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AMENDMENT AND RESTATEMENT OF  
MASTER DECLARATION CREATING  
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR STARR PASS

CITY CLERK NOTE:

This document was re-recorded due to scrivener's errors in the book and page number of maps and plats referred to in this document. The correct book and page number should be: Book 44, Page 60.

Dated: November 18, 1992

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AMENDMENT AND RESTATEMENT OF  
MASTER DECLARATION CREATING  
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR STARR PASS  
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AMENDMENT AND RESTATEMENT OF  
MASTER DECLARATION CREATING  
COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS  
FOR STARR PASS

This Declaration is made November 18, 1992 by Chicago Trust Company, an Arizona corporation, as Trustee under Trust No. 12,059, and StarPass Properties L.P., a Delaware Partnership, hereinafter collectively referred to as "Declarant."

W I T N E S S E T H:

Declarant is the Owner of that certain real property in the City of Tucson, County of Pima, State of Arizona, described as Blocks 1 through 5, 6N, 6S, 7 through 9, 10E, 10W and 11 through 24, 25, 26, and 27, and Common Property A, B, C, D, E, F and G of the subdivision known as Starr Pass, recorded in Book 44 at Page ~~78~~ <sup>60</sup> of Maps and Plats, Pima County records (hereinafter the Block Plat), being a resubdivision of StarPass, Blocks A through P, 1 through 8, and Common Property, recorded Book 40 Page 33, of Maps and Plats, Pima County Records. This Declaration is applicable to the following portions of the Block Plat:

Blocks 1 through 5, 6N, 6S, 7 through 9, 10E,  
10W, 11 through 24, and Common Property A  
through G.

This Declaration is also applicable to Champagne at StarPass, Lots 1 through 55 and Common Areas, recorded book 40 at page 80, of Maps and Plats, Pima County Records (hereinafter "Champagne"). Said land (excluding Blocks 25, 26, and 27) shall collectively hereinafter be referred to as the Properties. The term Properties shall include other land only if Declarant records a Declaration of Annexation with respect thereto, all as provided herein.

This Declaration is made pursuant to the terms and provisions of that certain Master Declaration of Establishment of Covenants, Conditions, Restrictions and Easements for StarPass recorded book 7888 at page 1057, Pima County Records (the "original declaration") and constitutes a complete amendment and restatement of the said original declaration. This declaration is also made pursuant to authority of the City of Tucson by reason of rezoning ordinances relating to the Properties and the development

thereof. The original declaration, and all exhibits thereto, shall be deemed completely revoked and superseded by the terms and provisions hereof.

This Declaration shall in no way apply to or encumber Blocks 26 or 27, which initially comprise the Golf Course, as defined herein, nor shall this Declaration apply to or encumber Block 25. It is not the intent of Declarant to annex any portion of said land under the purview of this Declaration, but Declarant reserves the right, in its sole discretion to annex portions of Block 25 should residential subdivision projects be built thereon.

Declarant desires that the development of the Properties occur in accordance with a master plan and general scheme of development.

Declarant therefore declares that the Properties and such later annexations to the Properties as may occur shall be held, sold, and conveyed subject to the following restrictions, covenants, conditions and easements ("Master Declaration" or "this Declaration") which are for the purpose of protecting the value and desirability of, and which shall run with, the aforesaid Properties and be binding upon all parties having any right, title or interest in the Properties or any part thereof, their heirs, personal representatives, successors, and assigns, and shall inure to the benefit of each Owner thereof.

None of the provisions hereof shall apply to any golf course, guest ranch, villas, resort, or to any related facilities, and none of said facilities, if any, shall be governed by or affected by the provisions hereof. If any such facility is built upon a Block constituting a part of the Properties, as defined herein, then this Declaration shall nevertheless have no application of relevance to such facility or facilities, and Declarant may and shall have the power to record any document necessary in the future to clarify such fact, it being the intent that this Declaration shall govern only the residential projects planned or constructed within the Properties.

#### ARTICLE I DEFINITIONS

Section 1. "Annexation Land" shall mean such land as the Declarant shall annex from time to time. The Annexation Land may be annexed in whole or in part, from time to time, in accordance with the provisions of this Master Declaration.

Section 2. "Architectural Control Committee" shall mean the committee appointed by Declarant or by the Board of Directors of the Master Association for the purposes provided herein.

Section 3. "Block" shall initially mean the individual blocks of land labelled numerically on the Block Plat as Blocks 1 through 5, 6N 6S, 7 through 9, 10E, 10W, and 11 through 24. The numerically labelled Blocks are where development shall, as a general rule, be concentrated, though certain of the numeric Blocks include protected peaks which may not be built upon without a variance. The legal description and configuration of Blocks may change in the course of the subdivision process whereby plats for portions of the Properties are submitted.

Section 4. "Block Plat" shall mean the plat for Start Pass, a residential cluster project, recorded book 44 page 60 of maps and plats, Pima County Records.

Section 5. "Common Areas" shall mean all common areas and improvements thereon owned by any Subassociation for the use and enjoyment of its Members, as defined in the Supplemental Declarations for subdivisions of the Blocks. Such Common Areas are for the use and enjoyment of the members of a Subassociation and, unless specifically provided to the contrary herein, this Master Declaration shall confer no rights in such Common Areas to the Members of the Master Association.

Section 6. "Common Expense" shall mean the actual and estimated costs paid, incurred, or reasonably anticipated to be incurred by the Master Association in administering, maintaining and operating the Common Property, or incurred or anticipated to be incurred by the Master Association in the performance of its duties, including any required reserves and expenses in the enforcement of the provisions of this Master Declaration, the Articles of Incorporation, Bylaws, and Design Guidelines of the Master Association.

Section 7. "Common Property" shall mean all property owned by the Master Association for the use and enjoyment of its Members. It is Declarant's intent that the alphabetically labelled blocks, as shown on the Block Plat, shall constitute Common Property and be conveyed to the Master Association, but such areas shall not be deemed Common Property until and unless they are so conveyed, and Declarant reserves the right to resubdivide such areas and to convey same to any Subassociation, as provided herein, or to convey same to any public authority or agency which may agree



to accept same, as they constitute, primarily, open spaces and/or protected peaks and ridges.

Section 8. "Declarant" shall mean Chicago Trust Company, Arizona corporation, as Trustee under Trust No. 12,059 and StarPass Properties L.P., a Delaware Partnership. The term "Declarant" shall include any first mortgagee who succeeds to title to substantially all of the Properties or portions thereof then owned by Declarant or its successors through foreclosure or deed in lieu thereof from Declarant or its successors (including a builder, developer or investor), and one or more successors in interest who have been designated in writing by the then existing Declarant as a "Declarant" and who have purchased all or substantially all of the Annexation Land.

Section 9. "Design Guidelines" shall mean the rules, regulations, restrictions, and architectural standards for the construction of improvements of any nature of the Properties, all as adopted pursuant to the provisions hereof.

Section 10. "Developer" shall mean a person or entity, other than the Declarant, who purchases or owns a portion of the Properties for purposes of subdivision, development, or resale. The term also includes purchasers of subdivided lots if the purchase is in bulk for purposes of investment or later resale to the public or to other Developers.

Section 11. "First Mortgage" shall mean and refer to any unpaid and outstanding mortgage, deed of trust, or other security instrument recorded in the records of the office of the Clerk and Recorder of the County of Pima, Arizona, having priority of record over all other recorded liens except those governmental liens made superior by statute (such as general ad valorem tax liens and special assessments).

Section 12. "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage or any successor to the interest of any such person under such First Mortgage.

Section 13. "Golf Course" shall mean the Starr Pass golf course on Blocks 26 and 27 (and any other golf course later constructed at Starr Pass), the clubhouse, related shops, parking area, and other property comprising the golf facility at Starr Pass.

Section 14. "Golf Tournament" shall mean a golf tournament or other special golf event.

Section 15. "Guest Ranch or Resort" shall mean any guest lodging facility including casitas and any other facilities associated therewith such as tennis courts, swimming pools, restaurants, gift shops, pro shop, bar, and any other facilities which may be constructed in connection with the Guest Ranch or Resort, if any. Such facility is initially planned within Block 25 which is not governed by the provisions of this Declaration. Declarant reserves, unto itself and its assigns, the right to build similar facilities or lodging facilities anywhere within the Properties, including upon Block 13. No commitment to build or establish any such facility exists, and reference to such facilities shall in all cases mean "if any."

Section 16. "Lot" shall mean and refer to any numbered plot of land shown upon any recorded Subdivision Plat of the Properties or any portion thereof, with the exception of the Common Property, Common Areas, and streets, but together with all appurtenances, improvements, and Residences now or hereafter built or placed on the Lot and together with all Lots shown on the plat for Champagne. In the case of any condominium developments within the Properties, the term Lot shall also mean any separate residential unit therein. Any such condominium project shall have a Subassociation and legal documents conforming to Arizona law regulating such condominiums. In the case of any rental apartment, each such apartment shall be deemed to be a Lot for purposes of all provisions hereof regulating the use of a Lot, unless the context clearly indicates to the contrary.

Two or more Lots combined and used as one, shall be considered one Lot for all purposes hereunder.

Section 17. "Master Association" shall mean and refer to Starr Pass Master Homeowners Association, Inc., an Arizona non-profit corporation, its successors and assigns.

