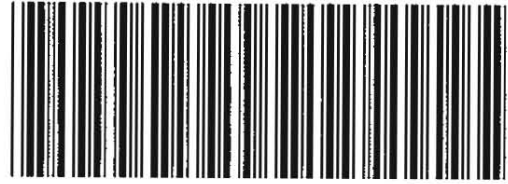


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DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HIGHLAND RANCH III

This Declaration of Covenants, Conditions and Restrictions for Highland Ranch III (the "Declaration") is made and entered into as of the 12 day of March, 1998, by Highland Ranch Construction Company L.L.C., an Arizona limited liability company ("Developer").

RECITALS

A. Developer is the owner of that parcel of real property situated in Maricopa County, Arizona, more particularly described in Exhibit "A" hereto (the "Parcel").

B. Developer desires to create a planned residential community which will include common facilities for the benefit of the community.

C. Developer desires to submit and subject the Parcel, together with all buildings, improvements and other permanent fixtures of whatever kind now or hereafter located thereon, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto (all of which are included within the term "Property" as defined in Section 1.26 hereof), to the covenants, conditions and restrictions herein set forth.

D. Developer desires to establish for its own benefit and for the mutual benefit of all future owners and occupants of the Property, and every part thereof, certain easements and rights in, over and upon the Property and certain mutually beneficial restrictions and obligations with respect to the proper use, conduct and maintenance thereof.

E. Developer desires and intends that the owner, mortgagees, beneficiaries and trustees under trust deeds, occupants and all other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to, the rights, easements, privileges, covenants and restrictions hereinafter set forth, all of which shall run with the land and be binding upon the Property and all parties having or acquiring any right, title or interest in or to the Property, or any part thereof, and shall inure to the benefit of each owner thereof, and all of which are declared to be in furtherance of a plan to promote and protect the Property and are established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Property.

DECLARATIONS

NOW, THEREFORE, Developer, for the purposes above set forth, declares and follows:

1. Definitions.

Defined terms used in this Declaration have the first letter of each word in the term capitalized. Unless the context otherwise requires, defined terms shall have the following meanings:

1.1 “Additional Property” means the real property which may be annexed to this Declaration together with all improvements situated thereon, and any real property, together with the improvements located thereon, situated within the vicinity of the Project.

1.2 “Articles” means the Articles of Incorporation for the Association, and any properly adopted amendments and supplements to them

1.3 “Association” means Highland Ranch III Owner Association, and Arizona nonprofit corporation, its successors and assigns.

1.4 “Board” means the Board of Directors of the Association.

1.5 “Bylaws” means the Bylaws of the Association and any properly adopted amendments and supplements to them.

1.6 “Common Areas” means that portion of the Property owned by the Association, together with the improvements and facilities constructed thereon, which is not part of any Lot as shown on the Plat and which has not been dedicated to the public as a public street or otherwise.

1.7 “Constituent Documents” means this Declaration, the Articles of Incorporation and Bylaws of the Association, any rules and regulations of the Association, and all such other similar documents as pertain to the Project, together with any properly adopted amendments to any of them.

1.8 “Declaration” means this Declaration of Covenants, Conditions and Restrictions for Highland Ranch III, as amended from time to time.

1.9 “Designated Builder” means any person or entity designated by Developer in writing engaged in the business of constructing and selling residences in the Property to the public and entitled to enjoy the privileges and benefits provided for in this Declaration.

1.10 “Developer” means the above-recited Developer or any person to whom Developer’s rights hereunder are hereafter assigned in whole or in part by recorded instrument.

1.11 “Eligible Holder” means any First Mortgagee or Institutional Guarantor that requests notice of certain matters in accordance with Section 18.18 hereof.

1.12 “First Mortgage” means a Mortgage which is the first and most senior of all Mortgages upon the same property.

1.13 “First Mortgagee” means the holder of the note secured by the First Mortgage and includes, as appropriate in the context of the regulations of any interested Institutional Guarantor, any such Institutional Guarantor with respect to such a note or First Mortgage.

1.14 “Fractional Interest” means that fraction, the numerator of which is one and the denominator of which is the total number of Lots then in the Project.

1.15 “Institutional Guarantor” means the Federal Housing Administration (“FHA”), the Veterans Administration (“VA”), the Federal Home Loan Mortgage Corporation (“FHLMC”), and the Federal National Mortgage Association (“FNMA”), including any successor thereto, if such an agency purchases any note, or guarantees or insures the payment of any note, secured by a First Mortgage.

1.16 “Lot” means each portion of the Property separately designated and described as a lot on the Plat, together with the improvements thereon.

1.17 “Majority of Owners” means the Owners holding more than 50% of the total weighted voting strength (irrespective of the total number of Owners); and, any specified fraction or percentage of Owners means the Owners holding that fraction or percentage of the total weighted voting strength (irrespective of the total number of Owners).

1.18 “Mortgage” means any recorded, filed or otherwise perfected instrument pertaining to a Lot (which is not a fraudulent conveyance under Arizona law), given in good faith and for valuable consideration as security for the performance of and obligation including, but not limited to, deeds of trust, but shall not include any instrument creating or evidencing solely a security interest arising under the Uniform Commercial Code.

1.19 “Mortgagee” means the holder of a note secured by a Mortgage, including the trustee and beneficiary under any deed of trust.

1.20 “Mortgagor” means the party executing a Mortgage as obligor.

1.21 “Occupant” means a person or persons, other than an Owner in rightful possession of a Lot.

1.22 "Owner" means the record owner, whether one or more persons or entities, of fee simple title to any Lot or Tract, whether or not subject to any Mortgage, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. If fee simple title to a Lot or Tract is vested of record in a trustee pursuant to Arizona Revised Statutes, Section 33-801 et seq., fee simple title shall be deemed to be in the trustor.

1.23 "Parcel" means the parcel of real estate hereinabove described, which is initially subjected to this Declaration.

1.24 "Person" means an individual, corporation, partnership, trustee or other legal entity.

1.25 "Plat" means the plat or plats of subdivision of the Property, recorded in the official records of Maricopa County, Arizona, and all amendments, supplements and correction thereto. Although any recorded plat may include real property in addition to the Parcel, the platting of such additional real property shall not in any way be deemed to subject the additional property to this Declaration or to obligate Developer to annex the additional property to the Project or to develop it in any particular manner.

1.26 "Private Yard" means that portion of a Lot other than the residential structure, which is enclosed or shielded from view by walls, fences, hedges or the like so that it is not generally Visible from Neighboring Property.

1.27 "Property" and "Project" are synonymous, and shall include the Lots, the Tracts, the Common Areas, and all easements, rights, appurtenances and privileges belonging or in any way pertaining thereto.

1.28 "Public Yard" means that portion of a Lot other than the residential structure, which is generally Visible from Neighboring Property, whether or not it is located in front of, beside, or behind the residential structure.

1.29 "Record" or "recording" refers to the act of recording a document in the office of the County Recorder of Maricopa County, Arizona.

1.30 "Servicer" means the person or entity servicing a First Mortgage (including the First Mortgagee, if applicable), its successors and assigns, pursuant to the regulation of any interested Institutional Guarantor.

1.31 "Tract" means such each contiguous area of real property within the Parcel (other than a Lot, the Common Area or any other property within the boundaries of a recorded subdivision) which is owned by the same Person.

1.32 "Visible from Neighboring Property" means capable of being clearly seen without artificial sight aids by an individual six feet tall standing at ground level on any Lot or on any public street in or abutting the Property.

2. Binding Covenants; Rights and Obligations.

Developer hereby submits and subjects the Property to the rights, easements, privileges, covenants and restrictions set forth in this Declaration, and hereby declares that all of the Property, including the Lots, the Tracts and Common Areas, shall be owned, leased, sold, conveyed and encumbered or otherwise held or disposed of subject to the terms, conditions and provisions of this Declaration. Each grantee of Developer, by the acceptance of a deed of conveyance, and each purchaser under any contract for a deed of conveyance, and each purchaser under any agreement of sale, and each Person at any time thereafter owning or acquiring any interest in any part of the Property, accepts the interest subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration. All rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and equitable servitudes, binding upon any Person having any interest or estate in the land at any time, and inuring to the benefit of the grantee, purchaser or Person as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance, purchase contract or other instrument whereby each such Person acquires an interest in the Property.

3. Property Rights and Rights of Enjoyment in the Common Areas.

3.1 Right of Enjoyment.

Subject to the provisions of Section 3.3, every Owner shall have a right and easement of enjoyment in and to the Common Areas. The easement shall be appurtenant to, and shall pass with the title to, every Lot or Tract. Except as to the Association's right to grant easements for utilities and similar and related purposes, as herein provided, the Common Areas may not be alienated, released, transferred, hypothecated or otherwise encumbered without the prior approval of two-thirds of each class of Members in the Association and all First Mortgagees.

3.2 Conveyance of Common Areas.

At such time as improvements on the Common Areas have been completed and the Association has been formed and is able to operate and maintain the Common Areas, legal title to the Common Area as shall be conveyed to the Association, free and clear of all liens and encumbrances except the lien for real property taxes (if any) not yet due and payable. Developer shall provide to the Association, at Developer's expense, a title insurance policy insuring good and marketable title to the Common Areas in the Association.

3.3 Limitations.

The rights and easements of enjoyment created in this Declaration shall be subject to the following:

- (a) The right of the Association, in accordance with this Declaration and the Articles and Bylaws of the Association, to borrow money for the purpose of improving the Common Areas and in aid thereof to mortgage the properties of the Association; provided, however, that the consent of two-thirds of each class of Members

shall be required prior to mortgaging or pledging any portion of the Common Areas;

(b) The right of the Association to take such steps as are reasonably necessary to protect the Common Areas against foreclosure in the event of default upon any mortgage covering them;

(c) The right of the Association, as provided in its Articles and Bylaws, to suspend the enjoyment and voting rights of any Owner or other Person for any period during which any assessment remains unpaid, and for any period not to exceed 30 days for any infraction of the Association's rules and regulation; provided, however, that no such suspension shall prevent reasonable access to a Lot or Tract across Common Areas; and

(d) The right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority, or utility company for such purposes and subject to such conditions as may be agreed to by the Owners, provided that no such dedication or transfer, or determination as to the purposes or as to the conditions thereof, shall be effective unless an instrument signed by Owners entitled to cast two-thirds of the votes of each class of membership has been recorded, agreeing to the dedications, transfer, purpose or condition, and unless written notice of the proposed agreement and action thereunder is sent to every owner at least 90 days in advance of any action being taken.

3.4 Delegation of Rights.

Any Owner of a Lot may delegate his rights of enjoyment in the Common Areas to the members of his family who reside upon the Property or to any Occupant of his Lot. The Owner shall notify the Association in writing of the name of any Person to whom such rights of enjoyment are delegated if they are not immediate family living on the Owner's Lot and the relationship of the Owner to the authorized Person. The rights and privileges of any such Person are subject to suspension as provided in this Declaration or the Bylaws of the Association to the same extent as those of the delegating Owner, and are subject to such further regulation as the Association may provide in its Bylaws.

4. Membership and Voting Rights in the Association.

4.1 Association.

The Association has been, or will be, formed to serve as the governing body for all of the Owners for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Areas, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Articles and the Bylaws. The Association shall not be deemed to be conducting a business of any kind, and all funds received by the Association shall be held and applied by it for the Owners in accordance with the provisions of this Declaration, the Articles and the Bylaws.

