled to recover the cost of such rebuilding and repair from the adjacent Owner provided that any liability imposed on the adjacent Owner hereunder shall not limit or prejudice the right of the adjacent Owner to pursue any available legal remedies against the person(s) causing such damage or destruction.

(5) If any Boundary Wall is destroyed or damaged (including by deterioration from ordinary wear and tear), other than by the act of the Association, or an adjacent Owner or any tenant, invitee, agent, contractor, guest or family member of the Association or any adjacent Owner (or if it cannot be determined who caused such destruction or damage), it shall be the joint obligation of the Owner and the Association (in the case of a Boundary Wall), or the two Owners (in the case of a Common Yard Wall), to rebuild and repair such wall to its pre-existing condition (including restoration of any affected landscaping) at their joint expense, such expense to be divided equally between them (and, in event that one such Owner fails or refuses so to act, the other Owner may undertake the rebuilding or repair of such Party Wall to its pre-existing condition, and thereupon shall have the right to obtain contribution from the Owner who failed or refused to act, in the amount of one-half of the cost of such rebuilding or repair); provided, however, that if such damage or destruction is limited to the surface of a Boundary Wall or Common Yard Wall, then the obligation to repair such damage or destruction shall be the sole responsibility of the Association (in the case of a Boundary Wall), or Owner of the adjacent property toward which such surface faces (in the case of a Common Yard Wall), at such party's sole expense.

(6) In connection with any rebuilding or repair of a Boundary Wall or Common Yard Wall in accordance with this Paragraph 8, the Association and each adjacent Owner, as applicable, shall have the right to enter upon the other adjacent Unit or the adjacent Common Area as may be reasonably necessary in order to carry out such rebuilding or repair (including restoration of any affected landscaping).

c. Modification of Walls. Notwithstanding anything to the contrary herein contained, there shall be no modification of any Boundary Wall or impairment of the structural integrity of any Boundary Wall without the prior consent of the Association and the Reviewer, and there shall be no modification of any Common Yard Wall or impairment of the structural integrity of any Common Yard Wall without the prior consent of the Owners of both adjacent Units and the Reviewer.

d. Commencement of Association Responsibility. Anything in the foregoing to the contrary notwithstanding, the Association shall have no responsibility for the maintenance, repair or replacement of any Boundary Wall pursuant to this Paragraph 8 unless and until it has inspected and approved the construction of such Boundary Wall and accepted in writing maintenance responsibility (to the extent provided herein) for such Boundary Wall, in accordance with applicable Association turnover processes. Until such acceptance, the Builder or the Founder who constructed such Boundary Wall shall have the rights and obligations of the Association set forth in this Paragraph 8.

e. Association Cure Rights. If an Owner shall fail to meet its maintenance or repair obligations under this Paragraph 8, the Association shall have the right (but not the obligation) to perform such maintenance or repair on behalf of such Owner, to enter upon such Owner's Unit to the extent reasonably necessary do so, and to recover from such Owner the cost of such maintenance or repair.

f. Contribution. The right of any Owner to contribution from the Association or from any other Owner under this Paragraph 8 shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

9. Photography of Homes. Each Owner acquiring title to a Unit, by the acceptance of a deed or other instrument evidencing such title, hereby consents to having the exterior of any residence constructed on such Unit photographed by professional photographers contracted by Founder, and agrees that such photographs may be used by Founder in advertising and marketing materials and also may be used to demonstrate design guideline principles applicable to structures constructed or landscaping installed at the Community. All such photographs and all such uses shall be at no cost to such Owner and such Owner shall allow such uses free of charge and without compensation to such Owner. All uses shall be implemented in a professional and tasteful manner. Each photography session, if any, shall be conducted at a mutually convenient time and date as agreed between the Owner and Founder. The photography crew shall have the right to enter onto the Unit on the day of the photography session to conduct its work. Any damage caused by such crew shall be the responsibility of Founder who shall promptly cause any such damage to be repaired, entirely at its cost, and with minimal inconvenience to the Owner.

10. Enforcement. The Association may recover from any Owner who fails to install landscaping on its Unit, or to maintain its Unit or any portion thereof or any adjacent Streetscape Area, or to pay to the Association any amounts payable to the Association by such Owner, as required by any of Paragraphs 7 or 8 above any and all costs incurred by the Association in performing such installation or maintenance on the Owner's behalf pursuant to any of said Paragraphs 7 or 8 above. In addition, without limiting any other rights or remedies available to the Association, in all cases of an Owner's failure to maintain or install as required by any of Paragraphs 7 or 8 above, the Association may impose a Specific Assessment under the Charter against the Owner's property within the Community in the amount of such costs or damages, which assessment shall be immediately due and payable upon delivery of notice of such assessment to the Owner.