Section 18. "Member" shall mean and refer to each Owner, including the Declarant, of a Lot, Block or portion of a Block in the Properties, that is subject to assessment hereunder; membership in the Master Association shall be appurtenant to, and may not be separated from, ownership of a Lot or Block. Notwithstanding the foregoing, the term "Member" shall not include Developers, except as set forth in Article III hereof. The foregoing exclusion from Membership shall apply even though land purchased or owned by Developers shall be subject to assessment hereunder.



Section 19. "Membership" shall mean, unless otherwise stated, the Type A and Type B membership of the Master Association, the Declarant initially being the Type B Membership. A required percentage vote of the Membership shall have reference to a percentage of the total votes existing and eligible to be cast by the Type A and Type B Members, combined, and not to a percentage vote of each Type of Membership.

Section 20. "Occupant" shall mean any person, other than an Owner, in rightful possession of a Lot.

Section 21. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, Block or portion of a Block which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. Tenants shall not be considered Owners, but tenants must comply with all regulatory provisions hereof.

Section 22. "Planned Lots" shall mean private residential lots or units planned in areas not yet subdivided, exclusive of casitas, hotel rooms, guest ranch rooms, and other such facilities. "Planned Lots" is a forecast which Declarant, in its sole discretion, may adjust in accordance with future development plans with particular attention given to recorded Subdivision Plats of the Properties, all as more specifically set forth herein. Ownership of a Block or portion thereof remaining unsubdivided, and ownership of other parcels of the Properties having a planned density (whether for single family homes, apartments, or other dwellings) in accordance with the provisions hereof, may be referred to herein as Ownership of Planned Lots.

THERE ARE INITIALLY APPROXIMATELY 1200 PLANNED LOTS WITHIN THE PROPERTIES, BUT THAT FIGURE IS NOT A LIMITATION OF DENSITY NOR IS IT A REPRESENTATION TO ANY PURCHASER OF ANY PORTION OF THE PROPERTIES, AND DECLARANT RESERVES THE RIGHT IN ITS SOLE DISCRETION TO BUILD AND/OR SUBDIVIDE THE MAXIMUM NUMBER OF RESIDENTIAL LOTS ALLOWED BY LAW.

Section 23. "Properties" shall mean and refer to the Lots, Blocks, and the Common Property subject to this Master Declaration, commencing first with Blocks 1 through 5, 6N, 6S, 7 through 9, 10E, 10W, 11 through 24, and Common Property A through G.

THE PROPERTIES DO NOT INCLUDE ANY PROPERTY OTHER THAN THE ACTUAL RESIDENTIAL BLOCKS AND LOTS AND COMMON PROPERTY AND

SPECIFICALLY DO NOT INCLUDE ANY RIGHT, TITLE OR INTEREST IN, OR EASEMENT OR LICENSE UPON, THE GOLF COURSE AND CLUB FACILITIES, OR THE GUEST RANCH, RESORT, CASITAS AND RELATED FACILITIES, WHICH ARE ADJACENT TO OR NEAR THE PROPERTIES AT STARR PASS, ALL OF WHICH WILL BE PRIVATELY AND SEPARATELY OWNED, AND WHEN SUCH FACILITIES AND PROPERTY ARE IDENTIFIED BY DECLARANT THEY MAY BE SET FORTH WITH SPECIFICITY IN A RECORDED INSTRUMENT AGAIN CLARIFYING THAT THEY ARE EXCLUDED FROM THE PURVIEW OF THIS MASTER DECLARATION. REGARDLESS OF WHETHER SUCH FACILITIES ARE LOCATED WITHIN BLOCKS, SUCH FACILITIES SHALL NOT BE DEEMED A PART OF THE PROPERTIES, AND NEITHER THE GOLF COURSE NOR CLUB FACILITIES NOR THE GUEST RANCH, NOR THE RESORT, CASITAS, VILLAS AND RELATED FACILITIES, WHICH ARE WITHIN BLOCKS OR NEAR OR ADJACENT TO THE PROPERTIES ARE PART OF THE COMMON PROPERTY NOR ARE THEY GOVERNED BY THIS MASTER DECLARATION. THIS MASTER DECLARATION SHALL NOT CONFER UPON LOT OWNERS ANY RIGHTS TO USE SUCH AREAS OR FACILITIES NOR TO ANY PROPERTY OR FACILITIES NOT SPECIFICALLY GOVERNED BY THIS MASTER DECLARATION, NOR TO ANY PUBLIC UTILITY EASEMENTS, EFFLUENT FACILITIES OR RESERVOIRS.

Section 24. "Residence" shall mean a dwelling on any Lot, including a detached dwelling, a townhome, patio home, condominium unit, etc.

Section 24. "Subassociation" shall mean and refer to any Arizona non-profit corporation, its successors and assigns, organized and established pursuant to or in connection with any Supplemental Declaration governing a specific subdivision of land from within the Properties.

Section 25. "Subdivision Plat" shall mean a recorded plat, other than the Block Plat as may be amended, causing a legal subdivision of all or any part of the Properties.

Section 27. "Supplemental Declaration" shall mean and refer to a declaration of covenants, conditions, and restrictions, other than the Master Declaration, to which subdivisions of the Properties may hereafter be subjected, provided that each such Supplemental Declaration must be approved and executed by Declarant herein and recorded in the office of the Recorder of the County of Pima, State of Arizona.

## ARTICLE II PROPERTY RIGHTS IN THE COMMON PROPERTY

Section 1. Owners' Easements of Enjoyment. Subject to the provisions hereof, every Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Property and the

improvements thereon, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2. Extent of Owners' Easements. The rights and easements of enjoyment created hereby shall be subject to the provisions of this Master Declaration, including the following:

(a) The right of the Master Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Property and, with written consent of two-thirds (2/3) of the votes of each Type of Membership to mortgage said property as security for any such loan;

(b) The right of the Master Association to take such steps as are reasonably necessary to protect the Common Property against foreclosure;

(c) The right of the Master Association to promulgate and publish rules and regulations which each Owner shall strictly comply with;

(d) The right of the Master Association as provided in its Articles and Bylaws, to suspend the voting rights of a Member for any period during which any assessment against his Lot, Block, or portion thereof remains unpaid and, for a period not to exceed sixty (60) days for each infraction of its published rules and regulations;

(e) The right of the Master Association to dedicate or transfer all or any part of the Common Property to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by a majority of the Members, provided that no such dedication or transfer shall be effective unless such action is approved in writing by two-thirds (2/3) of the votes of each Type of Membership.

Notwithstanding the foregoing: a) the granting of permits, licenses, and easements for public utilities, roads, and/or for other purposes consistent with the intended use of the Common Property, or otherwise approved by the Master Association, or as provided for in this Master Declaration and reasonably necessary or useful for the proper use, maintenance or operation of the Properties shall not be deemed a transfer within the meaning of this Subsection, and b) Declarant shall have the right, without any vote or consent whatsoever, to dedicate or transfer roads and streets and natural open spaces to the City of Tucson or County of Pima and to relocate and/or resubdivide Common Property, including

but not limited to Common Property G, the precise location of which cannot be determined until completion of engineering and design of future roads;

(f) The right of the Master Association to close or limit the use of the Common Property, or portions thereof, in connection with any Golf Tournament or while maintaining and repairing the Common Property; and

(g) The right of the Declarant, reserved hereby, to resubdivide Common Property for any purpose.

Section 3. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Property and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot.

Section 4. Payment of Taxes or Insurance by Mortgagees. First Mortgagees of Lots shall have the right, jointly or singly, to pay taxes or other charges or assessments which are in default and which may or have become a lien against the Common Property and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Property, and any First Mortgagee making any such payment shall be owed immediate reimbursement therefor from the Master Association.

### ARTICLE III THE MASTER ASSOCIATION

Section 1. Membership. Every Owner, including Declarant, of a Lot, Block, or portion of a Block in the Properties which is subject to assessment hereunder, shall be a Member of the Master Association. In the case of an apartment project, only the owner of the project, and not the individual tenants, shall be a Member. All tenants shall, however, be bound to comply with all provisions hereof regulating the use of the Properties.

Membership shall be appurtenant to and may not be separated from ownership of a Lot, Block, or portion of a Block.

Section 2. Types of Membership and Voting Rights. The Master Association shall have two types of Membership:

a) Type A - All Owners of Lots, excluding Declarant and Developers. Type A members shall have one vote for each such Lot owned, except that in the case of an apartment project, all votes shall be held and cast only by the owner of such project, and the

owner shall have one-quarter (1/4) of a vote for each apartment unit. The owner of a condominium unit shall have one-half (1/2) a vote for each such unit.

b) Type B - The Type B Membership shall be the Declarant. The Declarant shall have three votes for each Lot and three votes for each Planned Lot owned by the Declarant, whether such Lots are for single family dwellings, condominiums, or apartments.

Notwithstanding any contrary provision, in calculating the votes of the Declarant only, Lots and Planned Lots for the entire Properties shall be computed. The initial forecast for Lots and Planned Lots (exclusive of casitas, hotel rooms, guest ranch rooms and other such facilities) within the Block Plat is 1255 (55 Lots in Champagne plus 1200 Planned Lots elsewhere), and unless and until that forecast is adjusted by Declarant as provided herein, the number of Planned Lots shall equal 1255 minus the number of platted residential Lots. Declarant shall have three votes for each Planned Lot, and when each Block is platted, Declarant shall have three votes for each Lot owned by Declarant and shown thereon. As of the date hereof, Declarant shall have 3600 Type B votes.