4.2 Membership.

Each Owner shall be a member of the Association so long as he is an Owner. Membership shall automatically terminate when the Owner ceases to be an Owner. Upon the transfer of his ownership interest, the new Owner succeeding to the ownership interest shall likewise automatically succeed to the membership in the Association. A membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of the Lot or Tract to which it appertains (and then only to the purchaser of the Lot or Tract) or by intestate succession, testamentary disposition, foreclosure of a Mortgage or other legal process transferring fee simple title to the Lot or Tract (and then only to the Person to whom fee simple title is transferred). Notwithstanding the foregoing, if an Owner grants an irrevocable proxy or otherwise pledges or alienates his voting right regarding special matters to a Mortgagee as additional security, only the vote of the Mortgagee will be recognized in regard to the designated special matters if a copy of the proxy or other instrument pledging or alienating the Owner's vote has been filed with the Board. If more than one such instrument has been filed, the Board shall recognize the rights of the first Mortgagee to so file, regardless of the priority of the Mortgages themselves. Any attempt to make a prohibited transfer of a membership is void and will not be recognized by or reflected upon the books and records of the Association. If the Owner of any Lot or Tract fails or refuses to transfer the membership registered in his name to the purchaser of his Lot or Tract, the Association shall have the right to record a transfer upon the books of the Association and issue a new membership to the purchaser. Thereupon, the old membership outstanding in the name of the seller shall be terminated as though it had been surrendered.

4.3 Classes of Membership; Voting Rights of Classes.

The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners but, so long as any Class B memberships are outstanding, shall not include Developer. Each Class A member who is the Owner of one or more Lots shall be entitled to one vote for each Lot owned on each matter to be decided. Class A members shall not have any votes for any Tract owned by such member. When more than one Person holds an interest in any Lot, all such Persons shall be exercised as they determine among themselves, but in no event shall the vote be split or more than one vote be cast with respect to any Class A Lot. If such Persons are unable to agree how their single vote is to cast, their vote shall not be counted.

Class B. The Class B member shall be Developer. The Developer shall have one membership for each Lot owned by the Developer. The Developer shall be entitled to three votes for each such Class B membership on each matter to be decided. Developer may cast its votes in such proportions on any matter as Developer may determine. Class B memberships shall cease and be converted to Class A memberships, without further act or deed, upon the happening of any of the following events, whichever occurs first:

- (a) 120 days following the first date when the total votes outstanding in the Class A membership equal or exceed the total voted outstanding in the Class B membership, or

(b) Five years following conveyance of the first Lot by Developer.

If any lender to whom Developer has assigned, or hereafter assigns, all or substantially all of its rights under this Declaration as security succeeds to the interests of Developer by virtue of the assignment, the Class B memberships shall not be terminated, and the lender shall hold the Class B memberships on the same terms as they were held by Developer.

4.4 Association Board of Directors.

The Board of the Association shall initially be comprised of the individuals specified in the Association's Articles of Incorporation. The terms of office of the members of the Board shall be staggered as provided in the Articles and Bylaws. Each Board member shall serve until his successor is elected and qualified at the next annual meeting of the Association at which vacancies in his group of members is filled or upon his resignation or removal from office, as the case may be. Developer shall appoint the members of the Board until the first annual meeting of the Association after the date that Class B memberships are converted to Class A memberships. Except for the Initial Board and Board members elected or appointed by Developer, each director shall be an Owner or the spouse of an Owner (or, if an Owner is a corporation, partnership or trust, a director may be an officer, partner or beneficiary of the Owner). If a director ceases to meet these such qualifications during his term, he will thereupon cease to be a director and his place on the Board shall be deemed vacant. Vacancies on the Board caused by any reason shall be filled by a vote of the majority of the remaining Board members though less than a quorum, or by the remaining Board member if there is only one, and each person so elected shall be a Board member until his successor is duly elected and qualifies. A Board member may be removed from office as provided in the Articles or Bylaws. Except for directors elected or appointed by Developer, directors shall be elected in the manner and at the times set forth in the Articles or Bylaws.

4.5 Board's Determination Binding.

In the event of any dispute or disagreement between any Owners or other Persons relating to the Project, or any question of interpretation or application of the provisions of this Declaration, the Articles, Bylaws or rules and regulation of the Association, the determination by the Board shall be final and binding on each and all of such Owners or other Persons (subject to any contrary determination by a court of competent jurisdiction).

4.6 Additional Provisions in Articles and Bylaws.

The Articles and Bylaws may contain any provision relating to the conduct of the affairs of the Association and the rights and powers of its directors, officers, employees, agents, members and other interested Persons not inconsistent with law, this Declaration or the regulation of any interested Institutional Guarantor.

4.7 Indemnification.

The Association shall indemnify any and all of its directors and officers, and former directors and officers, against expenses incurred by them, including legal fees, or judgments or penalties rendered or levied against any such person or entity in a legal action brought against any such person or entity for acts or omissions alleged to have been committed by any such person or entity while acting within the scope of his or its authority as a director or officer of the Association, or exercising the powers of the Board, provided that the Board shall determine in good faith that such person or entity did not act, fail to act, or refuse to act with gross negligence or with wrongful, fraudulent or criminal intent in regard to the matter involved in the action. Notwithstanding anything to the contrary expressed herein, the Board shall have the right to refuse indemnification as to expenses in any instance in which the person or entity to whom indemnification would otherwise have been applicable shall have incurred expenses without the approval by the Board which are excessive and unreasonable in the circumstances and are so determined by the Board, and as to expenses, judgments, or penalties in any instance in which such person or entity shall have refused unreasonably to permit the Association, at its own expense and through counsel of its own choosing, to defend him or it in the action or to compromise and settle the action. The Association shall also indemnify the employees and direct agents for the Association in the same manner and with the same limitation as provided above with respect to directors and officers. The foregoing rights of indemnification shall be in addition to and not exclusive of all other rights to which such directors, officers or agents may be entitled.

4.8 Easements.

In addition to the blanket easements granted in Section 5 below, the Board is authorized and empowered to grant such licensed, easements and rights-of-way for sewer lines, water lines, underground conduits, storm drains and other public or private utility purposes as may be necessary and appropriate for the orderly maintenance, preservation and enjoyment of the Common Areas or for the preservation of the health, safety, convenience and welfare of the Owners, provided that any damage to a Lot or Tract resulting from such a grant shall be repaired by the Association at its expense.

4.9 Accounting.

The Board, at all times, shall keep, or cause to be kept, true and correct records of account in accordance with generally accepted accounting principles, together with recent financial statements (which are audited or unaudited as determined by the Board). The Board shall make such books and record available for the inspection of all Owners, First Mortgagees and Institutional Guarantors, upon request, during normal business hours or other reasonable times. Required books and records shall specify in reasonable detail all expenses incurred and funds accumulated from assessments or otherwise. The Board may impose a reasonable charge for copies of any such books or records requested by any Owner, First Mortgagee or Institutional Guarantor.

4.10 Constituent Documents.

The Board, at all times, shall keep, or cause to be kept, current copies of the Constituent Documents, together with any amendments thereto, and shall make such documents available for the inspection of all Owners, First Mortgagees and Institutional Guarantors, upon request, during normal business hours or other reasonable times. The Board may impose reasonable charges for copies of any Constituent Documents requested by any Owner, First Mortgagee or Institutional Guarantor.

4.11 Termination Of Association.

If the Association is terminated or dissolved, the assets of the Association shall be transferred to a successor owners' association, a public agency or a trust for the benefit of the Owners and Mortgagees, whichever appears to the Board, in its sole and absolute discretion, to then be the most reasonable and equitable distribution thereof consistent with applicable tax and other laws.

5. Blanket Easements and Use of Common Areas.

5.1 Creation of Easement.

There is hereby created a blanket easement upon, across, over and under the Common Areas for ingress and egress, installing, construction, replacing, repairing, maintaining and operating all utilities including, but not limited to, water, sewer, gas, telephone, electricity, television cable, security systems, and communication lines and systems, and in addition thereto for the use of emergency vehicles of all types. By virtue of the easement, it shall be expressly permissible for the providing governmental agency or utility company to erect and maintain necessary facilities and equipment on the Common Areas. Notwithstanding anything to the contrary contained in this Section 5, no easements shall be created nor shall any sewers, electrical lines, water lines or other facilities for utilities be installed or relocated on the Common Areas except as initially created and approved by Developer or thereafter created or approved by the board. This provision shall in no way affect any other recorded easements on the Property.

5.2 General Use Rights.

Except for the use limitations provided in Section 9, each Owner shall have the non-exclusive right to use the Common Areas in common with all other Owners as required for the purposes of access and use, occupancy and enjoyment of, the respective Lot or Tract owned by the Owner. The right to use the Common Areas shall extend to each Owner and Occupant and the agents, servants, tenants, family members and invitees of each Owner. The right to use and possess the Common Areas shall be subject to and governed by the provisions of the Declaration, the Articles, Bylaws, and rules and regulation of the Association and such reasonable limitations and restriction as may, from time to time, be contained therein.

5.3 Wall Easement.

There is hereby created an easement upon, over and across each Lot and Tract within the Property which is adjacent to the perimeter boundaries of the Project for reasonable ingress, egress, installation, replacement, maintenance and repair of a Project perimeter

wall located on the easement. The easement created by this Section 5.3 shall be in favor of Developer and Designated Builders and appurtenant to the portions of the Project owned by them at any time, as well as in favor of the Association and those Owners whose Lots or Tracts are subject to the easement.

6. Managing Agent.

All powers, duties and rights of the Association or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement. Any agreement for professional management, or any other contract providing for services of Developer or any other party, shall not provide for compensation to the managing agent or other contracting party in excess of those amounts standard within the community in which the Project is located, nor exceed a term of one year, but the term may be renewed by agreement of the parties for successive one-year periods. Any such agreement shall provide for termination by either party with or without cause and without payment of a termination fee upon 60 days' written notice. Any decision by the Association to terminate professional management after it has begun and assume self-management of the Project shall not be effective until approved in writing by three-fourths of the Owners and of the First Mortgage Mortgagees (based upon one vote for each Mortgage owned).

7. Common Expenses.

7.1 Assessments for Common Expenses.

Except as otherwise specifically provided herein, each Owner of a Lot, including Developer and each Designated Builder so long as it is an Owner of a Lot, shall pay his proportionate share of the expenses of the administration, maintenance and operation of the Common Areas and of any other expenses incurred in conformance with this Declaration, the Articles, Bylaws and rules and regulations of the Association (which expenses are herein sometimes referred to as "Common Expenses"), including specifically, but not by way of limitation, insurance, maintenance and repair of the Common Areas (and any and all replacements and additions thereto), water electricity and other utilities provided to the Project, and establishment and maintenance of such reasonable reserves for contingencies, replacements and other proper purposes as the Board may from time to time elect to establish and maintain in its sole discretion. Common Expenses may, if so determined by the Board, include such amounts as are determined by the Board for the establishment and maintenance of such a reserve fund. Reserve funds may also be funded and derived by means of a special assessment levied in accordance with Section 7.8. The proportionate share of the Common Expenses for each Owner of a Lot shall be in the same ration as his Fractional Interest. Notwithstanding anything foregoing to the contrary, so long as any Class B memberships in the Association are outstanding, Developer shall pay for Lots owned by Developer an amount equal to one-quarter of the amount otherwise payable hereunder as such Lots' share of the Common Expenses in the absence of this proviso.

7.2 Commencement.

Assessments for Common Expenses provided herein shall commence for all Owners of Lots, including Developer and any Designated Builders, upon the sale and delivery of the first Lot with a completed residence on it by Developer or a Designated Builder. Any sale and simultaneous leaseback of a model residence for use in marketing shall not constitute a sale of

the residence for purposes of the preceding sentence so long as the model continues to be used for marketing rather than residential purposes.