11. **Adjacent Land Use.**

a. **General Disclosures.** Founder hereby gives notice that the Parcels are located adjacent to (i) parcels zoned for development with residential lots, to the east, to the south and to the north, (ii) a parcel zoned for residential condominiums, to the west, (iii) a public school, to the west, and (iv) a public park, to the southwest. Each Owner, by taking title to a Unit acknowledges that Founder makes no warranties or representations whatsoever that any land now owned or hereafter acquired by Founder is or will be committed to or developed for a particular (or any) use, or if that land is once used for a particular use, that such use will continue in effect, and that Founder reserves the right to change the uses, densities and zoning of any property in the Community which Founder owns without the consent of any Owner.

b. **Nearby Air Force Base.** Founder hereby gives notice that the Parcels lie in the vicinity of the aircraft overflight area for aircraft utilizing Luke Air Force Base and the increased noise and accident potential attendant thereto, which may be of concern to Owners, residents and other Persons. All Owners and prospective purchasers are advised that aircraft may have the right of flight over the Units, and that the Units may be subject to the attendant noise, vibrations, fumes, dust, fuel and lubricant particles and all other effects that may be caused by the operation of aircraft landing at, or taking off from, or operating at or on, Luke Air Force Base. All residential dwellings within the Parcels shall be constructed in compliance with any and all applicable sound attenuation standards adopted by the City of Surprise. Further information concerning the operation of Luke Air Force Base and the effect that the operation of Luke Air Force Base may have upon the Community and the Owners and residents thereof may be obtained by contacting Luke Air Force Base or the City of Surprise Community Development Department.

c. **Wastewater Treatment Plant.** Founder hereby gives notice that the Parcels lie in the vicinity of the City of Surprise's wastewater treatment plant located south of Cactus Road approximately one-half (1/2) mile east of Litchfield Road, and may be subject to odors, fumes, smells and physical airborne particulates caused by the lawful operation and maintenance thereof.

d. **Lighted Ball Fields.** Founder hereby gives notice that the Parcels are located in the vicinity of a proposed public park and a proposed public school, one or both of which might have ball fields or other facilities that, if built, may be illuminated with light fixtures that will cast light that is visible from the Units within the Parcels.

e. **Lighting of Tracts and Sidewalks.** Founder hereby gives notice that Tract "S12" shown on the Replat, is a Common Area that may include sidewalks, recreational facilities or other uses, and may include lighting fixtures relating thereto, which uses may cause nearby Units to be exposed to light, noise, increased pedestrian and non-motorized vehicular traffic and other matters associated with the use of such Common Areas. Founder reserves to itself and its successors and assigns the right to install, remove, maintain, replace and repair lighting fixtures, related electrical lines and other related facilities, within such Tract "S12". The design and location of such fixtures, lines and related facilities shall be as determined by the Association, consistent with the Community-Wide Standard and all other rules, regulations, and design standards and guidelines adopted by the Association with respect to the Parcels from time

to time, and the Association shall determine from time to time the days and hours of the day on which such lighting fixtures shall be operated.

f. **Electric Transmission Lines.** Utility easements containing transmission lines for electricity are located along the northern border of the Community and within and along streets within the Community. The question of whether proximate exposure to electromagnetic fields generated by such electric lines presents long-term health risks is being examined by the scientific community, within which there is significant disagreement. Founder and the Association disclaim any special knowledge or expertise on this issue. Each person who desires to purchase a Unit should conduct his or her own investigation concerning any possible health risks before signing a purchase contract.

12. **Trash Receptacles.** No garbage or trash shall be placed or kept on any Unit, except in covered containers of a type, size and style that are approved in writing by the Reviewer. No Improvements that in anyway might materially interfere with or impede the utilization of the easement for its intended purpose shall be allowed. The Association reserves the right to adopt additional rules regarding the keeping, placement and disposal of garbage within the Parcels and/or Community.

13. **Notice of Community Enhancement Fee.** By its acceptance of a deed with respect to any Unit, the Owner of such Unit is hereby deemed to acknowledge and agree to the requirement that any Owner transferring title to such Unit shall pay to the Association a transfer fee in an amount not to exceed one-fourth of one percent (0.25%) of the gross sale price of the Unit. Certain exemptions apply. This requirement is set forth in Section 14.11 of the Charter. Nothing in this Supplement shall limit or otherwise affect in any manner the provisions of the Charter, which should be reviewed in detail (along with all other recorded documents affecting the Unit) before the purchase of the Unit.