As an example, if the Block Plat consists of 300 Lots and 955 Planned Lots, with 100 of the platted Lots (other than apartments or condominiums) being owned by homeowners, the remaining 200 platted Lots being owned 100 by a Developer (who has not been assigned Declarant's weighted voting rights), and 100 by Declarant, and all Planned Lots being owned by Declarant, the votes in the Master Association would be as follows:

- a) Homeowners - 100 Type A votes
- b) Developer - 100 Type A votes
- c) Declarant - 3165 Type B votes (100 Lots plus 955 Planned Lots multiplied by 3)

Type B Membership shall terminate and be converted to Type A the earlier of:

- i) The time at which the total outstanding votes of Type A equal the total outstanding votes of Type B, or



ii) December 31, 2010.

c) Co-owners must agree among themselves as to how a vote shall be cast. Regardless of the number of co-owners, no more than one Type A Membership vote may be cast for each Lot.

d) Any mortgagee who acquires title to a Lot pursuant to a judgment of foreclosure or a trustee's sale shall automatically become entitled to exercise all voting rights which the Owner of said Lot would otherwise have had.

e) If any lender to whom Declarant has assigned, or hereafter assigns, as security all or substantially all of its rights under this Master Declaration succeeds to the interests of the Declarant by virtue of said assignment, the absolute voting rights of the Declarant as provided herein shall not be terminated thereby, and such lender, or successor to such lender by assignment or foreclosure or acceptance of a deed in lien thereof, shall hold the Declarant's memberships and voting rights on the same terms as they were held by Declarant.

f) Declarant shall have the right to assign its weighted three to one voting privileges to any Developer who shall then have three votes for each Lot owned. Upon sale of an unsubdivided Block or portion thereof to a Developer, the Declarant may assign and record a designation of the number of Planned Lots that shall be assigned to said land for purposes of this Master Declaration, and the actual number of Lots shall be fixed upon recordation of a subdivision plat therefor.

Section 3. Purpose of Association. The Master Association is a non-profit corporation which will serve as the governing body for all Owners and Members for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Property, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Master Declaration, the Articles, Bylaws, Association Rules and Design Guidelines. The



Association shall not be deemed to be conducting a business of any kind. All funds received by the Master Association shall be held and applied by it for the Owners and Members in accordance with the provisions of this Master Declaration, the Articles and the Bylaws.

Section 4. Rights and Responsibilities of Master Association. The Master Association, through the Board of Directors unless specifically provided otherwise, shall have the duty of enforcement of all provisions of this Master Declaration, the right to enforce the provisions of all Supplemental Declarations, and shall have the right and be responsible for the proper and efficient management and operation of the Common Property, including:

(a) maintaining, operating, and rebuilding the drainage and detention/retention facilities within the Common Property, if any, including any ponds or basins within any wash area and including and such facilities that the Master Association may accept from any Subassociation;

(b) maintaining and landscaping property owned or contracted by the Master Association, including easements, trails, paths, and roads;

(c) operating, maintaining (including insuring), and rebuilding, if necessary, street signs, walls, fences, and other improvements originally constructed by Declarant or later constructed or later accepted by the Master Association on or about the Common Property;

(d) paying ad valorem real estate taxes, assessments, and other charges on the Common Property;

(e) insuring all improvements which the Association is obligated to maintain against damage by casualty with such companies and such limits as provided herein and as the Master Association deems appropriate;

(f) hiring, firing, supervising and paying employees and independent contractors including, but not limited to, watchmen and security personnel to operate any restricted entry system, workmen, landscapers, attorneys, accountants, architects, and contractors to carry out the obligations set forth herein;

(g) maintaining such liability insurance as the Master Association deems necessary to protect the Members and the Board of Directors of the Master Association from any liability caused

by occurrences or happenings on or about those portions of the areas maintained by the Master Association (including, but not limited to, errors and omissions insurance for the Board of Directors of the Association);

(h) maintaining workmen's compensation insurance for the employees of the Master Association;

(i) purchasing all goods, supplies, labor, and services reasonably necessary for the performance of the obligations set forth herein;

(j) establishing and maintaining such cash reserves, if any, as the Master Association may, in its sole and absolute discretion, deem reasonably necessary for the maintenance and repair of the improvements which it is responsible to maintain;

(k) providing for and payment of all utility services for Common Property;

(l) entering into such agreements and taking such actions as are reasonably necessary and convenient for the accomplishment of the obligations set forth above and the operation and maintenance of the Properties as a first-class, multi-use development;

(m) granting licenses, easements, and other agreements for the use of Common Property in connection with the Golf Course or otherwise; and

(n) such other matters as are provided for in this Master Declaration, the Articles of Incorporation, and the Bylaws.

Section 5. Articles and Bylaws. The manner in which the Master Association holds meetings and attends to other corporate formalities shall be controlled by the provisions of the Bylaws, the Articles of Incorporation, and this Master Declaration which shall control. For a period of ten years from the date hereof, Declarant shall, so long as it owns a single Lot or Planned Lot in the Properties, have the right to appoint the members of the Board of Directors without a meeting and without a vote of the Members, and during said ten year period no election of the Members to elect the Directors shall be had unless Declarant has in writing relinquished its right of exclusive appointment.

Section 6. Transition to Board. Prior to the time that the operations of the Master Association are turned over to the

Members by the Declarant, the Members shall be required by February 15 of each year to report and submit to the Master Association, in writing, any claims or disputes with regard to the operations of the Master Association by the Declarant, during the immediately preceding calendar year, including the maintenance of any streets, roads, sidewalks, street signs, walls, fences, landscape, or other improvements originally constructed by Declarant or the collection of assessments, maintenance and reserve accounts, and other matters falling within the realm of responsibility of the Master Association.

When the operations of the Master Association are turned over to the Members by the Declarant, the Declarant shall deliver all corporate books and accounting records to the Members at the Master Association's offices. Upon receipt of the corporate books, accounting records and written notice of Declarant's intent to turn over the operations of the Master Association, the Members shall notify Declarant in writing within forty-five (45) days of any claims or disputes with regard to the operations of the Master Association by the Declarant which have arisen subsequent to December 31 of the preceding year including the maintenance of any streets, roads, sidewalks, street signs, walls, fences, landscape or any other improvements originally constructed by Declarant or the collection of assessments, maintenance of assessments, and other matters falling within the realm of responsibility of the Master Association.

In the event that such claims or disputes are not presented in writing to the Declarant within the time periods set forth above, such claims and disputes shall be deemed forever waived, relinquished, and abandoned.

Any valid and timely written claims or disputes presented to the Declarant shall be resolved promptly between the Members and Declarant.

Section 7. Authority of Board. The Board shall be empowered to adopt, amend, or repeal such rules and regulations as it deems reasonable and appropriate, including without limitation the Design Guidelines as set forth herein (collectively the "Association Rules"), which shall be binding upon all persons subject to this Master Declaration and shall govern the use and/or occupancy of the Properties. The Association Rules may also include the establishment of a system of fines and penalties enforceable as Special Assessments. The Association Rules shall govern such matters as the Board deems to be in furtherance of the purposes of the Master Association, including, without limitation,

the use of the Common Property. The Association Rules, including the Design Guidelines, may be amended at any Special or regular meeting of the Board of Directors.

The Association Rules are deemed incorporated herein by this reference and shall have the same force and effect as if they were set forth in and were part of this Master Declaration and shall be binding on all persons having any interest in, or making any use of, any part of the Properties, whether or not copies of the Association Rules are actually received by such persons. The Association Rules, as adopted, amended, or repealed, shall be available for review at the principal office of the Master Association to each person reasonably entitled thereto. It shall be the responsibility of each person subject to the Association Rules to review, and keep abreast of any changes in, the provisions thereof. In the event of any conflict between any provision of the Association Rules and any provisions of this Master Declaration, or the Articles of Incorporation or Bylaws, the provisions of the Association Rules shall be deemed to be superseded by the provisions of this Master Declaration, the Articles of Incorporation, or Bylaws to the extent of any such conflict.

The Declarant shall have the right so long as it owns a single Lot, Block, or Planned Lot to amend, add to, or repeal the provisions of the Association Rules providing for Design Guidelines without a meeting and without a vote of the Members and may veto any action of the Master Association in connection therewith.

Section 8. Non-Liability of Officials and Indemnification. To the fullest extent permitted by law, neither Declarant, the Board of Directors, the Architectural Control Committee, or any other committees of the Master Association nor any member thereof, nor any officers, directors, or employees of the Declarant or of the Master Association, shall be liable to any Owner, Occupant, or to the Master Association or any other person for any damage, loss, or prejudice suffered or claimed on account of any decision, approval, or disapproval of plans or specifications (whether or not defective), course of action, act, inaction, omission, error, negligence, or the like made in good faith and which Declarant, the Board, or such committees or officers reasonably believed to be within the scope of their respective duties.