7.3 Payment and Liens.

Except as otherwise provided herein, payment of Common Expenses shall be in such amounts and at such times as may be provided in the Articles and Bylaws or as determined by the Board in accordance with Section 7.6 hereof. Such payments and special assessment hereunder, together with interest at the annual rate of 18% (or such lesser rate as the Board may select from time to time but in no event in excess of the maximum lawful rate or the maximum rate allowed under applicable requirements of Institutional Guarantors) on sums due but unpaid, costs (including, but not limited to, collection costs), reasonable attorneys' fees, such reasonable late charges as the Board may impose by rule or regulation, and such reasonable fines, penalties and/or charges as the Board may impose by rule or regulation for infraction of the Declaration or the Association rules or regulations, shall constitute the personal obligation of the Person who was the Owner at the time the payment fell due. The personal obligation for delinquent payments shall not pass to an Owner's successor in title unless expressly assumed by him. If any Owner fails or refuses to make any payment of Common Expenses when due, the amount thereof, together with interest, cost, reasonable attorney's fees and any late charges, shall constitute a lien from the date the amount was due on the Owner's Lot and on any rents or proceeds therefrom. The lien shall be subordinate to the lien of a First Mortgage on the Lot, except for the amount of the unpaid Common Expenses which accrues from and after the date on which the First Mortgagee comes into possession of or acquires title to the Lot, whichever occurs first (together with any interest, costs, reasonable attorney's fees and any late charges related thereto). If any lien for unpaid assessments prior to the date the First Mortgagee comes into possession of or acquires title to the Lot has not been extinguished by the process by which the First Mortgagee came into possession of or acquired title to the Lot, the First Mortgagee shall not be liable for accrued unpaid assessments and, upon written request to the Board by the First Mortgagee, the lien shall be released in writing by the Association to the extent of any such prior assessments.

7.4 Certificate of Payment.

Any Person acquiring an interest in Lot shall be entitled to a statement from the Association setting forth the amount of unpaid assessments, if any. No person shall be liable for, nor shall any lien attach to a Lot in excess of, the amount set forth in such a statement, except for assessments which occur or become due after the date thereof and any interest, costs, reasonable attorneys' fees and late charges related to the assessments. The Association may charge a reasonable fee for the preparation of any such statement.

7.5 Foreclosure of Lien.

The lien provided for in this Section may be foreclosed by the Association in any manner provided or permitted for the judicial foreclosure of realty mortgages or deeds of trust in the State of Arizona. All of the provisions of this Section 7 relating to the lien provided for

herein (including, but not limited to, the subordination provisions) shall apply with equal force in each other instance provided for in this Declaration wherein it is stated that payment of a particular assessment, charge or other sum shall be secured by the lien provided for in this Section 7.

7.6 Budget.

No later than 60 days prior to the beginning of each fiscal year of the Association, the Board shall prepare, or cause to be prepared, a pro forma annual budget for the Association for the upcoming fiscal year. The budget shall take into account all Common Expenses, and, to the extent that assessments from the prior year(s) have been more or less than the expenditures and provision for reserves of such prior year(s), the surplus or deficit. If, during the course of any fiscal year, or portion thereof, it appears that the assessments determined in accordance with the estimated annual budget are insufficient to cover the actual Common Expenses, or are in excess of the amount necessary to cover the actual amount necessary for payment of Common Expenses, then the Board may prepare a supplemental budget and increase or decrease the assessment as may be necessary, subject, however, to the limitations set forth in Section 7.7.

7.7. Maximum Assessments.

Prior to January 1 of the year following the first conveyance of a Lot with a completed residence on it by Developer or a Designated Builder to and Owner, the maximum amount which any Owner shall be required to pay as his proportionate share of the Common Expenses may not exceed \$ 720.00 per year. Notwithstanding the provisions of Section 7.6, prior to January 1 of the year immediately following conveyance of the first Lot with a completed residence on it by Developer or a Designated Builder to an Owner, the Board may fix and thereafter adjust the assessment payable by all Owners for Common Expenses at such amounts as the Board reasonably elects, provided the maximum amount payable by each Owner does not exceed the maximum amount set forth in the preceding sentence. From and after this January 1, the maximum amount which each Owner may be required to pay as his proportionate share of the common Expenses may be increased each year by the Board to an amount not in excess of the sum of: (i) the amount of the assessment due and payable by an Owner as his proportionate share of Common Expenses for the preceding year, plus the greater of (ii) an amount equal to 10% of the assessment due and payable by the Owner for the preceding year, or (iii) an amount equal to the percentage change in the Consumer Price Index - United States City Average for Urban Wage Earners and Clerical Workers - All items (1967 = 100), as published by the United States Department of Labor, Bureau of Labor Statistics (or such other government index with which it may be replaced), for the preceding year. Notwithstanding the foregoing, if two-thirds of each class of members of the Association approve, the maximum allowable assessment may be increased by an amount greater than otherwise permitted pursuant to this Section 7.7.

7.8 Special Assessments.

If the Board determines that the estimated total amount of funds collected from regular assessments for a given fiscal year is or will be inadequate to meet Common Expenses for any reason (including, but not limited to, costs of construction, unexpected repairs, additions or replacements of improvements in Common Areas, increases in taxes, or increases in the costs of insurance or any other obligation of the Association), the Board may, with the consent of two-thirds of each class of Members of the Association, levv a special assessment against all Owners to

the extent necessary to make up the deficiency. The amount of the required special assessment shall be determined by the Board, in its sole discretion. The special assessments shall be levied against the Owners of Lots in the same proportion as their Fractional Interests. The special assessment shall be payable at such time or in installments from time to time, as the Board may determine. The special assessments provided for herein shall be secured by the lien provided in this Section 7 of the Declaration. Special assessments approved by the Members as provided in this Section 7.8 shall not be subject to the limitations of Section 7.7 of the Declaration.

7.9 No Assessment Against Owner of Tracts. No annual or special assessment shall be levied against the Owners of Tracts.

8. Mortgages.

Each Owner shall have the right, subject to the provisions hereof, to make separate Mortgages for his Lot or Tract. No Owner shall have the right or authority to make or create or cause to be made or created any Mortgage, or other lien or security interest, on or affecting the Property or any part thereof, except only to the extent of his Lot or Tract.

9. Exclusive Use Rights.

By action of the Board, minor portions of the Common Areas adjoining a Lot may be reserved for the exclusive control, possession and use of the Owner of the Lot. If such an area serves as access to and from two Lots, the Owners of the two Lots shall have joint control, possession and use if the area as reasonably serves both Lots. The exclusive use rights created herein are subject to the blanket utility easement, maintenance and architectural control provisions contained in this Declaration and to such reasonable rules and regulation with respect to possession, control, use and maintenance as the Board may from time to time promulgate. Easements are hereby created in favor of running with each Lot having such an area, for the creation of such exclusive control and use of each such area. Each Owner, by accepting title to a Lot, shall be deemed to have further ratified the easements and rights to exclusive use by this Section 9.

10. Insurance.

Insurance shall be carried by the Association on the Common Areas and the activities of the Association and shall be governed by the following provisions.

10.1 Authority to Purchase.

The Association, by and through the Board, shall purchase and maintain certain insurance upon the Common Areas and the activities of the Association including, but not limited to, the insurance described in Section 10.2. Provision shall be made for the issuance of certificates of endorsement to any First Mortgagee if requested by it. Such policies and endorsements thereon, or copies thereof, shall be deposited with the Association. The Board shall deliver a copy of certificates of insurance evidencing the Association's coverage or, by and through its agent, advise the Owners of the coverage of the policies, to permit the Owners to determine

which particular items are included within the coverage so that the Owners may insure themselves as they see fit if certain items are not insured by the Association. The Board may impose a reasonable charge for copies of insurance certificates or policies requested by any Owner. Without limiting the generality of the foregoing, it shall be each Owner's responsibility to provide for himself insurance on the contents of any dwelling or other structure constructed on his Lot or Tract, his additions and improvements thereto, decorating therein and furnishings and personal property therein, his personal property stored elsewhere on the Property, his personal liability to the extent not covered by the liability insurance for all of the Owners obtained as part of the Common Expenses as above provided, and such other insurance which is not carried by the Association as the Owner desires. No Owner shall maintain any insurance on his Lot or Tract which would limit or reduce the insurance proceeds payable under the casualty insurance maintained by the Association in the event of damage to the improvements or fixtures in the Property.

10.2 Coverage.

The Association shall maintain and pay for policies of insurance as follows:

(1) Policies of a multi-peril type covering the Common Areas providing, as a minimum, fire and extended coverage, and all other coverage in kinds and amounts customarily acquired or required for projects similar in construction, of demolition, vandalism, malicious mischief, and windstorm and water damage, in an amount not less than 100% of the insurable value (based upon replacement cost as determined at least once every two years by a qualified insurance appraiser selected by the Board), and, if available, agreed amount, inflation guard and construction code endorsements.

(2) Commercial general liability insurance covering all of the Common Areas and public ways in the Project in a minimum amount of at least \$1,000,000.00 per occurrence for personal injury, deaths and/or property damage. This insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association and its agents or other Owners. The scope of coverage shall include all other coverage in the kinds and amounts customarily but not limited to, liability of the Association related to employment contracts of the Association, water damage liability, liability for non-owned and hired automobiles, and liability for property of others.

(3) If there is ever a steam boiler in operation in connection with the Project, there must be in force boiler explosion insurance evidenced by the standard form of boiler and machinery insurance policy and providing, as minimum coverage, \$100,000.00 per accident per location.

(4) If the Project is located in an area identified by the Secretary of Housing and Urban Development as an area having special flood hazards, a "blanket" policy of flood insurance on the Project must be maintained in amount not less than 100% of the insurable value, based upon replacement cost, or the maximum limit of coverage available under the National Flood Insurance Act of 1968, as amended, whichever is less.

Such a flood insurance policy shall be in the form of the standard policy issued by the National Flood Insurance Association.

(5) The Association must obtain fidelity coverage against dishonest acts on the part of directors, officers, managers, trustees, agents, employees or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance must name the Association as the named insured and shall be written to provide protection which is in no event less than the greater of: (I) one and one-half times the Association's estimated annual operation expenses and reserves or, (ii) the sum of three months' assessments on all Lots then within the Project plus the reserve funds held by the Association. In connection with such coverage, an appropriate endorsement to the policy to cover any person who serves without compensation shall be added if the policy would not otherwise cover volunteers.

(6) A worker's compensation policy, if necessary to meet the requirements of law.

(7) Such other insurance as the Board Shall determine from time to time to be desirable.

(8) Notwithstanding any other provisions herein, the Association shall continuously maintain in effect such casualty, flood and liability insurance and a fidelity bond meeting the insurance and fidelity bond requirements for similar projects established by any interested Institutional Guarantor, except to the extent such coverage is not reasonably available or has been waived in writing by the Institutional Guarantor.

10.3 Provisions Required.

The insurance policies purchased by the Association shall, to the extent reasonably possible, contain the following provisions:

(1) The coverage afforded by policies shall not be brought into contribution or proration with any insurance which may be purchased by Owners or First Mortgagees.

(2) The conduct of any one or more Owners shall not constitute grounds for avoiding liability on any policies

(3) There shall be no subrogation with respect to the Association, its agents or employees, Owners and members of their household and their families and employees, and each Mortgagee of all or any part of the Property or of any Lot, or the policy(ies) should name such people as additional insureds; and, each policy must contain a waiver of any defenses based on co-insurance or on invalidity arising from the acts of the insured.

(4) A "severability of interest" endorsement shall be obtained which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

(5) A statement of the name of the insured shall be included in all

policies, in form and substance similar to the following:

“Highland Ranch III Owners Association, for the use and benefit of the individual owners” [designated by name, if required].

(6) A standard mortgagee clause which must be endorsed to provide that any proceeds shall be paid to the Association, for the use and benefit of Mortgagees as their interests may appear, or which must be otherwise endorsed to fully protect the interest of First Mortgagees, their successors and assigns.