14. **Easement for Surface Water Run-Off.** In any instance in which storm water drains from the surface of a Unit (the "**Surface Draining Unit**") or Area of Common Responsibility onto an adjacent Unit (an "**Adjacent Surface Unit**"), and such drainage consists of water flow resulting from a finished grade established in substantial accordance with the final civil plans for the Parcels prepared by Founder and approved by the City of Surprise, the Owner of the Adjacent Surface Unit shall be deemed to have granted to the Owner of the Surface Draining Unit or Area of Common Responsibility a non-exclusive easement over that portion of the front yard of the Adjacent Surface Unit lying within five (5) feet of the Surface Draining Unit or Area of Common Responsibility (as applicable), which easement shall be for purposes of drainage of such storm water from the surface of the Surface Draining Unit or Area of Common Responsibility.

15. **Mailbox Easement.** Founder hereby expressly reserves for itself, together with the right to transfer and assign the same, a perpetual easement (each a "**Mailbox Easement**") over, upon, across and under that portion of each Unit that is encumbered with a public utility easement as reflected on the Replat or any recorded map of dedication, to enter such portion of the Unit and to install, use, maintain, repair, replace and operate one or more community postal boxes to serve the Owners of such Units within the Parcels as the Association may designate from time to time; provided and only to the extent that such use is not inconsistent with, and does



not unreasonably interfere with, the use of such areas for public utility purposes in accordance with the provisions of the Replat, as same may be amended from time to time. No Owner shall have the right to deny access to any other Owner or the United States Postal Service to any community postal box situated on a Unit. The rights and obligations granted herein shall be deemed to run with the land, and the subsequent sale of all or any portion of the Parcels shall not affect such rights and obligations.

16. **Interpretation.** This Supplement shall run with the land within the Parcels, shall be binding on all parties having or acquiring any right, title or interest in the Parcels or any part thereof, and their respective heirs, successors and assigns, and shall be enforceable in accordance with and as a part of the Charter. The Parcel 12 Supplement shall no longer apply to the Parcels, effective as of the recording of this Supplement.

17. **Amendment.** This Supplement may be amended in the same manner as the Charter may be amended in accordance with the provisions of the Charter; provided that notwithstanding the foregoing, Founder shall be entitled to unilaterally amend this Supplement to make any corrections or modifications deemed necessary or appropriate by the Founder in its sole and absolute discretion due to the designation or depiction of any item or matter on the Replat.

IN WITNESS WHEREOF, Founder has executed the foregoing instrument as of the date first set forth above.

FOUNDER: MARLEY PARK, LLC, an Arizona limited liability company

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

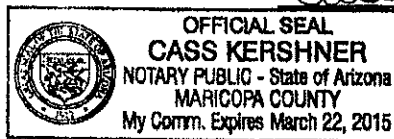
By: Mary S. Alexander  
Its: Executive Vice President

STATE OF ARIZONA )  
 )  
County of Maricopa ) ss.

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of December, 2012, by Mary S. Alexander, the Executive Vice President of DMB Associates, Inc., an Arizona corporation, in its capacity as Manager of MARLEY PARK LLC, an Arizona limited liability company, on behalf of the latter limited liability company.

Cass Kershner

My Commission Expires:



Notary Public

**CONSENT OF MARLEY PARK PHASE I LLC**

For valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Marley Park Phase I LLC, as the Owner of the Parcels, hereby consents to, ratifies and approves the foregoing Supplement, including all dedications and easements referenced thereon, and agrees that its right, title and interest in and to the Parcels (as defined in the Supplement) is and shall be subject to the Supplement.

MARLEY PARK PHASE I LLC, an Arizona limited liability company

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

By: Mary S. Alexander

Its: Executive Vice President

STATE OF ARIZONA        )  
  )        ss.  
County of Maricopa        )

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of December, 2012, by Mary S. Alexander, the Executive Vice President of DMB Associates, Inc., an Arizona corporation, in its capacity as Manager of MARLEY PARK PHASE I LLC, an Arizona limited liability company, on behalf of the latter limited liability company.

Cass Kershner  
Notary Public

My Commission Expires:



Exhibit "A"  
to  
Supplement to Charter

Lots 12093 through 12144, inclusive, Replat of Marley Park Parcel 12, according to the plat recorded in Book 1127 of Maps, Page 37, official records of Maricopa County, Arizona.