To the fullest extent permitted by law Declarant, and every director, officer, or committee member of the Master Association and of the Declarant (to the extent a claim may be brought by reason of Declarant's appointment, removal, or control

over members of the Board or its control over the Master Association or any committee thereof) shall be indemnified by the Master Association. Every other person serving as an employee or direct agent of the Master Association, or otherwise acting on behalf of, and at the request of, the Master Association, may, in the discretion of the Board, be indemnified by the Master Association. Any such indemnification shall be limited to all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon such person in connection with any proceeding to which he may be a party or in which he may become involved, by reason of his being or having served in such capacity on behalf of the Master Association (or in the case of Declarant by reason of having appointed, removed, controlled, or failed to control members of the Board, or controlled, or failed to control the Master Association), or incurred in any settlement thereof, whether or not he is a director, officer or member of a committee or serving in such other specified capacity at the time such expenses are incurred.

Section 9. Non-Liability for Certain Changes and Amendments. Neither the Declarant, the Master Association, nor their successors shall be liable to, or subject to injunction by, any Member or Owner or to one another in the event that any change in zoning at Starr Pass is sought or obtained, or in the event that any area plan amendment or change in density shall be sought and obtained, including, but not limited to, any change in area or density among the various Blocks of land shown on the Block Plat, any change in the location of subdivisions, and any amendment to the Block Plat itself.

Section 10. Managing Agent. All powers, duties and rights of the Master Association or the Board, as provided by law and herein, may be delegated to a managing agent under a management agreement; provided, however, that no such delegation shall relieve the Master Association of its obligation to perform any such delegated duty. Any agreement for professional management shall not exceed a term of one year, which 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 90 days' written notice; provided, however, that the Master Association may terminate the agreement for cause upon 30 days' written notice. The Master Association is expressly authorized to contract with Declarant, or an affiliate of Declarant, to provide management services or to perform other duties of the Master Association or the Board; provided, however, that the compensation to be paid to Declarant or its affiliate, under such contract shall



not exceed a reasonable amount consistent with compensation paid to professional managers performing similar services in accordance with the standards of the industry.

Section 11. Disputes. In the event of any dispute or disagreement between any Owners, Occupants, or any other persons subject to this Master Declaration relating to the Properties or Annexation Land, or any question of interpretation or application of the provisions of this Master Declaration, the Articles of Incorporation, Bylaws, or Association Rules, this Master Declaration shall control.

Section 12. Security Services. The Master Association may, if it deems it necessary or desirable, provide for police or security protection for the Properties. In addition, the Master Association may provide access to and require Owners to participate in a security system for the protection of individual Residences located on the Properties.

Section 13. Records and Accounting. The Master Association shall keep, or cause to be kept, true and correct books and records of account at the sole cost and expense of the Master Association in accordance with generally accepted accounting principles. Such books and records, together with current copies of this Master Declaration, the articles of Incorporation, Bylaws and Association Rules and Design Guidelines, shall be available for inspection by all Owners and first mortgagees of record at reasonable times during regular business hours, and shall specify in reasonable detail all expenses incurred and funds accumulated. Such records, books, and accounts shall be kept for a period of at least two years after preparation.

#### ARTICLE IV COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. Each Owner of a Lot, Block, or portion of a Block, and the owner of each apartment project, which is a part of the Properties (excluding the Golf Course, Common Property, Guest Ranch or Resort, etc.), including Declarant and Developers who have purchased or own land within the Properties, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Master Association: (1) annual assessments or charges (including reserves) and (2) special assessments, such assessments to be established and collected as hereinafter provided.



The annual and special assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a charge and shall be a continuing lien upon the Lot, Block or portion of a Block against which each such assessment is made. The lien may be enforced by foreclosure of the lien on the defaulting Owner's Lot or Block by the Master Association in like manner as a mortgage on real property. In any such foreclosure the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorneys' fees. The Board of Directors or managing agent of the Master Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot or Block and a description thereof. Such a notice shall be signed and acknowledged by one of the Board of Directors or by the managing agent of the Master Association and may be recorded in the office of the Clerk and Recorder of the County of Pima, Arizona. The lien for each unpaid assessment attaches to each Lot and Block at the beginning of each assessment period and shall continue to be a lien against such Lot or Block until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for the Lot or Block against which it is filed and collected as part and parcel thereof. Each assessment, together with interest, late charges, costs, and reasonable attorneys' fees, shall also be the personal obligation of each person who was the Owner of such Lot or Block at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The Master Association's lien on each Lot or Block for assessments shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Arizona or any exemption now or hereafter provided by the laws of the United States. The acceptance of a deed subject to this Master Declaration shall constitute a waiver of the homestead and any other exemption as against said assessment lien.

Until a particular Block owned by Declarant is subdivided by a recorded subdivision plat therefor, assessments for Planned Lots owned by Declarant shall apply to all such unsubdivided Blocks as a whole (i.e., one assessment as to all 1200 Planned Lots in unsubdivided Blocks at 25% of the regular rate), based upon Planned Lots as determined by Declarant from time to time. Upon sale of unsubdivided Blocks, Declarant shall assign a specific number of Lots or Planned Lots to such Block or portion thereof separately. In the case of an apartment project, the Block or portion thereof shall be assigned a number of Lots equal to the number of apartment units built or to be built.

In the event that an Owner owns a portion of an unsubdivided Block, the lien of the assessment shall attach to the portion owned at the time the assessment was made. The amount of the assessment will be based on the Planned Lots in the entire Block, prorated in accordance with the portion of the Block owned by the Owner, as established by Declarant as set forth above.

In the case of an apartment project, the lien of any assessment shall extend to the entire apartment project land as if it were one lot, and the basis for assessment shall be as provided in Section 6 below. In the case of any casita or villas project built in Block 13, if the Block is subdivided, then the Lots therein shall be subject to assessment hereunder.

The assessment liens of the Master Association shall be superior in all cases to the assessment liens of any Subassociation.

Section 2. Purpose of Assessments. The assessments levied by the Master Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Properties, for the improvement and maintenance of the Common Property, including without limitation the appurtenances and improvements thereto and thereon, and for the purpose of enabling the Master Association to perform its duties hereunder and to have on hand sufficient revenue to pay the Common Expenses of the Master Association, including reserves for maintenance.

Section 3. Maximum Annual Assessment.

Until the commencement of the second annual assessment period, the maximum annual assessment (exclusive of any special assessments and reserves) shall be \$40 per month for each Lot and Planned Lot, including for any condominium unit, payable in each case whether or not a dwelling thereon is actually constructed.

(a) Effective with commencement of the second and each subsequent annual assessment period, the maximum annual assessment shall be increased effective at the beginning of each annual assessment year by an amount at least in conformance with the rise, if any, of the BLS Consumer Price Index (CPI) - U.S. published by the Department of Labor, Washington, D.C., for All Items, All Cities, for All Urban Consumers, for the one-year period ending with the preceding month of October. An annual increase in the maximum annual assessment shall occur automatically in an amount at least equal to the increase in the CPI upon the commencement of

each annual assessment year without the necessity of any action being taken with respect thereto by Members of the Master Association. In the event the aforesaid Consumer Price Index is not published, for whatever reason, then the increase in the maximum annual assessment, as provided herein, shall be calculated by using a substantially comparable index designated by the Board of Directors of the Master Association. Further, without a vote of the Members, the Board of Directors shall have the discretion to raise the annual assessment by 6 percent in the event the CPI shall provide for a smaller increase.

(b) Effective with commencement of the second and each subsequent annual assessment period, the maximum annual assessment may be increased above the maximum established by paragraph (a) above for the next succeeding annual assessment year and at the end of each such annual assessment period, for each succeeding annual assessment year, provided that any such increase shall have the assent of two-thirds (2/3) of the votes of the Type A Membership and two-thirds (2/3) of the votes of the Type B Membership who are voting in person or by proxy at a meeting duly called for this purpose, as provided in Section 6 below.

(c) The limitations hereof pertaining to increases in assessments shall not apply to any change in the maximum and basis of the assessments undertaken as an incident to a merger or consolidation in which the Master Association is authorized to participate under its Articles of Incorporation, or incident to annexation of additional property pursuant to the provisions hereof, in which case assessments may be altered by the Board of Directors without approval of the members.

(d) The Master Association may, in its discretion, maintain reserve funds out of the annual assessments for the maintenance and repair of those elements of the Common Property that must be maintained or repaired.

Section 4. Special Assessments for Capital Improvements.  
In addition to the annual assessments authorized herein, the Master Association may levy in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the costs of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Property, including fixtures and personal property related thereto, or for the funding of any operating deficit incurred by the Master Association.

A special assessment shall be levied in the same manner as the annual assessments, except as otherwise provided herein. Any such assessment shall have the assent of two-thirds (2/3) of the votes of Type A Membership and two-thirds (2/3) of the votes of the Type B Membership who are voting in person or by proxy at a meeting duly called for this purpose, in accordance with Section 6 below.

Section 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 5 of this Article shall be sent to all Members not less than thirty (30) nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of the Memberships, other than Declarant, shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Annual and special assessments, except as otherwise provided herein, shall be uniform and equal as to Lots and Planned Lots annexed into the Properties: provided, however: a) assessments for any apartment project shall apply to the project in its entirety, and shall apply at the full uniform rate for each apartment unit as if each apartment were any other Lot (i.e. a project with 100 apartments will pay 100 full assessments); and b) the amount required to be paid toward annual and special assessments for the Lots and Planned Lots within the Properties and owned by Declarant which are neither leased, nor rented, nor otherwise occupied as a Residence shall be fixed at twenty-five percent (25%) of the regular assessment rate for the other Lots and Planned Lots.