(7) For policies of hazard insurance, a standard mortgagee clause shall provide that the insurance carrier shall notify the First Mortgagee named at least ten days in advance of the effective date of any reduction in or cancellation of the policy.

(8) Any “no other insurance” clause shall exclude insurance purchased by Owners or First Mortgagees.

(9) Coverage must not be prejudiced by (a) any act or neglect of Owners when such act or neglect is not within the control of the Association or (b) any failure of the Association to comply with any warranty or condition regarding any portion of the Property over which the Association has no control.

(10) Coverage may not be canceled or substantially modified without at least 30 days’ (or such lesser period as otherwise provided herein) prior written notice to any and all insureds including First Mortgagees, their successors, and assigns, and interested Institutional Guarantors and their Servicers, if any.

(11) Any policy of property insurance which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such an election is not exercisable without the prior written approval of the Association, or when in conflict with the insurance trust provisions contained herein, or any requirement of law.

10.4 First Mortgagee Protection.

(1) The Association shall, upon written request, provide each First Mortgagee with a letter wherein the Association agrees (a) to give timely written notices to each First Mortgagee or Servicer, or any entity or individual designated by a First Mortgagee or Servicer, whenever damage (whether arising from casualty, condemnation or otherwise) to the Common Areas and related facilities exceeds \$10,000, (b) to give timely written notice to the First Mortgagee or Servicer, or any entity or person designated by a First Mortgagee or Servicer, whenever damage (whether arising from casualty, condemnation or otherwise) to a Lot known to the Association covered by the First Mortgagee exceeds \$1,000, and (c) any lapse, cancellation or material modification of any insurance or fidelity bond maintained by the Association.

(2) Each hazard insurance policy shall be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better, or if this rating service is discontinued, and equivalent rating by a successor thereto or a similar rating service.

(3) Each insurance carrier must be specifically licensed or authorized by law to transact business within the State of Arizona.

(4) Policies shall not be utilized where: under the term of the carrier's charter, bylaws or policy, contributions may be required or assessments may be made against the Owner or First Mortgagee or any entity or individual purchasing or guaranteeing any First Mortgage or may become a lien superior to any First Mortgage; by the terms of the carrier's charter, bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policyholders, or members; or, the policy includes any limiting clauses (other than insurance condition) which could prevent any Owner or the First Mortgagee, its successors or assigns, from collecting insurance proceeds.

(5) The mortgagee clause of each insurance policy shall be properly endorse and necessary notices of transfer must have been given, and any other action required to be taken must be taken in order to fully protect, under the terms of the policies and applicable law, the interest of all First Mortgagees, their successors and assigns. Where permissible, the insurance carrier shall be required to name the Servicer of a First Mortgage, or "[name of Servicer], its successors or assigns," as the First Mortgagee under the mortgagee clause. If permissible, where a deed of trust is utilized, the insurance carrier shall be required to use "[name of Servicer], its successors or assigns, beneficiary" or [name of trustee], its successors or assigns, for the benefit of [name of Servicer]" instead of only the name of the trustee under the deed of trust.

(6) All insurance drafts, notices, policies, invoices and all other similar documents, or their equivalent, shall be delivered directly to each Servicer involved, if any, regardless of the manner in which the mortgagee clause is endorsed. The Servicer's address on any First Mortgagee endorsement on a policy shall be used in the endorsements in lieu of the address of the First Mortgagee if requested by the First Mortgagee.

(7) First Mortgagees may pay overdue premiums, or may secure new insurance coverage on the lapse of a policy, with respect to any insurance required to be maintained by the Association as provided in this Section 10, and First Mortgagees making expenditures therefor shall be owed immediate reimbursement by the Association.

10.5 Non-Liability of Association/Board.

Notwithstanding the duty of the Association to obtain insurance coverage as stated herein, neither the Association nor any Board member or other Person shall be liable to any Owner or Mortgagee if any risks or hazards are not covered by insurance or if the amount of insurance is not adequate. It shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for such additional insurance coverage and protection as the Owner may desire.

10.6 Premiums.

Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense, except that the amount of increase over any annual or other premium occasioned by the use, misuse, occupancy or abandonment of a Lot or Tract or its appurtenances, or of the Common Areas, by an Owner, or by any Occupant, guest or invitee of an Owner, shall be assessed against that particular Owner.

10.7 Insurance Claims.

The Association, acting by and through its Board, is hereby irrevocably appointed agent and attorney-in-fact for each Owner and for each holder of a First Mortgage or other lien upon a Lot or Tract, and for each owner of any other interest in the Property, subject to the provisions contained herein, to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and the Board has full and complete power to act for the Association in this regard.

10.8 Benefit.

Except as otherwise provided herein, all insurance policies purchased by the Association shall be for the benefit of the Association, the Owners, First Mortgagees and interested Institutional Guarantors, as their interests may appear.

11. Damage, Destruction and Condemnation.

11.1 Definitions.

As used in this Section, the following terms shall have the following definitions:

(a) "Destruction" shall exist whenever the Board determines that, as a result of any casualty, damage or destruction, the Common Areas, or any part thereof, have been damaged.

(B) "Condemnation" means the taking of any property interest in the Common Areas by the exercise of a power of eminent domain, or the transfer or conveyance of such an interest to a condemning authority in anticipation of such an exercise.

(C) "Restoration" in the case of Destruction means the repair or reconstruction of the damaged or destroyed portions of the Common Areas in accordance with the provisions of this Section. "Restoration" following any Condemnation means the repair or reconstruction of the remaining portions of the Common Areas, if any, to restore the Common areas to an attractive, sound, functional and desirable condition, including, if the Board deems it desirable or necessary, the replacement of any improvements so taken. Insofar as reasonably possible, taking into account the portions of the Common Areas

subject to Destruction or taken by Condemnation, Restoration shall be in conformance with the original plans and specifications or, if the Board determines that adherence to applicable laws, ordinances, building codes or other governmental rules or regulations then in effect, such repairs or reconstruction shall be of a kind and quality substantially the same as the condition in which the affected portions of the Common Areas existed before the Destruction or Condemnation. Any Restoration not in accordance with original plans and specifications shall first be approved by a majority of First Mortgagees, based on one vote for each mortgage owned.

(D) "Restoration Funds" in the case of any Destruction means any proceeds of insurance received by the Association as a result of the Destruction of any portion of the Common Areas, but excluding that portion of any proceeds of insurance legally required to be paid to any party other than the Association, including a Mortgage of all or any part of the Common Areas or Lots, and any uncommitted funds or income of the Association other than that derived through assessments or special assessments. "Restoration Funds" in the case of Condemnation means the entire amount received by the Association as compensation for any Condemnation including, not limited to, any amount awarded as severance damages, but deducting therefrom reasonable and necessary costs and expenses including, but not limited to, attorney's fees, appraiser's fees and court costs, together with any uncommitted funds or income of the Association other than that derived through assessments or special assessments.

11.2 Restoration of Common Areas.

In the event of any Destruction or Condemnation of the Common Areas, the Association shall undertake the Restoration of the Common Areas without a vote of the Owners unless two-thirds of each class of Members of the Association and three-fourths of the First Mortgagees (based upon one vote for each Mortgage owned) agree in writing at or prior to the special meeting hereinafter provided that the Association should not undertake the Restoration of the Property.

11.3 Construction Contract.

In the event the Association undertakes the Restoration of the Common Areas, the Board shall contract with a reputable contractor or contractors who shall, if required by the Board, post a suitable performance or completion bond. The contract with such contractors shall provide for payment of a specified sum for completion of the work described therein and shall provide for periodic disbursements of funds, which shall be subject to the prior presentation of an architect's certificate containing such provisions as may be appropriate in the circumstances and deemed suitable by the Board.

11.4 Restoration Funds.

Upon receipt by the Association of any insurance proceeds, condemnation awards or other funds resulting from the Destruction or Condemnation of any portion of the Common Areas, the Association may cause the Restoration Funds to be paid directly to a bank located in Maricopa County, Arizona, whose accounts are insured by the Federal Deposit Insurance Corporation, or its successor agency, as designated by the Board, as trustee (the "Restoration Funds Trustee") for the Association. Any such funds shall be received, held and

administered by the Restoration Funds Trustee subject to a trust agreement consistent with the provisions of this Declaration and which shall be entered into between the Restoration Funds Trustee and the Association. Disbursements to contractors performing any repair or reconstruction upon the Common Areas shall be made periodically as the work progresses in a manner consistent with procedures then followed by prudent lending institutions in Maricopa County, Arizona.

11.5 Special Assessment for Restoration.

If the Restoration Funds are, or appear to the Board to be, insufficient to pay all of the costs of Restoration, the Board shall, with the consent of two-third of each class of Members of the Association, levy a special assessment to make up any deficiency. Such a special assessment shall be levied against all Owners of Lots to the Extent necessary required special assessment shall be determined by the Board, in its sole discretion. The special assessments relating to the Restoration of the Common Areas shall be levied against the Owners of Lots in the same proportion as their Fractional Interests. The special assessment shall be payable at such time or in installments from time to time, as the Board may determine. The special assessment provided for herein shall be secured by the lien provided for in Section 7 of this Declaration.

11.6 Special Meeting.

In the event of the Destruction or Condemnation of the Common Areas, the Board, at its election or upon presentation of a petition signed by not less than 10% of the Owners requesting such a meeting, shall convene a special meeting of the Association for resolving whether the Association should undertake the Restoration of the Common Areas in accordance with Section 11.2.

11.7 Decisions Not to Restore.

If the Common Areas are not to be restored following any Destruction or Condemnation, the Board shall use the Restoration Funds to pay all of the Mortgages or other liens or encumbrances of record with respect to the Common Areas which will not be restored. If any Restoration Funds remain after such an application of them, they shall be held by the Association for working capital or reserves, in the descretion of the Board.

11.8 Emergency Repairs.

Notwithstanding any provision of this Section 11, the Board may, without any vote of the Owner or First Mortgagees, undertake any repair which the Board deems reasonably necessary to avoid further damage or destruction which is likely, in the Board's sole opinion, to cause substantial diminution in the value of the Common Areas or which presents an unreasonable risk of injury to person or property.

11.9 Condemnation of a Lot.

In the event that any Lot or Tract is damaged or destroyed (in whole or in part), the Owner shall promptly undertake or cause to be undertaken the repair or reconstruction of

the damaged or destroyed portions of the Lot or Tract. If a Lot or Tract is not restored within a reasonable time following notice by the Board to the Owner when restoration is mandatory hereunder, then the Association shall be entitled to exercise any right or remedy available under this Declaration, including affirmative injunctive relief, and shall have the further right to enter into possession of the Lot or Tract in order to undertake the restoration of the Lot or Tract in accordance with this Section.

12. Party Walls.

12.1 Rights and Duties.

The rights and duties of the Owners and the Association with respect to party walls shall, to the extent not inconsistent with the provisions of this Section, be governed by the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions. The cost of reasonable repairs and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to their use.

12.2 Restoration.

If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration in proportion to their use, without prejudice, however, to the right of any such Owner to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions. Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes the party wall to be damaged or to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements. The right of an Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to the Owner's successors in title.

12.3 Disputes.

In the event of any dispute between Owners concerning a party wall, or under the provisions of this Section, upon the written request of any one of the Owners addressed to the Association, the disputed matter shall be decided by the Board, whose decision shall be final and binding upon the Owners.

13. Maintenance, Repairs and Replacements.

13.1 Maintenance of Lots and Tracts.

Each Owner shall furnish and be responsible for, at his own expense, all of the maintenance, repairs and replacements of his own Lot or Tract in a neat and orderly condition, in accordance with such rules and regulations as may be adopted by the Association, and consistent with the level of quality, and in accordance with the plans and specifications applicable to the initial construction within the Project and the level of maintenance of the Common Areas by Developer and Designated Builders.

13.2 Maintenance of Common Areas.

Except as otherwise provided herein to the contrary, maintenance, repairs and replacements of the Common Areas shall be furnished by the Association as part of the Common Expenses, subject to the Bylaws and rules and regulation of the Association. If, due to the intentional act or negligence of an Owner or his invitee, guest or other authorized visitor (for whom the Owner may be held legally responsible), or an Occupant, damage is caused to the Common Areas or to a Lot or Tract owned by others, or maintenance, repairs or replacements are required which would otherwise be at the common expense, then the Owner or Occupant shall pay for the damage and for such maintenance, repairs and replacements as may be determined by the Board, to the extent not covered by the Association's insurance. An authorized representative of the Board, or of the manager or managing agent of the Project, and all contractors and repairmen employed or engaged by the Board or the manager or managing agent, shall be entitled to reasonable access to each of the Lots or Tracts as may be required in connection with maintenance, repairs or replacements of or to the Common Areas or any equipment, facilities or fixtures affecting or serving other Lots, Tracts and the Common Areas.

13.3 Enforcement of Obligations.

In the event that any Owner fails to maintain and repair his Lot or Tract and improvements on its as required hereunder, the Association, following reasonable notice to the Owner (except in emergency situations where such notice is not practical), in addition to all other remedies available to it hereunder or by law, and without waiving any alternative remedies, shall have the right, through its agents and employees, to enter upon the Lot or Tract at any reasonable time and in any reasonable manner, and to repair, maintain, and restore the Lot or Tract, including the exterior of the improvements erected thereon. Each Owner (by acceptance of a deed for his Lot or Tract) hereby covenants and agrees to repay to the Association the cost of any such repairs immediately upon demand, and the failure of any Owner to make a required payment shall carry with it the same consequences as the failure to pay any assessment hereunder when due, including the imposition of interest and late charges in accordance with the rules and regulation of the Association, all of which shall be the personal obligation of the Owner and secured by the lien provided for in Section 7.

13.4 Disputes.

If any maintenance, repair, replacement or reconstruction involves more than one Lot or Tract, and if the Owners of the affected Lots or Tracts do not agree as to who should perform the work, or as to the allocation of the cost thereof, the decision shall be made by the Board and the decision shall be final and binding upon the Owners.

14. Architectural Control.

14.1 Architectural Committee.

The Board may establish and appoint the members of an Architectural Committee to perform the functions of the Architectural Committee set forth in the Declaration. Prior to the appointment of the initial members of the Architectural Committee, and at any time when there is no one serving on the Architectural Committee (whether due to death, resignation or removal), the Board shall exercise any and all rights, powers, duties and obligations of the Architectural Committee. The Architectural Committee shall adopt, and may from time to time amend, supplement and repeal, architectural and landscaping standards and application procedures and shall make the same available to Owner. Such standards and procedures shall interpret, implement and supplement this Declaration, and shall set forth procedures for Architectural Committee review. Such standards and procedures may include, without limitation, provisions regarding:

14.1.1 architectural design, with particular regard to the harmony of the design with surrounding structures and topography;

14.1.2 landscaping design, content and conformance with the character of the Property, and permitted and prohibited plants;

14.1.3 requirements concerning exterior color schemes, exterior finishes and materials; and

14.1.4 signage.

Such standards and procedures shall have the same force and effect as the rules and regulations promulgated hereunder by the Board. Such standards and procedures and all amendments, supplements, repeals or replacements to or of such standards and procedures shall be subject to the approval of the Board.

14.2 Submission and Review of Plans.

Except for improvements installed or constructed by Developer or any Designated Builder, no construction, building, additions, modifications, improvements, the exterior appearance of any Lot or Tract or the improvements located thereon from their natural or improved state existing on the date that such Tract or Lot (and the completed residence thereon) were first conveyed by Developer or a Designated Builder shall be made or done without the prior approval of the Architectural Committee. No changes or deviations in or from the plans and specification once approved by the Architectural Committee shall be made without the prior written approval of the Architectural Committee. Nothing contained herein shall be construed to limit the right of an Owner to make interior alteration within his Lot or Tract which are not Visible from Neighboring Property.

14.3 Other Approval; Liability.

No approval by the Architectural Committee of any proposed construction, installation, modification, addition or alteration shall be deemed to replace or be substituted for any building permit or similar approval required by any applicable governmental authority, nor shall any such approval be deemed to make the Architectural Committee (or the Board or the Association) liable or responsible for any damage or injury resulting or arising from any such construction, modification, addition or alteration. Neither Developer, the Association, the

Board nor the Architectural Committee (nor any member thereof) shall be liable to the Association, any Owner or any other party for any damage, loss or prejudice suffered or claimed on account of:

14.3.1 the approval or disapproval of any plans, drawings or specification, whether or not defective;

14.3.2 the construction or performance of any work, whether or not pursuant to approved plans, drawings and specification; or

14.3.3 the development of any Lot or Tract.

14.4 Fee.

The Board may establish a reasonable processing fee to defer the costs of the Architectural Committee in considering any request for approvals submitted to the Architectural Committee or for appeals to the Board, which fee shall be paid at the time the request for approval or review is submitted.

14.5 Inspection.

Any member or authorized consultant of the Architectural Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot or Tract, after reasonable notice to the Owner or Occupant of such Lot or Tract, in order to inspect the improvement constructed or being constructed on such Lot or Tract to ascertain that such improvements have been, or are being, built in compliance with this Declaration, the standards and procedures adopted by the Architectural Committee and any approved plans, drawings or specifications.

14.6 Waiver.

Approval by the Architectural Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring approval of the Architectural Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

14.7 Appeal to Board.

Any Owner or Occupant aggrieved by a decision of the Architectural Committee may appeal the decision to the Board in accordance with procedures to be established in the Architectural Committee's standards and procedures. In the event the decision of the Architectural Committee is overruled by the Board on any issue or question, the prior decision of the Architectural Committee shall be deemed modified to the extent specified by the Board.

15. Encroachments.

Each Lot and the Common Areas shall be subject to an easement for encroachments, including, but not limited to encroachments of walls, ceilings, ledges, floors, and roofs created by construction, settling and overhangs as originally designed or constructed, or as created by discrepancies between the Plat and the actual construction. If any portion of the Common Areas actually encroaches upon any Lot, or if any Lot actually encroaches upon any portion of the Common Areas, or if any Lot actually encroaches upon another Lot, as the Common Areas and the Lots are shown by the Plat, an easement for the encroachment and for the maintenance thereof, so long as they stand, shall exist. In the event that any Lot or structure is repaired, altered or reconstructed, similar encroachments shall be permitted and an easement for the encroachments and for the maintenance thereof shall exist. Each Owner and any other Person acquiring any interest in the Property shall be deemed to acquiesce in and agree to the existence of such easements by accepting a deed from any seller or by acquiring any interest whatsoever in the Property.

16. Rental Lots.

Notwithstanding anything herein to the contrary, any Owner may rent or otherwise grant occupancy rights to any Lot (but not less than an entire Lot) owned by him, with the lessee, renter or other Occupant being entitled to the same privileges of use of the Lot and Common Areas and subject to the same restrictions as the Owner of the Lot. With the exception of a First Mortgagee in possession of a Lot following a default in a First Mortgage, or a foreclosure proceeding or deed or other arrangement in lieu of foreclosure, no Owner may allow the use of his Lot for transient or hotel purposes or for a period of less than 30 days. All lease or other occupancy agreements, including those for a month-to-month tenancy, shall be in writing and provide that the term of the agreement shall be subject in all respects to this Declaration and the Articles, Bylaws and rules and regulations of the Association, and that failure to comply with the provisions of such documents shall constitute a default under the agreement. A copy of the agreement shall be delivered by the Owner to the Board on or before the commencement of occupancy under the agreement. Each Owner granting occupancy rights to his Lot shall remain jointly and severally liable with the Occupant for the payment of any assessment required hereunder and compliance with this Declaration, the Articles, Bylaws and rules and regulations of the Association, including any fines or penalties levied as a result of a violation thereof.

17. Use and Occupancy Restrictions.

17.1 Residential Use.

No part of the Property shall be used for other than residential and related purposes except Developer reserves for itself and for Designated Builders the right to maintain sales offices, storage units, model units, and signs on the Property, together with rights of ingress thereto and egress therefrom, until all Lots have had residences constructed on them and the Lots and residences have been sold and occupied, and the Board may approve appropriate and reasonable non-residential uses.

17.2 Landscaping.

The landscaping on the portion of each Lot which is Visible from Neighboring Property (including, but not limited to, the front yard of the Lot) shall be completed within six months after the residence on the Lot is first occupied. No landscaping (other than landscaping installed by Developer or any Designated Builder) shall be erected, placed or maintained anywhere in or upon a Lot unless the plans for such landscaping have been approved by the Architectural Committee as provided in Section 14.

17.3 Temporary Structures.

No structure of a temporary character, whether trailer, basement, tent, shack, garage, barn shed or other, shall be used as a residence, or otherwise kept on a Lot or Tract so as to be Visible from Neighboring Property, at any time except such structures as Developer or a Designated Builder may find necessary or convenient to the development and sale of Lots.

17.4 Cancellation of Insurance.

No Owner shall permit anything to be done or kept in his Lot or Tract or in or upon any Common Areas which will result in the cancellation of insurance thereon or which would be in violation of any law.

17.5 Signs.

No sign of any kind shall be displayed to the public view on any Lot, Tract or any Common Areas without the approval of the Board except (a) such signs as may be used by Developer or Designated Builders in connection with the development and sale of Lots, and (b) one "For Sale" or "For Rent" sign on each Lot, which sign shall have a total face area of five feet or less and the location of which sign may be regulated by rule or regulation of the Board or Architectural Committee.

17.6 Pets.

Subject to the provisions of Sections 17.6 and 17.19, a reasonable number of small, commonly accepted household pets may be kept in each Lot without the prior approval of the Board. All additional pets are prohibited unless approved in advance by the Board. No animal shall be kept, bred or maintained for any commercial purpose, and, except as otherwise provided above, no animals of any kind shall be raised, bred or kept in any Lot or in or upon any Common Areas. No animal shall be allowed to become a nuisance, whether by making an unreasonable amount of noise or otherwise. All pets shall be leashed or otherwise appropriately restrained when in any part of the Property other than in a Private Yard or a residence. Upon the request of any Owner, the Board shall determine, in its sole and absolute discretion, whether, for the purposes of this Section 17.5, a particular animal is a commonly accepted household pet or whether a particular animal is a nuisance. The keeping of pets shall also be subject to such additional rules and regulations with respect thereto as the Association may adopt.

17.7 Nuisances.

No Owner shall permit or suffer anything to be done or kept about or within his Lot or Tract which will obstruct or interfere with the rights of other Owners or Occupants, or annoy them by unreasonable noises or otherwise, nor commit or permit any nuisance about or within his Lot or Tract or commit or suffer any illegal act to be committed therein. Each Owner shall comply with all of the requirements of the health authorities and of all other governmental authorities with respect to his Lot or Tract and the Common Areas.

17.8 Vehicles.

Except as specifically permitted by the Board, (a) no boats, trailers, motor homes, campers, trucks classed by manufacturer capacity rating as exceeding 3/4 ton, or unlicensed or inoperative vehicles shall be parked or stored in or upon any Lot or Tract, the Common Areas or the public streets of the Project, other than temporary parking on a Lot, Tract or the adjacent street for purposes of loading or unloading; and (b) no vehicle shall be repaired or rebuilt in or on any portion of any Lot that is visible from Neighboring Property or upon the Common Areas or the public streets of the Project.