A Developer shall, if so designated in writing by Declarant, be deemed entitled to pay assessments at the same rate as the Declarant, i.e., 25 percent of the annual and special assessment applicable to other Lots.

Developers who have not been designated as being entitled to such reduced assessment ratio shall pay full assessments, not the 25% rate applicable to Declarant.

Section 7. Date of Commencement of Annual Assessments.

The initial annual assessment period shall commence on the first day of the month following conveyance of Common Property by Declarant to the Master Association, and the second and each subsequent annual assessment period shall correspond with the fiscal year of the Master Association. The annual assessments shall be made due and payable in twelve (12) monthly installments per annum on such dates as determined by the Board of Directors of the Master Association, provided that the first annual assessment shall be adjusted according to the number of months in the first annual assessment year. Any Owner purchasing a Lot or Block between installment due dates or whose Lot or Block is annexed into the Properties between installment due dates shall pay a pro rata share of the last installment due and shall be liable for all remaining installments for that year's assessment.

Section 8. Effect of Non-payment of Assessments; Remedies of the Master Association. Any assessment or portion thereof which is not paid within ten (10) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum and the Master Association may assess a monthly late charge thereon. The Master Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against such Lot or Block or portion thereof and in the event a judgment is obtained, such judgment shall include interest and late charges on the assessment, as above provided, and a reasonable attorneys' fee to be fixed by the court, together with the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Property or abandonment of his Lot or Block.

Section 9. Subordination of the Lien to Mortgages.

The lien of the assessments provided for herein, including without limitation any fees, costs, late charges, or interest which may be levied by the Master Association in connection with unpaid assessments, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot or Block pursuant to foreclosure of any such First Mortgage or any such executory land sales contracts or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract, shall extinguish the lien of assessments charges which became due prior to any such sale or transfer, or foreclosure, or any proceeding in lieu thereof, including deed in lieu of foreclosure, or cancellation or forfeiture of any such executory land sales contract; provided, however, that any such delinquent assessment charges, including



interest, late charges, costs, and reasonable attorneys, fees, which are extinguished as provided herein, may be reallocated and assessed to all Lots and Blocks as a Common Expense.

No such sale, transfer, foreclosure, or any proceeding in lieu of, including deed in lieu of foreclosure, nor cancellation or forfeiture of such executory land sales contract shall relieve any Owner of a Lot or Block from liability for any assessment charges thereafter becoming due, nor from the lien thereof; provided, however, that in the event of foreclosure of Mortgage or the taking of a deed in lieu thereof, such First Mortgagee shall not be liable for unpaid assessments or other charges which accrue prior to the acquisition of title to the Lot or Block in question by such First Mortgagee.

#### Section 10. Adjustment of Estimated Assessment.

The estimated annual assessment may be adjusted by the Master Association to reflect changes in the Block Plat, changes in the designation of any Block shown on the Block Plat, changes in the estimated number of Planned Lots for any Block or area subject to the provisions hereof, and changes in the total amount of the estimated annual assessment as a result of annexation or otherwise. Such adjustment shall be accomplished by the recalculation of the proportionate share of the assessments that each Lot, Block, or portion of a Block should bear. The adjustment shall be prospective only and shall not be required to be made more frequently than annual basis. No Member shall be entitled to a refund on an assessments previously levied, whether already paid or not, by reason of the fact that such share may have been reduced by the adjustment provided for herein. Recalculation of Lots and Planned Lots may also change the number of votes which cast from within particular subdivisions or Blocks.

The numbers of Planned Lots initially estimated for the land shown on the Block Plat is 1200. As the Properties are developed, changes the Block Plat and in the estimated number of Planned Lots in particular Blocks or areas may be required as more fully set forth herein.

### ARTICLE V ARCHITECTURAL CONTROL COMMITTEE

Section 1. Composition of Committee. The Architectural Control Committee shall consist of three (3) or more persons appointed by the Board of Directors of the Master Association; provided, however, that Declarant alone shall appoint the



Architectural Control Committee so long as it owns a single Lot, Block, or Planned Lot from within the Properties.

Section 2. Review by Committee. No structure or any attachment to an existing structure, whether a Residence, any building, a tennis court, a swimming pool, fences, walls, canopies, awnings, roofs, solar devises, exterior lighting facilities, athletic facility, or other similar improvements or attachments, shall be constructed upon the Properties anywhere within the development at Starr Pass, no alteration of the exterior of a Residence or other structure shall be made, and no change in the final grade, nor the installation of or any change in any landscaping, shall be performed, unless complete plans and specifications therefor (said plans and specifications to show exterior design, neight, materials, color, location of the structure or addition to the structure, plotted horizontally and vertically, location and size of driveways, general plan of landscaping, fencing, walls, windbreaks, grading plan, and other matters required by the Design Guidelines) shall have been first submitted to and approved in writing by the Architectural Control Committee. The Architectural Control Committee shall exercise its best judgment to the end that all attachments, improvements, construction, landscaping, and alterations to Residences, other structures, and property, within the Properties, conform to and harmonize with the existing surroundings, Residences, landscaping, and structures.

Notwithstanding the foregoing, Declarant is exempt from this Article and from all requirements relating in any way to Architectural Control or review.

Section 3. Procedures. The Architectural Control Committee shall approve or disapprove all plans within thirty (30) working days after its regularly scheduled meeting to consider the plans, provided that the plans must have been submitted at least five working days prior to that meeting of the Architectural Control Committee or they will be withdrawn from consideration and held over until the next periodic meeting. In the event that the Architectural Control Committee fails to notify the party or Owner of a decision on such timely submitted plans and specifications within thirty (30) working days after the regularly scheduled meeting at which such plans were reviewed, then the party dr Owner submitting the plans may request a decision by certified letter addressed to the Architectural Control Committee and if no response is given, the plans shall be deemed approved fifteen days after the letter is postmarked, certified first class mail, return receipt requested, addressed to the Architectural Control Committee at the

address of the Master Association. Each time that a submission is disapproved by the Architectural Control Committee, and then resubmitted to it, the thirty (30) day period shall begin anew.

Section 4. Vote. A majority vote of the Architectural Control Committee is required to approve a proposed change or improvement, unless the Committee has in writing designated a representative to act for it, in which case the written approval of the designated representative shall be required. Until all Lots and Planned Lots in the Annexation Land have been conveyed by the Declarant to the first Owner thereof, all proposed changes or improvements shall also require the approval of Declarant. Further, Declarant shall until such time have the right, in its sole discretion, to veto any proposed action of the Architectural Control Committee.

Section 5. Records. The Architectural Control Committee shall maintain written records for a period of three years after submittal of all applications submitted to it and all actions taken by it thereon, and such records shall be available to Members for inspection at reasonable hours of the business day.

Section 6. Design Guidelines.

The Association Rules provided for in Article III, Section 7 shall include written Design Guidelines setting forth minimum standards for the design, size, location, style, structure, color, mode of architecture, and the relevant criteria deemed important by the Architectural Control Committee for the construction of improvements of any nature on the residential Properties.

The initial Design Guidelines shall be subject to all provisions of this Master Declaration and shall not, so long as Declarant owns a single Lot, Block, or Planned Lot in the Properties, be amended or waived without the written consent of the Declarant.

The Design Guidelines are deemed incorporated herein by reference. The purpose of the Design Guidelines is to insure a residential community compatible with surrounding neighborhoods. By acceptance of a deed to any Lot, Block, or portion of a Block, each Owner and his successors and assigns agrees to be bound by all provisions of the Design Guidelines and to use diligence in keeping abreast of the provisions thereof.

The Design Guidelines may set forth reasonable fees to be paid for review of plans and specifications by both Developers and purchasers of custom home Lots.

Section 7. Variance. The Architectural Control Committee may grant reasonable variances or adjustments from any condition and restriction imposed by this Article, or any condition or restriction imposed by any Supplemental Declaration, in order to overcome practical difficulties and prevent unnecessary hardships arising by reason of the application of the conditions and restrictions contained herein, or any Supplemental Declaration. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the other property or improvements in the neighborhood and shall not militate against the general intent and purpose hereof.

Section 8. Violation of Approved Plans; Non-Conforming Items. If it is determined by the Architectural Control Committee that work completed on any Lot or Block has not been completed in compliance with the final plans approved by the Committee, the Committee or the Master Association may notify the Owner in writing of such non-compliance within 45 working days of inspection, specifying in reasonable detail the particulars of non-compliance and may require the Owner to remedy the same. If, upon the expiration of 30 days from the date of such notification, the Owner shall fail to remedy such non-compliance or to commence and continue diligently toward achieving compliance, the Master Association shall notify the Owner that it may take action to remove the non-complying improvements as provided for in the Design Guidelines or Master Declaration, and seek injunctive relief, recovery of costs incurred, and imposition of a fine, which fine shall not exceed ten percent (10%) of the cost of achieving compliance.

Each Owner shall be required to complete construction of his Residence, including landscaping, within one year from the commencement of the construction following the date written approval of plans is given by the Architectural Control Committee or within such earlier time as may be established in the Design Guidelines or design criteria established for a particular Developer. If an Owner who has commenced construction fails to comply with this paragraph or fails to fully complete the improvements commenced, the Committee shall notify the Master Association of such failure and the Master Association, at its option, may complete the exterior in accordance with the approved plans or remove the improvements. The Owner shall reimburse the

Master Association for all expenses incurred in connection therewith.