17.9 Lighting.

Except as initially installed by Developer or a designated Builder, no spotlights, flood lights or other high intensity lighting shall be placed or utilized upon any Lot or Tract which will allow light to be directed or reflected in any manner on the Common Areas, or any part thereof, or any other Lot, Tract or public streets in the Project.

17.10 Air Conditioners.

No window air conditioners or portable units of any kind Visible from Neighboring Property shall be installed in any Lot. No heating, cooling, ventilating or air conditioning units, or solar panels or equipment, shall be placed on any Lot so as to be Visible from Neighboring Property unless approved by the Board.

17.11 Reflected Materials.

No reflective materials including, but not limited to, aluminum foil, reflective screens or glass, mirrors or similar type items, shall be permitted to be installed or placed on the outside or inside of any windows which are Visible from Neighboring Property without the prior written approval of the Board.

17.12 Antennas.

No radio, television or other antennas of any kind or nature shall be placed or maintained upon any Lot except as may be permitted by the Board. All cable television lines serving a Lot shall be placed so as to not be Visible from Neighboring Property. Each Owner shall pay for any damage to the Common Areas (including, but not limited to, landscaping therein) caused by any installation of cable television lines serving the Owner's Lot.

17.13 Trash Collection.

The Association may maintain trash and garbage collection bins or similar facilities in such areas of the Common Areas as the Board determines. No garbage or trash shall be kept, maintained or contained in any Lot or Tract so as to be Visible from Neighboring Property except in sanitary containers with lids or covers. Sanitary containers placed in public view for collection shall be promptly stored out of public view after collection.

17.14 Clotheslines.

Outside clotheslines or other facilities for drying or airing clothes shall not be erected, placed or maintained on the Property unless they are within the Private Yard on a Lot and are not Visible from Neighboring Property.

17.15 Vegetation.

No shrub, tree or other vegetation belonging to any Owner shall be allowed to overhang another Lot without the consent of the Owner. Consent may be revoked at any time after having been given.

17.16 No Mining.

No portion of the Property shall be used in any manner to explore for or remove any water, oil or other hydrocarbons or minerals of any kind or earth substance of any kind.

17.17 Safe Condition.

Without limiting the foregoing, each Owner shall maintain and keep his Lot or Tract and any Common Areas subject to his exclusive control at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might interfere with the reasonable enjoyment by other Owners of their respective Lots or Tracts or the Common Areas.

17.18 Enforcement.

The Board or its authorized agents may enter any Lot or Tract in which a violation of these restrictions or the rules and regulation of the Association exists and may correct such violation at the expense of the Owner of the Lot or Tract. The Board may enact and impose a reasonable system of fines, penalties and/or fees for violation of these restrictions or the rules and regulations of the Association.

18. Rights and Duties of First Mortgagee.

Notwithstanding and prevailing over any other provisions of this Declaration, the Articles, Bylaws, rules and regulations of the Association, and management agreements, the following provisions shall apply to and benefit each holder of a First Mortgage:

18.1 No Right of First Refusal.

None of the Constituent Documents shall provide that the right of an Owner to sell, transfer or otherwise convey his Lot will be subject to any right of first refusal, or similar restriction, in favor of the Association. Any "right of first refusal" that may ever be contained in the Constituent Documents shall not impair or affect the rights of a First Mortgagee to foreclose or take title to a Lot pursuant to the remedies provided in the First Mortgage, to accept a deed (or assignment) in lieu of foreclosure in the event of default by a Mortgagor, or interfere with a subsequent sale or lease of a Lot so acquired by the First Mortgagee.

18.2 Mortgagee in Possession.

A First Mortgagee who comes into possession of a mortgaged Lot by virtue of foreclosure of the Mortgage, or through any equivalent proceedings, such as, but not limited to, the taking of a deed or assignment in lieu of foreclosure or acquiring title at a trustee's sale under a first deed of trust, or any third party purchaser at a foreclosure sale or trustee's sale, will not be liable for the Lot's unpaid dues, charges or assessments which may accrue prior to the time the First Mortgagee or third party purchaser comes into possession of the Lot. Any such Person shall acquire title free and clear of any lien authorized by or arising out of the provisions of this Declaration which secures the payment of any dues, charges or assessments accrued prior to the time the Person came into possession of the Lot. Any such unpaid dues, charges or assessment against the Lot foreclosed shall be deemed to be a Common Expense charged proratably against all of the Lots. Nevertheless, in the event the Owner against whom the original assessment or charge was made is the purchaser or redemptioner, the lien shall continue in effect and may be enforced by the Association for the amount of the unpaid dues, charges or assessments that were due prior to the final conclusion of any such foreclosure or equivalent proceeding. Further, any such unpaid assessment or charge shall continue to exist as the personal obligation of the defaulting Owner to the Association, and the Board may use reasonable efforts to collect from the Owner even after he is no longer a member of the Association.

18.3 Consent of Mortgagees Required.

Unless at least three-fourths of the Eligible Holders (based upon one vote for each First Mortgage owned), including, in the case of the partition or subdivision of any Lot, the holder of the First Mortgage for the Lot, and two-thirds of the Owners, or such higher percentage as required in this Declaration or by applicable law, have given their prior written approval, neither the Owners nor the Association shall be entitled to:

(1) By act or omission, seek to abandon or terminate this Declaration, except where provided by law in the case of substantial destruction by fire or other casualty or in the case of taking by condemnation eminent domain.

(2) Change the pro rata Fractional Interest or obligation of any individual Lot for the purpose of levying assessments or charges or allocating distributions or hazard insurance proceeds or condemnation awards (except as provided in Section 11.9, relating to Condemnation of a Lot).

(3) Partition or subdivide any Lot.

(4) By act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas by the Project shall not be deemed a transfer within the meaning of this clause).

(5) Use hazard insurance proceeds payable or paid to the Association due to losses to the Common Areas or the Lots or portions thereof for other than the repair, replacement or reconstruction of such areas, except as provided herein or by statute in case of substantial loss to the Common Areas. First Mortgagees shall have the right to participate in the adjustment and settlement of any claim under any insurance maintained by the Association.

18.4 Tax Lien.

All taxes, assessments and charges which may become liens prior to a First Mortgage under local law shall relate only to the individual Lot and not to the Project as a whole.

18.5 Priority of Mortgage.

No provision of the Constituent Documents shall give an Owner, or any other party, priority over any rights of the First Mortgagee of a Lot pursuant to its First Mortgage in the case of a distribution to the Owner of insurance proceeds or condemnation awards for losses to or a taking of Lots and/or Common Areas.

18.6 Amenities.

Amenities (if any) pertaining to the Project (such as parking, recreation and service areas) are a part of the Project.

18.7 Notice of Default.

Upon request, each First Mortgagee and Institutional Guarantor shall be entitled to written notification from the Association of any default in the performance by its Mortgagor under the Constituent Documents, if the Default is not cured within 30 days. All First Mortgagees and Institutional Guarantors shall be entitled to written notification by the Association upon the commencement of any condemnation proceedings against all or any part of the Property or the Lot securing its Mortgage.

18.8 Review of Records.

First Mortgagees and Institutional Guarantors shall have the right upon reasonable written request to: (a) examine the books and records of the Association at reasonable times; (b) receive an annual financial statement of the Association within 90 days following the end of any fiscal year of the Association, which shall be audited by an independent accountant if

required by the regulations of any Institutional Guarantor; and (c) receive written notice of all meetings of the Association and designate a representative to attend all such meetings.

18.9 No Personal Liability.

A First Mortgagee shall not in any case or manner be personally liable for the payment of any assessment or charge, nor the observance or performance of any covenant, restriction, or rule and regulation of the Association, or any provision of the Articles or Bylaws, or any management agreement, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as specifically provided in this Section 18.

18.10 Enforcement Against Successors.

An action to abate the breach of any of these covenants, restrictions, reservations and conditions may be brought against a purchaser who has acquired title through foreclosure of a First Mortgage and the subsequent foreclosure or trustee's sale (or through any equivalent proceedings), and the successors in interest to any such purchase, even though the breach existed prior to the time purchaser acquired an interest in the Lot.

18.11 Exercise of Owner's Rights.

During the pendency of any proceedings to foreclose a First Mortgage (including any period of redemption) or from the time a trustee under a first deed of trust has given notice of sale pursuant to a power of sale conferred under a deed of trust and pursuant to law, the First Mortgagee, or a receiver appointed in any such action, may (but need not exercise) any or all of the rights and privileges of the defaulting Owner of the Lot including, but not limited to, the right to vote as a member of the Association in the place and stead of the defaulting Owner.

18.12 Mortgagee Subject to Declaration.

At such time as a First Mortgagee comes into possession of or becomes record Owner of a Lot, the First Mortgagee shall be subject to all of the terms and conditions of this Declaration including, but not limited to, the obligation to pay all assessments and charges accruing thereafter, in the same manner as any other Owner.

18.13 Lien Subordinate to First Mortgage.

The lien of the assessments provided for herein shall be subordinate to the lien of any First Mortgage now or hereafter placed upon any Lot; provided that the First Mortgage is in favor of a bank, savings and loan association, insurance company, mortgage banker, other institutional lender, or Institutional Guarantor and their successors or assigns; and provided further that subordination shall apply only to the assessments which have accrued prior to a sale or transfer of the Lot to which the First Mortgage related pursuant to a decree of foreclosure or any other proceeding in lieu of foreclosure.

18.14 No Impairment of Mortgage.

Notwithstanding any provision in the Constituent Documents to the contrary, no provision of this Declaration or the other Constituent Documents related to costs, use, set-back, minimum size, building materials, architectural, aesthetic or similar matters shall ever provide for reversion or foreclosure of title to a Lot in the event of violation thereof. No breach or violation of any provision of the Constituent Documents shall affect, impair, defeat or render invalid the interest or lien of any First Mortgagee.

18.15 Amendment.

Notwithstanding and prevailing over all other provisions hereof, no amendment to this Declaration shall be made or become effective which in any way adversely affects, materially diminishes or materially impairs any of the rights, privileges or powers granted to any First Mortgagee or which is in any way materially inconsistent with the customary rules, regulation or requirements of institutional First Mortgagees affected or their successors or assigns without the prior written consent of all affected institutional First Mortgagees. Upon written request, each First Mortgagee and Institutional Guarantor shall be entitled to timely written notice of any proposed action which requires the consent of a specified percentage of Mortgagees.

18.16 Enforcement.

First Mortgagees shall have the right to enforce against Owners, the Association and all others, any and all provisions of this Declaration including, but not limited to, this Section 18. Enforcement by First Mortgagees may be by injunction, mandatory or prohibitory, or any other lawful procedure. This Declaration shall be interpreted to the extent reasonably possible in conformity with all rules, regulations and requirements of any Institutional Guarantor of a Mortgage on any Lot in effect as of this date, or as they may be hereafter amended, and any provision hereof which is materially inconsistent therewith shall be deemed modified to conform thereto to the extent reasonably possible.

18.17 Articles and Bylaws.

The Articles, Bylaws and all rules and regulations of the Association shall be governed by this Declaration and all provision thereof which are inconsistent herewith shall be void.

18.18 Eligible Holders.

Notwithstanding anything in this Declaration to the contrary, any Mortgagee or Institutional Guarantor may submit a written request to the Association, which identifies the name and address of the Mortgagee or Institutional Guarantor and the particular Lot or Lots subject to its rights as Mortgagee or Institutional Guarantor, to receive timely written notice of all or any of the matters specified below. Any Mortgagee or Institutional Guarantor which submits a request in the manner provided herein shall be considered an "Eligible Holder" for purposes of this Declaration. Those matters for which any Mortgagee or Institutional Guarantor may request notice are:

(a) Any condemnation or casualty loss that affects either a material portion of the Project or a material portion of the Lot subject to its rights as Mortgagee or Institutional Guarantor;

(b) Any 30-day delinquency in the payment of assessments or charges owed by the Owner of the Lot subject to its rights as Mortgagee or Institutional Guarantor;

(c) A lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and

(d) Any proposed action that requires the consent of a specified percentage of Eligible Holders.