The provisions of this Section 8 are not intended, in any way, to deprive the Master Association or any Owner of other rights and remedies available hereunder or at law or in equity. The Master Association shall have a lien against the Lot, Block, or portion of a Block of an Owner for expenses incurred pursuant to the provisions of this paragraph, and the lien may be foreclosed in the manner of a mortgage 10 days after written notice and demand for reimbursement to the Owner and after recording a notice of lien with respect thereto.

Section 9. Non-Liability for Approval of Plans.

Although the Architectural Control Committee shall have the right to reject plans and specifications for reasons which may include their failure to comply with zoning or building ordinances, or other governmental regulations or restrictions, or on the basis that such plans and specifications are defective or not prepared in accordance with sound engineering practices, the approval of plans and specifications shall not constitute a representation, warranty or guarantee that such plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such plans and specifications neither the Architectural Control Committee, the members thereof, the Master Association, any Member thereof, the Board nor Declarant assumes any liability or responsibility therefor, or for any defect in the structure constructed from such plans or specifications. Neither the Architectural Control Committee, any member thereof, the Master Association, the Board, nor Declarant shall be liable to any Member, Owner, Occupant, or other Person for any damage, loss, or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, and specifications, whether or not defective, (b) the construction or performance of any work, whether or not pursuant to the approved plans, drawings, and specifications or (c) the development, or manner of development, of any portion of the Properties, provided that such action, with the actual knowledge possessed by him, was taken in good faith.

Section 10. Consultants. The Architectural Control Committee may employ a consultant to advise in matters pertinent to the Committee's functions and may pay a consulting fee which in the discretion of the Committee may be charged to a person requesting approval of plans.

ARTICLE VI  
INSURANCE AND NOTICE TO FIRST MORTGAGEES

Section 1. Insurance on Common Property. The Master Association shall maintain insurance covering all insurable improvements located or constructed upon the Common Property. The Master Association shall maintain the following types of insurance, to the extent that such insurance is reasonably available, considering the availability, cost, and risk coverage provided by such insurance:

(a) A policy of property insurance covering all insurable improvements located on the Common Property, with a "Replacement Cost Endorsement" providing that any claim shall be settled on a full replacement cost basis without deduction for depreciation, and including an "Inflation Guard Endorsement" and an "Agreed Amount Endorsement," if possible. The Master Association may also purchase a "Demolition Endorsement," an "Increased Cost of Construction Endorsement," a "Contingent Liability from Operation of Building Laws Endorsement" or the equivalent, and/or coverage on personal property owned by the Master Association. Such insurance as maintained by the Master Association pursuant to this subsection shall afford protection against at least the following:

(1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(2) such other risks as shall customarily be covered with respect to projects similar in construction, location, and use, including all perils normally covered by the standard all risk endorsement, where such is available.

(b) A comprehensive policy of public liability insurance covering all of the Common Property, insuring the Master Association in an amount not less than \$1,000,000.00 covering bodily injury, including death of persons, personal injury, and property damage liability arising out of a single occurrence. Such coverage shall include, without limitation, legal liability of the insureds for property damage, bodily injuries, and deaths of persons in connection with the operation, maintenance, or use of the Common Property; legal liability arising out of lawsuits related to employment contracts of the Master Association; and protection against liability for non-owned and hired automobiles;



Mortgagees of each Lot. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any First Mortgagee of a Lot upon written request. The insurance shall be carried in blanket forms naming the Master Association, as the insured, as trustee and attorney in fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any such Owner's membership in the Master Association.

Section 2. Damage to Common Property. In the event of damage to or destruction of all or a portion of the Common Property due to fire or other adversity or disaster, the insurance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Master Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Property damage or destruction, together with money offered or contributed from another source, if any, are insufficient to repair and reconstruct the damage or destruction, but equal or exceed 75 percent of such cost, the Master Association shall levy a special assessment to obtain the funds necessary to repair or reconstruct the damage. If such proceeds are less than 75 percent of such cost, the Master Association shall present to the Members a notice of special assessment for approval by the membership in accordance with the provisions hereof. If such assessment is approved, the Master Association shall levy such assessment and proceed to make such repairs or reconstruction. If such assessment is not approved, the insurance proceeds may, after first being used to clean and landscape damaged areas, be applied in accordance with the wishes of the Membership upon the approval of Members and Eligible Mortgage Holders as set forth in Article XI hereof, except that the proceeds shall not be distributed to the Owners, unless made jointly payable to Owners and the First Mortgagees, if any, of their respective Lots or Blocks.

Any such assessment or refund as set forth above shall be applied in accordance with the same methods used for regular annual assessments, except that Lots and Blocks owned by Declarant shall be assessed at one-quarter (1/4) of the assessment rate for other Lots, as more fully provided in Article V, Section 7 hereof. Such assessment shall be due and payable as provided by resolution of the Board of Directors of the Master Association, but not sooner than sixty (60) days after written notice thereof. The assessment provided for herein shall be a debt of each Owner and a lien on his Lot or Block, and may be enforced and collected in the same manner as any assessment lien provided for in this Master Declaration.



such coverage may also include, if applicable, garagekeeper's liability, liability for property of others, host liquor liability, water damage liability, contractual liability, workmen's compensation insurance for employees of the Master Association, and such other risks as shall customarily be covered with respect to projects similar in construction, location, and use.

(c) A policy providing adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Master Association and all others who handle or are responsible for handling funds of the Association. Such fidelity coverage or bonds shall meet the following requirements:

(1) all such fidelity coverage or bonds shall name the Master Association as an obligee;

(2) such fidelity coverage or bonds shall contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression.

(d) If the Common Property or any portion thereof is located within an area identified by the Federal Emergency Management Agency as having special flood hazards, and flood insurance coverage or improvements on the Common Property has been made available under the National Flood Insurance Program, then such a policy of flood insurance on the Common Property in an amount at least equal to the lesser of:

(1) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or

(2) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.

All such policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of the Declarant or a Member of the Master Association and shall provide that the policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the insured, as well as to the First

Section 3. Master Association Insurance as Primary Coverage. If at the time of any loss under any policy which is in the name of the Master Association, there is other insurance in the name of any Owner and such Owner's policy covers the same property or loss, or any portion thereof, which is covered by such Master Association policy, such Master Association policy shall be primary insurance not contributing with any of such other insurance.

Section 4. Other Insurance to be Maintained by Owners. Insurance coverage on the furnishings and other items of personal property belonging to an Owner, public liability insurance coverage upon each Lot, and hazard insurance coverage on the improvements constructed on Lots (unless such coverage is maintained by the Subassociation having jurisdiction over such Lot), shall be the responsibility of the Owner thereof.

Section 5. Notice to First Mortgagees.

Provided that a First Mortgagee has, in writing, requested the following information with respect to a Lot upon which said First Mortgagee holds the First Mortgage and has furnished the Master Association with the address to which said First Mortgagee wants the information sent, then in the event that there shall be any damage to or destruction of the Common Property which shall be in excess of Ten Thousand Dollars (\$10,000.00), then timely written notice of any such damage or destruction shall be given by the Master Association to such First Mortgagee.

In addition, each holder of a first mortgage and each insurer and guarantor to a first mortgage who has requested such notice, shall be entitled to timely written notice of the following:

A. Any material condemnation or substantial casualty loss that affects a material portion of the Properties or the Lots securing the mortgage, provided that the Master Association has been given notice thereof;

B. Any 60 day delinquency in the payment of assessments or charges owed by an Owner of any Lot upon which the holder holds a first mortgage;

C. Lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Master Association; and

D. Any proposed action that requires the consent of specified percentages of the eligible mortgage holders as defined herein.

For purposes of the foregoing, for any eligible mortgage holder to be entitled to receive notice of such matters, the mortgage holder, insurer, or guarantor must send a written request to the Master Association stating both its name and address and the Lot number or street address of the Lot upon which it holds, insures, or guarantees a mortgage.

Section 6. Annual Review of Insurance Policies. All insurance policies carried by the Master Association shall be reviewed annually by the Board of Directors of the Master Association to ascertain that the coverage provided by such policies is reasonably adequate in view of expected and likely risks insured by the Master Association.

#### ARTICLE VII USE RESTRICTIONS

Section 1. Use of Common Property. The following shall apply to the Common Property, subject to all other provisions hereof, including Declarant's reserved rights of resubdivision and amendment of Common Property:

a) No use shall be made of the Common Property which will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Common Property.

(b) No Owner shall place any structure whatsoever upon the Common Property, nor shall any Owner engage in any activity which will temporarily or permanently deny free access to any part of the Common Property to all Members.

(c) The use of the Common Property shall be subject to such rules and regulations as may be adopted from time to time by the Board of Directors of the Master Association.

(d) No use shall ever be made of the Common Property which will deny ingress and egress to those Owners having access to a public or private street or to their Lots only over Common Property, and said rights of ingress and egress to all Lots are hereby expressly granted.

Section 2. Residential Use. Subject to the provisions of this Master Declaration, the platted residential Lots shall be used for private residential purposes only, including uses related to the convenience and enjoyment of such residential use, and no business or profession of any nature shall be conducted on any Lot or Block or in any Residence, except home occupations wholly within a dwelling unit and not involving solicitation of the general public, nor traffic of customers to or from any dwelling unit, nor any repair, manufacturing or other activity which may cause noise or inconvenience or disturbance to other residents. An allowed home occupation shall be limited to professional services such as legal and accounting, arts and crafts, drafting and such other services as the Master Association, in its sole discretion, permit upon application of an Owner.

Notwithstanding the foregoing, this provision shall in no way prohibit or limit the leasing or renting of Lots, apartments, condominium units, or portions of Lots, nor shall it prohibit or regulate the establishment, construction, or operation of any Golf Course, Guest Ranch, lodge or resort by Declarant or its assigns, nor any activities in connection therewith or related thereto. Declarant reserves the right, without limitation, to allow the short term leasing of townhouses and similar residential products near the Golf Course. The rights reserved unto the Declarant herein are exclusively for the Declarant and its assigns, and not for the buyers of individual lots or parcels.

Section 3. Declarant's Use, Commercial Use and Zoning Limitation. Notwithstanding anything to the contrary contained in this Master Declaration, it shall be expressly permissible and proper for Declarant, its employees, agents, and contractors, and Developers to perform such reasonable activities, and to maintain upon portions of the Properties, including Lots and Blocks owned by Declarant or a Developer, such facilities as Declarant or a Developer deems reasonably necessary or incidental to the construction and sale of Lots and Blocks and development of the Properties and Annexation Land, specifically including without limiting the generality of the foregoing, maintaining business offices, storage areas, construction yards, equipment, signs, model units, sales offices, parking areas, and lighting facilities.

Buildings and Lots owned by Declarant and used as models, sales offices, and administrative offices by Declarant, as well as for parking areas, may later be sold to the public. Such buildings or Lots may also be granted or sold to the Master Association as Common Property.

Section 4. Household Pets. No animals, livestock, poultry, or bees, of any kind, shall be raised, bred, kept, or boarded in or on the Properties; provided, however, that the Owners of each Lot may keep a reasonable number of dogs, cats, fish, or other domestic animals which are bona fide household pets, so long as such pet(s) are not kept for any commercial purpose and are not kept in such number or in such manner as to create a nuisance to any resident of the Properties. Notwithstanding the foregoing, the Master Association shall have, and is hereby given, the right and authority to determine in its sole discretion that dogs, cats, or other household pets are being kept for commercial purposes or are being kept in such number or in such manner as to be unreasonable or to create a nuisance to any resident of the Properties, or that an Owner is otherwise in violation of the provisions of this Section 4, and to take such action or actions as it deems reasonably necessary to correct the same. An Owner's right to keep household pets shall be coupled with the responsibility to pay for any damage caused by such Owner's pet(s).

In the discretion of the Master Association, horses may be permitted on certain Lots provided that proper facilities exist and that the horses are located appropriately on the Lot. Any such Lot must be at least 60,000 square feet in size and the Master Association may in its sole discretion disallow horses when it feels a nuisance or disturbance will be created.

The owner of any lodge, guest ranch, or resort may elect to have horses there as a part of the overall amenity package.

The Master Association may establish and enforce regulations requiring that pets be on leashes and confined such that no disturbance to other Owners or occupants occurs, and such that no unreasonable risk to wildlife exists.

Section 5. Temporary Structures. Except as hereinafter provided, no structure of a temporary character, including but not limited to a house trailer, tent, shack, garage, or outbuilding, shall be placed or erected upon any Lot, and no Residence shall be occupied in any manner at any time prior to its being fully completed in accordance with approved plans, nor shall any Residence when completed be in any manner occupied until made to comply with all requirements, conditions, and restrictions herein set forth; provided, however, that during the actual construction or alteration of a Residence, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering, or remodeling



any Residence shall be prosecuted diligently from the commencement thereof until the completion thereof.

Section 6. Signs and Advertising. Signs shall be in compliance with the applicable sign ordinances. Except as hereinafter provided, no signs (other than a name plate of the occupant(s) and a street number, and except one sign of not more than five (5) square feet per Lot advertising that the Lot is "For Sale" or "For Rent"), advertising, billboards, unsightly objects, or nuisances of any kind shall be placed, erected, or permitted to remain in or on any Lot, nor shall any sign(s) be permitted elsewhere on the Property, without the prior written approval of the Master Association.

Notwithstanding the foregoing, signs, advertising, or billboards used by the Declarant and Developers in connection with its sale or rental of Lots or Blocks, or otherwise in connection with its development of the Properties, shall be permissible, provided that such use shall not physically interfere with the Owners' use of their Lots, the Common Property or Common Areas, to which such Owners have a right of use, nor interfere with their ingress and egress from a public way to the Common Property or Common Areas, or their Lots.

Political signs, one per Lot, may be erected no earlier than two weeks prior to an election, and shall be removed within one day thereafter. No more than one sign may be erected on any Lot, and no signs may be placed on the Common Property.

All signs shall comply with the design criteria established by the Master Association.

Section 7. Miscellaneous Structures.

All types of refrigeration, cooking, or heating apparatus shall be screened, and no such facilities may be constructed upon any roof without the written consent of the Architectural Committee. No tanks of any kind, either elevated or buried, shall be erected, placed or permitted on any Lot. All outside storage areas, transformers, and meters shall be screened and/or landscaped in a first class manner with material compatible to the surrounding neighborhood and structures, using desert or earth tones.

No antennae or satellite dishes will be permitted unless screened and installed to limit visibility from surrounding areas, and all placement of any such items shall require consent of the Architectural Control Committee.

Section 8. Vehicular Parking, Storage, and Repairs.

(a) Except as hereinafter provided, no portion of the Properties, including but not limited to streets, drives, or parking areas, unless specifically designated by the Master Association therefor, shall be used as a parking, storage, display, or accommodation area for any type of house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, or accessories thereto, truck larger than 1/4 ton, or self-contained motorized recreational vehicle, except as a temporary expedience for loading, delivery, or emergency. The same shall be stored, parked, or maintained wholly within the garage area, if any, of a Lot with the garage door in a closed position or within such area(s), if any, as may be designated by the Master Association for such parking, storage, or accommodation, the making of such designation(s), if any, to be in the sole discretion of the Master Association, and the parking of any such vehicles is expressly prohibited unless the Master Association declares otherwise in writing pursuant to written rules and regulations. This restriction, however, shall not restrict trucks or other commercial vehicles within the Properties which are necessary for the construction of residences or the maintenance of the Common Property, Common Areas, Lots, or any improvements located thereon.

(b) Except as hereinabove provided, no abandoned or inoperable automobiles or vehicles of any kind shall be stored or parked on the Properties. An "abandoned or inoperable vehicle" shall be defined as any automobile, truck, motorcycle, boat, trailer, camper, house trailer, self-contained motorized recreational vehicle, or other similar vehicle, which has not been driven under its own propulsion for a period of two (2) weeks or longer, or which does not have an operable propulsion system installed therein; provided, however, that otherwise permitted vehicles parked by Owners while on vacation or during a period of illness shall not constitute abandoned or inoperable vehicles. In the event the Master Association shall determine that a vehicle is an abandoned or inoperable vehicle, then a written notice describing said vehicle shall be personally delivered to the owner thereof (if such owner can be reasonably ascertained) or shall be conspicuously placed upon the vehicle (if the owner thereof cannot be reasonably ascertained), and if the abandoned or inoperable vehicle is not removed within seventy-two (72) hours thereafter, the Master Association shall have the right to remove the vehicle at the sole expense of the owner thereof.

(c) No activity such as, but not limited to, maintenance, repair, rebuilding, dismantling, repainting, or servicing of any

kind of vehicles, trailers, or boats, may be performed on any Lot unless it is done within completely enclosed structures located on the Lot which screen the sight and sound of the activity from the street and from adjoining property, nor shall any such activity be performed or conducted on the Common Property or Common Areas. The foregoing restriction shall not be deemed to prevent washing and polishing of any motor vehicle, boat, trailer, or motor-driven cycle, together with those activities normally incident and necessary to such washing and polishing.

d) All ordinary motor vehicles used for daily transportation, and not governed by the above provisions, shall be stored only on the driveways of each Lot, and not on any road or street, and when a garage exists, such vehicles shall be parked in the garage with the garage door shut.

Section 9. Nuisances. No nuisance shall be permitted on the Properties, nor any use or practice which is the source of annoyance to residents or which interferes with the peaceful enjoyment or possession and proper use of the Properties, or any portion thereof, by its residents. As used herein, the term "nuisance" shall not include any activities of Declarant which are reasonably necessary to the development of and construction on the Properties.

The Properties and all portions thereof shall be kept in a clean and sanitary condition, and no rubbish, refuse, litter, junk, or garbage shall be allowed to accumulate, nor any fire hazard to exist. Further, no immoral, improper, offensive, or unlawful use shall be permitted or made of the Properties or any portion thereof. All valid laws, ordinances, and regulations of all governmental bodies having jurisdiction over the Properties, or any portion thereof, shall be observed.

Section 10. Lots Not to be Subdivided. No Lot shall be subdivided, except by the Declarant (or by a Developer who has the consent of the Declarant) or except for the purpose of combining portions with an adjoining Lot or area. Not less than one entire Lot, as conveyed to an Owner, shall be used as a building site.

Section 11. Underground Utility Lines. All electric, television, radio, and telephone line installations and connections within the Properties shall be placed underground, except that during the construction of a Residence the contractor or builder may install a temporary overhead utility line which shall be promptly removed upon completion of construction. This provision shall not require the Declarant to place underground any electric

lines or facilities existing in the development as of the date of recording hereof.