19. Exemption of Developer from Restrictions.

Notwithstanding anything contained in this Declaration to the contrary (except that, in the event of a conflict with the provisions of Section 18 hereof, those provisions shall be controlling), none of the restrictions contained in this Declaration shall be construed or deemed to limit or prohibit any act of Developer or a Designated Builder, or any of their employees, agents and subcontractors, or parties designated by it in connection with the construction, completion, marketing, sale or leasing of the Lots, or repair of Lots as required in this Declaration or any contracts of sale with Owners.

20. Remedies.

20.1 Power to Enforce.

In the event of any default by and Person under the provisions of this Declaration, or the Articles, Bylaws or rules and regulations of the Association, the Association, or its successors or assigns, and the Board, or its agents, and an Owner of a Lot shall have each and all of the rights and remedies which may be provided for in this Declaration, the Articles, Bylaws or rules and regulations of the Association, and which may be available at law or equity, and may prosecute any action or other proceedings against the defaulting Person for enforcement or foreclosure of its lien and the appointment of a receiver for a Lot, or for damages or injunction, whether mandatory or prohibitory, or specific performance, or for judgment for payment of money and collection thereof, or the right to take possession of a Lot and to rent the Lot and apply the rents received to payment of unpaid assessments and interest accrued thereon, and to sell it as hereinafter in this Section 20 provided, or for any combination of remedies or for any other relief, all without notice and without regard to the value of the Lot or the solvency of the defaulting Person.

20.2 Expenses.

The proceeds of any such rental or sale shall first be paid to discharge court cost, other litigation costs including, but not limited to, reasonable attorney's fees, and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting Owner in a final judgment. Any balance of proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens shall be paid to the Owner or the Mortgagees of the Lot, as their interests may appear. Upon the confirmation of the sale, the purchasers shall be entitled to

a deed to the Lot and to immediate possession of the Lot and may apply to the court for a writ of restitution for the purpose of acquiring possession, and it shall be a condition of any such sale, and the judgment shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

20.3 Lien Rights.

All expenses of the Association in connection with any action or proceeding described or permitted by this Section 20, including court costs and reasonable attorneys' fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the annual rate of 18%, (or such lower rate as the Board may set from time to time) but in no event in excess of the maximum lawful rate, until paid, shall be charged to and assessed against such defaulting Owner and shall be added to and deemed part of his respective share of the Common Expenses, and the Association shall have a lien as provided in Section 7 hereof for all such sums, as well as for nonpayment of his respective share of the Common Expenses, upon the Lot of the defaulting Owner and upon all of his additions and improvements thereto.

20.4 Self Help.

In the event of a default by any person, the Association and the Board, and the manager or managing agent, if authorized by the Board, shall have the authority to correct the default and to do whatever may be necessary, and all expenses in connection therewith shall be charged to and assessed against the defaulting Person. Such an assessment shall constitute a lien against a defaulting Owner's Lot as provided for in Section 7 of this Declaration. Any and all such rights and remedies may be exercised at any time and from time to time, cumulatively or otherwise, by the Association or the Board.

20.5 Warning Notice.

If any Person (either by his conduct or by the conduct of any Occupant of his Lot or Tract, or the Owner's family, guests, invitees or tenants to the extent the Owner may be held legally responsible therefor) violates any of the provisions of this Declaration, or the Articles, Bylaws or rules and regulations of the Association, as then in effect, and the violation continues for 10 days after notice in writing to the defaulting Person or occurs repeatedly during any 10 day period after written notice, then the Board or any affected or aggrieved Owner shall have the power to file an action against the defaulting Person for a judgment or injunction, whether mandatory or prohibitory, requiring the defaulting Person to comply with the provisions of this Declaration, or the Articles, Bylaws or rules and regulations of the Association, and granting other appropriate relief, including money damages.

20.6 Mortgage Priority.

Anything to the contrary herein notwithstanding, any breach of any of the covenants, restrictions, reservations, conditions and servitudes provided for in this Declaration, or any right of reentry by reason thereof, shall not defeat or adversely affect the lien of any Mortgage upon any Lot but, except as herein specifically provided, each and all of the covenants, restrictions, reservations, conditions and servitudes shall be binding upon and effective against any lessee or Owner of a Lot whose title thereto is acquired by foreclosure, trustee's sale, sale, deed in lieu of

foreclosure or otherwise. To the extent that summary abatement or enforcement rights are herein reserved to Developer or a Designated Builder, the Association or any other Person, judicial proceedings for enforcement must be instituted before any items of construction can be altered or demolished.

21. Amendment.

Amendments to this Declaration shall be made by an instrument in writing entitled "Amendment to Declaration" which sets forth the entire amendment. So long as there is outstanding any Class B membership in the Association, any amendment other than one authorized by Section 21.4 must be approved by all Institutional Guarantors.

21.1 Adoption.

Amendments may be adopted with or without a duly held meeting of the Owners upon the approval of three-fourths of the Owners then entitled to vote for directors. In the event that no meeting of Owners is held, the requisite number of Owners must consent in writing to the amendment. Amendments properly adopted shall bear the signature of the president of the Association and shall be attested by the secretary, and shall be acknowledged by them as officers of the Association. Properly adopted amendments shall be effective upon recording in the appropriate governmental offices or at such later date as may be specified in the amendment. Notwithstanding the foregoing, any amendment of this Declaration which is deemed to be "material" under the requirements of Institutional Guarantors, including, but not limited to, any amendment which would change the Fractional Interest of any Owner, may be adopted only with the affirmative vote or consent of three-fourths of the Owners and three-fourths of all First Mortgagees (based on one vote for each Mortgage owned).

21.2 Effect.

It is specifically covenanted and agreed that any amendment to this Declaration properly adopted will be completely effective to amend any and all of the covenants, conditions and restrictions contained herein which may be affected and any or all clauses of this Declaration, unless otherwise specifically provided in the section being amended or the amendment itself.

21.3 Required Percentages.

If this Declaration, the Articles or Bylaws requires the consent or agreement of all Owners and/or all lienholders and all trustees and/or beneficiaries under trust deeds, or any specified percentage of them, for any action specified in this Declaration, then any instrument changing, modifying or rescinding any provision of this Declaration with respect to such an action shall be signed by no lesser percentage of the Owners and/or lienholders and trustees and/or beneficiaries under trust deeds.

21.4 Developer Powers.

Notwithstanding any provision of this Section 21, for so long as any Class B membership in the Association is outstanding, Developer reserves the right, and shall be authorized and empowered, acting alone, to amend this Declaration for any legal purpose which Developer approves or, as necessary to comply with, or conform this Declaration to, the requirements or guidelines of an Institutional Guarantor and governmental authorities (including, but not limited to, requirements to qualify the Property and offer it for sale); provided, however, that Developer shall obtain the approval of any interested Institutional Guarantor or governmental authority to such an amendment. Upon the adoption and recording of any such amendment by Developer, a copy of the amendment shall be made available for the inspection of every Owner and Eligible Holder.

21.5 Institutional Guarantors.

Anything to the contrary herein notwithstanding, no amendment shall be effective to materially modify, change, limit or alter the rights expressly conferred upon Mortgagees in this Declaration, or which is in any way materially inconsistent with the rules, regulations or requirements of any interested Institutional Guarantor, unless the amendment is approved in writing by the Institutional Guarantor.

22. Notices.

Notices provided for in this Declaration, or the Bylaws or rules and regulations of the Association, shall be in writing and shall be addressed to the Association or the Board, as the case may be, at an address to be established by the Board. The Association or the Board may at any time designate a different address or addresses for notices to them respectively by giving written notice of the change of address to all Owners. All notices to Owners shall be to their respective Lots or Tracts. Any Owner may designate a different address or addresses for notices to him by giving written notice of his change of address to the Board. Notices addressed as above shall be deemed delivered when mailed by United States mail, first class with postage prepaid, or when delivered in person. Upon written request to the Board, a Mortgagee of a Lot shall be given a copy of all notices permitted or required by this Declaration to be given to the Owner of the Lot subject to the Mortgage.

23. Captions and Exhibits; Construction.

Captions given to various sections herein are for convenience only and are not intended to modify or affect the meaning of any of the substantive provisions hereof. Any exhibits referred to herein are incorporated as though fully set forth where the reference is made. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the ownership and operation of the Property under the provisions of Arizona law.

24. Severability.

If any provision of this Declaration, the Articles, Bylaws or rules and regulations of the Association, or any section, clause, sentence, phrase or word, or the application thereof in any circumstance, is held invalid, the validity of the remainder of this Declaration, the Articles, Bylaws or the rules and regulations, and of the application of any such provision, section, sentence,

clause, phrase or word in any other circumstances, shall not be affected, and the remainder shall be construed as if the invalid part were never included therein.

25. Power of Attorney.

Whenever the Association or the Board is granted rights, privileges or duties in this Declaration, the Board shall have the authority to act for the Association in accordance with the Articles and Bylaws. Further, unless otherwise specifically restricted by the provisions of this Declaration, wherever the Association or the board is empowered to take any action or do any act including, but not limited to, action or acts in connection with the Common Areas, the Owners and each of them hereby constitute and appoint the Association, acting through its Board, as their attorney-in-fact for the purposes of taking such action or doing such acts including, but not limited to, executing, acknowledging and delivering any instruments or documents necessary, appropriate or helpful for such purposes. It is acknowledged that this power of attorney is irrevocable and coupled with an interest and by the acceptance of a deed for a Lot or by signing a contract for purchase of a Lot or by succeeding in any other manner to the ownership of a Lot, each Owner shall be deemed and construed to have ratified and expressly granted the above power of attorney.

26. Annexation of Additional Property.


(a) the Additional Property may be annexed to the Property and become subject to this Declaration and subject to the jurisdiction of the Association without the approval, assent or vote of the Association or its Members, provided that a Declaration of Annexation, as hereinafter described, covering the portion of the Additional Property sought to be annexed shall be executed and Recorded by Developer or its successors and assigns (and by the fee title holder(s) of the portion of the Additional Property sought to be annexed, in the event Developer or its successors and assigns does not hold fee title to all of said property), provided, however, that no Declaration of annexation shall be so executed and Recorded pursuant to this Section more than 15 years subsequent to the Recording of this Declaration. Such execution and Recording of a Declaration of Annexation shall constitute and effectuate the annexation of said portion of the Additional Property described therein, making said real property subject to this Declaration and subject to the functions, powers and jurisdiction of the Association, and thereafter the Additional Property so annexed shall be part of the Property and all of the Owners of Lots in the additional Property so annexed shall automatically be Members of the Association. Although Developer, its successors and assigns, shall have the ability to so annex all or any portion of Additional Property, neither Developer, nor its successors and assigns, shall be obligated to annex all or any portion of Additional Property, and such Additional Property shall not become subject to this Declaration unless and until a Declaration of Annexation annexing such Additional Property shall have been so executed and Recorded.

(b) The annexation authorized under the foregoing shall be made by Recording in the office of the County Recorder of Maricopa County, Arizona, a Declaration of Annexation, or similar instrument with respect to the Additional Property which shall extend the plan of this Declaration to such property. The Declaration of Annexation contemplated above may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the annexed property and

as are not inconsistent with the plan of this Declaration. In no event, however, shall any such Declaration of Annexation, revoke, modify or add to the covenants established by this Declaration within the existing Property.

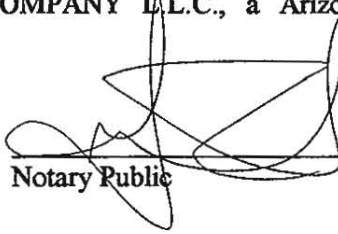
IN WITNESS WHEREOF, Developer has caused this Declaration to be duly executed.

HIGHLAND RANCH CONSTRUCTION COMPANY L.L.C.
a Arizona limited liability company,

By: 
D. Grant Lane, Member

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 12th day of, by of
HIGHLAND RANCH CONSTRUCTION COMPANY L.L.C., a Arizona limited liability
company, for and on behalf thereof.


Notary Public

My Commission Expires:


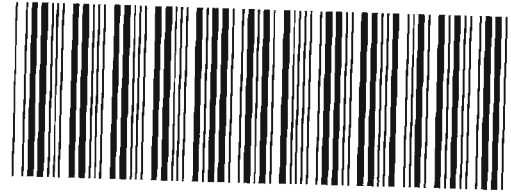
_____ 

EXHIBIT A

Lots 1-71, inclusive of Highland Ranch III
as recorded at Book 454 page 29 of the
Official Records of Maricopa County,
Recorder's Number 97-0800162

SECURITY COPY



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

2000-0485702 06/27/2000 11:33

IRENE 13 OF 76

When recorded return to:

HOLD FOR SECURITY
Clare H. Abel, Esq. *THE BAR.*
BURCH & CRACCHIOLO, P.A. *SUE.*
P. O. Box 16882
Phoenix, Arizona 85011

**FIRST DECLARATION OF ANNEXATION
AND
SUPPLEMENTAL DECLARATION
FOR
HIGHLAND RANCH III
(Highland Ranch IV)**

THIS FIRST DECLARATION OF ANNEXATION AND SUPPLEMENTAL
DECLARATION is made on the 26 day of JUNE, 2000, by Capital Pacific Holdings,
L.L.C., a Delaware limited liability company, as Developer.

WITNESSETH:

Highland Ranch Construction Company, L.L.C., an Arizona limited liability company
("HRCC") executed and caused to be recorded that certain Declaration of Covenants, Conditions,
and Restrictions for Highland Ranch III, recorded on March 16, 1998, at Instrument No. 98-
0197919, Official Records of Maricopa County, Arizona, as amended by the Amendment to
Declaration of Covenants, Conditions, and Restrictions for Highland Ranch III recorded on June
10, 1998 at Instrument No. 98-0491456, Official Records of Maricopa County, Arizona
(hereinafter collectively the "Declaration").

All right, title and interest of HRCC as Developer under the Declaration has been
assigned to Capital Pacific Holdings, L.L.C., a Delaware limited liability company, (hereinafter
"Developer") pursuant to that certain Assignment of Developer's Rights, recorded on October
23, 1998, at Instrument No. 98-0949521, Official Records of Maricopa County, Arizona.

Section 26 of the Declaration provides for the annexation of Additional Property by the
Developer from time to time and Developer now wishes to annex certain real property into the
Declaration.

ARTICLE I

DECLARATION OF ANNEXATION FOR LOTS AND COMMON AREAS

1.1 DESCRIPTION. Highland Ranch Construction Company, L.L.C., an Arizona limited liability company ("HRCC") executed and caused to be recorded that certain Declaration of Covenants, Conditions, and Restrictions for Highland Ranch III, recorded on March 16, 1998, at Instrument No. 98-0197919, Official Records of Maricopa County, Arizona, as amended by the Amendment to Declaration of Covenants, Conditions, and Restrictions for Highland Ranch III recorded on June 10, 1998 at Instrument No. 98-0491456, Official Records of Maricopa County, Arizona (hereinafter collectively the "Declaration"). The Declaration includes the following as the Covered Property:

Lots 1 through 71, inclusive and Tracts A through H, inclusive, of HIGHLAND RANCH III, according to the Plat recorded in Book 454 of Maps, Page 29 thereof, and at Instrument No. 97-0800162, Official Records of Maricopa County, Arizona ("Highland Ranch III" or "Initial Covered Property").

1.2 DESCRIPTION OF ANNEXATION PROPERTY. Developer, is the owner of the real property described as follows:

HIGHLAND RANCH IV, in the Town of Gilbert, Maricopa County, Arizona, according to the Plat recorded on May 12, 2000, in Book 532 of Maps, Page 30 thereof, and recorded at Instrument No. 00-0361937, Official Records of Maricopa County, Arizona ("Highland Ranch IV" or "Additional Property"), identifying

and pursuant to Section 26 of the Declaration, now desires, intends and does hereby annex, Highland Ranch IV into the Declaration.

1.3 COVERED PROPERTY. The Property shall now include:

Lots 1 through 71, inclusive and Tracts A through H, inclusive of HIGHLAND RANCH III, in the Town of Gilbert, Maricopa County, Arizona, according to the Plat recorded in Book 454 of Maps, Page 29, thereof, and at Instrument No. 97-0800162, Official Records of Maricopa County, Arizona; and Lots 1 through 30, inclusive, and Tracts A through F, inclusive, HIGHLAND RANCH IV, in the Town of Gilbert, Maricopa County, Arizona, according to the Plat recorded on May 12, 2000, in Book 532 of Maps, Page 30 thereof, and recorded at Instrument No. 00-0361937, Official Records of Maricopa County, Arizona.

1.4 DECLARATION. Pursuant to Section 26, Developer hereby does submit said Covered Property, including the improvements to be constructed thereon, and all easements,

rights and appurtenances belonging thereto, all of which hereafter may be referred to as the "Property" or "Covered Property," to the Declaration and said Declarant hereby further does declare that all of such Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following covenants, conditions and restrictions, all of which are declared to be in furtherance of the plan for the improvement, development and sale of said Property and are established for the purpose of enhancing and perfecting the value and desirability of said Property and every part thereof. No property other than that brought within the Covered Property by the Declaration, and this First Declaration of Annexation is deemed subject to the Declaration unless and until specifically made subject thereto as provided in the Declaration.

ARTICLE II

SUPPLEMENTARY DECLARATION

The following covenants, conditions, restrictions, reservations and easements shall apply to Highland Ranch Unit IV:

2.1 WORKING CAPITAL FUND. To ensure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each purchaser of a Lot within Highland Ranch IV from the Developer shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6) of the then current Annual Assessment multiplied by the number of Memberships attributable to the Lot. Funds paid to the Association pursuant to this Paragraph may be used by the Association for the payment of operating expenses or any other purpose permitted under this Declaration. Payments made pursuant to this Paragraph shall be nonrefundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

ARTICLE III

ALL OTHER PROVISIONS

3.1 DEFINITIONS. Capitalized terms used in this First Declaration of Annexation and Supplemental Declaration shall have the meaning set forth for such terms in the Declaration unless otherwise set forth herein.

3.2 INTERPRETATION. This First Declaration of Annexation shall be considered an integral part of the Declaration and shall be construed with the Declaration as if the provisions hereof were set forth therein. This First Declaration of Annexation shall run with the real property and improvements herein annexed and shall be enforceable in accordance with and as a part of the Declaration.

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3.3 ALL OTHER PROVISIONS. All other provisions of the Declaration shall remain and are the same and shall apply to all of the Property described in Article I above as though fully set forth herein.

IN WITNESS WHEREOF, Declarant has executed this First Declaration of Annexation and Supplemental Declaration on this 76 day of June, 2000.

CAPITAL PACIFIC HOLDINGS, L.L.C., a Delaware limited liability company

BY: CAPITAL PACIFIC HOLDINGS, INC., a Delaware corporation, Its: Managing Member

By: CAPITAL PACIFIC ARIZONA, INC., A Delaware corporation
Its: Authorized Agent

By: [Signature]
Its: President

By: [Signature]
Its: CFO

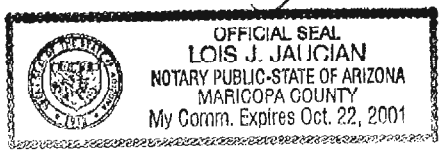
STATE OF Arizona) ss.
County of Maricopa

On this, the 24 day of June, 2000, before me, the undersigned Notary Public, personally appeared Anthony Bruce Daniels, who acknowledged himself to be the President of CAPITAL PACIFIC ARIZONA, INC., a Delaware corporation as Authorized Agent for CAPITAL PACIFIC HOLDINGS, INC., a Delaware corporation, the Managing Member of CAPITAL PACIFIC HOLDINGS, L.L.C. A Delaware limited liability company, for and on behalf of said limited liability company and that he as such officer being authorized so to do, executed the foregoing instrument for the purposes contained therein.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

[Signature]
NOTARY PUBLIC

My Commission Expires:



STATE OF Arizona) ss.
County of Maricopa

On this, the 26 day of June, 2000, before me, the undersigned Notary Public, personally appeared John Pedersen, who acknowledged himself to be the Chief Financial Officer of CAPITAL PACIFIC ARIZONA, INC., a Delaware corporation as Authorized Agent for CAPITAL PACIFIC HOLDINGS, INC., a Delaware corporation, the Managing Member of CAPITAL PACIFIC HOLDINGS, L.L.C. A Delaware limited liability company, for and on behalf of said limited liability company and that he as such officer being authorized so to do, executed the foregoing instrument for the purposes contained therein.

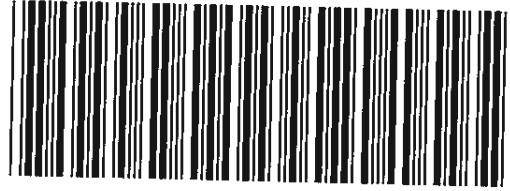
IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

Lois Jaucian
NOTARY PUBLIC

My Commission Expires:



When recorded mail to:



OFFICIAL RECORDS OF
MARICOPA COUNTY RECORDER
HELEN PURCELL

98-0491456 06/10/98 12:23

BECKY 1 OF 1

CAPTION HEADING: _____

DO NOT REMOVE

This is part of the official document.

**AMENDMENT TO DECLARATION
OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HIGHLAND RANCH III**

This Amendment to Declaration of Covenants, Conditions and Restrictions for Highland Ranch III is made and entered into this 24th day of June, 1998 by Highland Ranch Construction Company, L.L.C., an Arizona limited liability company ("Developer").

RECITALS

1. Developer has recorded a Declaration of Covenants, Conditions and Restrictions ("CC&Rs") for the residential subdivision in Maricopa County known as Highland Ranch III. The CC&Rs are recorded in the official records of Maricopa County at recorder's number 98-0197919.
2. All terms and definitions applicable to the CC&Rs apply also to this Amendment.
3. Developer desires to amend the CC&Rs to require FHA or VA approval of certain actions if either agency has approved the Subdivision development plan.

AMENDMENT TO DECLARATION

Developer, therefore, amends and declares as follows:

1. Annexation and De-annexation. So long as the Developer controls the Association or any class of membership of the Association, and, if either FHA or VA have approved the Parcel's development plan, the following actions require the prior approval of FHA or VA:
 - (a) The annexation of Additional Property;
 - (b) The dedication of any Common Area;
 - (c) The withdrawal or de-annexation of any property from the CC&Rs.
2. No Additional Changes. All other terms and conditions of the CC&Rs remain in full force and effect.

IN WITNESS WHEREOF, Developer has caused this Amendment to be duly executed.

HIGHLAND RANCH CONSTRUCTION COMPANY, L.L.C., an Arizona limited liability company

By: Mark D. Pugmire
Old West Development Corporation, administrative member, by
Mark D. Pugmire, President

STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this 8th day of June, 1998 by Mark D. Pugmire of Old West Development Corporation for and on behalf of Highland Ranch Construction Company, L.L.C., an Arizona limited liability company.



Rebecca Lamoreaux Webb
Notary Public

My Commission Expires: 12/25/2001