Section 12. No Hazardous Activities. No activities shall be conducted on the Properties or within improvements constructed on the Properties which are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon any of the Properties and no open fires shall be lighted or permitted on the Properties, except in a contained outdoor fireplace or barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace.

Section 13. Annoying Sounds or Odors. No sound shall be emitted from any Lot or Residence which is unreasonably loud or annoying. No odor shall be emitted from any Lot or Residence which is noxious or offensive to others.

Section 14. Garbage and Refuse Disposal. No garbage, refuse, rubbish, or cuttings shall be deposited on any street, the Common Property, Common Areas, or any Lot, unless placed in a suitable container suitably located, solely for the purpose of garbage pickup. The type of garbage disposal container may be specified by the Master Association or a Subassociation. All equipment or containers for the storage or disposal of such materials shall be concealed from view from other Owners and neighboring properties, except for a temporary period when such garbage or refuse is being disposed of by a proper disposal agency or being transported away from the Properties. All such equipment and containers shall be kept in a clean and sanitary condition. No garbage or trash cans or receptacles shall be maintained in an exposed or unsightly manner.

Section 15. Interior Maintenance and Repair. The maintenance and repair of the exterior and interior of each Residence shall be the responsibility of the Owner thereof.

Section 16. Excavations. No excavation shall be made, except in connection with construction of improvements. Upon completion of such construction, exposed openings shall be backfilled and disturbed ground shall be graded and landscaped.

Section 17. No Oil and Gas or Mining Operations. No derrick or other structure designed for use in boring for oil, natural gas, or other minerals shall be erected, maintained, or permitted upon any Lot. No oil drilling, oil development operations, oil refining, quarrying, or mining operations of any

kind shall be permitted upon the Properties, nor shall oil wells, tanks, tunnels, or mineral excavations be permitted upon or within any Lot. No installations of power, telephone, or other utility line (wire, pipe, or conduit) shall be made or operated anywhere on the Properties, except such works operated by public agencies, duly certified public utility companies, cable television or security companies.

Section 18. Drainage. No Owner shall do any work, construct any improvements, place any landscaping, or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots, Common Areas, or Common Property as established in connection with the approval of the final Plat maps applicable to the Properties, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Control Committee and the applicable Subassociation, if any. This provision shall not apply to Declarant nor to alterations necessary and approved for development in accordance with an approved plat or plan.

Section 19. Outside Storage. No furniture, fixtures, appliances, or other goods and chattels not in active use shall be stored on any open area or on any Lot in such manner that such material is visible from a neighboring Lot or from the Common Areas, or Common Property. Construction materials shall not be stored on any Lot for a period exceeding thirty (30) days prior to commencement of construction.

Section 20. Noise. No exterior horns, whistles, bells, or other sound devices, except security devices used exclusively to protect the security of Lots and improvements located thereon shall be placed or used on any Lot, Common Areas, or Common Property.

Section 21. No Obstruction. There shall be no obstruction of the pedestrian walkways located upon any Lot or any interference with free use thereof except such obstruction as may be reasonably required in connection with repairs of such walkways. The Members, their tenants, licensees, and guests are granted nonexclusive easements to use all of the pedestrian walkways within the Properties. Use of all of the walkways shall be subject to regulation by rules adopted by the Master Association and furnished in writing to the Members. The Master Association shall promptly take such action as may be necessary to abate or enjoin any interference with or obstruction of the pedestrian walkways contrary to the provisions hereof and shall have a right to enter upon a Lot for purposes of removing the same, and any costs



incurred by the Master Association in connection with such abatement, injunction, or corrective work shall be specially assessed to the Owner or Owners responsible therefore.

Section 22. Miscellaneous. There shall be no basketball backboards or hoops visible in any front yard on any Lot, nor any permanent flagpoles. There shall be no wrought iron burglar resistant works or similar bars over any front window or door without the express written consent of the Architectural Committee based upon such criteria as appearance, visibility, disruption of harmony of design, and other factors deemed relevant by the Architectural Committee.

## ARTICLE VII DEVELOPMENT STANDARDS AND RESTRICTIONS

### A. General Provisions.

The following standards and restrictions are in addition to and supplement the Design Guidelines:

Section 1. Landscaping; Preservation and Revegetation Requirement. At the time of or as soon as reasonably possible following construction of a structure on a Lot, but no later than twelve months after commencement of construction following approval of plans by the Architectural Control Committee as provided herein, or within such time as the Design Guidelines or similar criteria of the Architectural Committee shall establish, the Lot shall be suitably landscaped and returned to its natural state by the Owner. Thereafter all vegetation on the Lot shall be kept and maintained in an attractive, healthy, live, and growing condition. All dead or diseased vegetation shall be promptly removed and suitable replacement landscaping installed.

### Section 2. Exterior Surface Color; Exposed Materials.

All exterior walls, fences, roofs, and other visible portions of the improvements shall be painted in low reflective or non-reflective tones.

Section 3. Lighting. No lighting will be permitted which causes unreasonable glare to neighboring property owners.

Section 4. Fences. All fences shall be compatible with the construction and design of the other improvements upon the Properties. There will be no chain link fences permitted on any Lot. All fences must comply with the Design Guidelines which shall

require uniform design in certain public areas and on certain Lots visible from public areas such as a main street or from the Golf Course.

Section 5. Compliance with Local Laws. All development within the Properties shall comply with local laws, including the Airport Environs Zone which affects the Properties. Dwellings constructed on "dead end" or cul de sac streets may be required to have fire prevention and control sprinkler systems if necessary to comply with the regulations of the City of Tucson.

B. RESTRICTIONS CONCERNING CONSTRUCTION ACTIVITY BORDERING THE GOLF COURSE.

Section 1. Construction Trailers, Sheds, or Temporary Structures. Construction trailers, sheds, chemical toilets, or temporary structures shall be located on the street side of Lots bordering the Golf Course. Trash disposal areas shall not be located in an area readily visible from the Golf Course.

Section 3. Excavation. No permanent open trenching shall be located adjacent to the Golf Course, and any trenches within ten (10) feet of the Golf Course must be closed overnight unless effectively barricaded and marked to indicate a hazardous condition.

Section 4. Vehicles and Parking. Construction parking will be restricted to the street side of the Lots bordering the Golf Course.

Section 5. Signage. No signs will be allowed on the Golf Course side of the Lots other than emergency or warning signs.

Section 6. Dress Prohibitions. Improper dress, or behavior which will interfere with enjoyment of the Golf Course by its members, invitees, etc., is prohibited.

Section 7. Scheduling of Work Near Golf Course.

The contractor shall schedule and perform his work in a good and workmanlike manner and use reasonable efforts to minimize the detrimental impact on the quality of play at the golf course.

No work will be allowed that will unreasonably restrict access to the Golf Course or maintenance building until such work is coordinated with and approved by the Golf Course operator.

No work or construction of any nature will be allowed within fifty (50) feet of the Golf Course, except such emergency work as may be required, during the period beginning thirty (30) days before and extending until the completion of any Golf Tournament.

C. ADDITIONAL RESTRICTIONS

Section 1. The Golf Course shall be watered with effluent. The Golf Course shall comply with regulations of the Arizona Department of Water Resources.

Section 2. Declarant or its successors agree to employ a landscape consultant with experience in the preservation of desert plants and the handling of the fragile desert property. Unused plants will be sold to the public for \$1.00 each with preference to neighboring property owners.

Section 3. The density of the Property is limited by ordinance of the City of Tucson, presently 1500 residential units and 600 casitas/guest room associated with any allowed resort or guest facility, for a total of 2100 units.

Chain link fences are prohibited. All colors, including colors of the Guest Ranch or Resort shall be low reflective or desert or earth tones.

Section 4. No area plan amendment and no major concept plan changes shall be made in any of the plans approved by the City of Tucson without informing the Westside Coalition, Park West II and III, A-Mountain Association, Tucson Mountain Park Association, and contiguous owners within 150 feet. Additional notice shall be given as required by applicable City of Tucson ordinance.

Section 5. Unused roads and sites will be revegetated if reasonably possible, at the time of the development of the area in question.

Section 6. The number of residential units on the Lord Parcel shall be not greater than 216 ( the Lord Parcel is the southwest quarter of the southeast quarter of section 8, township 14 south, range 13 east, G & S R B & M, Pima County). No tennis court lights shall be permitted on the Lord Parcel and all swimming pool lights on the Lord Parcel shall be hooded, a natural area of a size to be determined by Declarant shall be established at or near the northwest corner of the Lord Parcel, and any two-story

units on the Lord Parcel shall be primarily in the southeastern, low lying portions of the Lord Parcel.

Section 7. Construction on the top ridge line of the ridge on the northwestern portion of the Lord Parcel shall not block the view of the Santa Rita Mountains from the vantage point of the Scenic Highway (Anklam Road), provided that this provision is not intended to regulate impacts by construction not directly on the top ridge line, nor is it intended to prohibit slight interferences, nor shall it prohibit reducing the grade of the land to minimize such impacts.

Section 8. No commercial uses shall be allowed on the Lord Parcel.

Section 9. The eastern ridge of designated peak and ridge number 14, if developed, shall have only single story units so that any blocking of the view of Cat Mountain shall be minimized.

Section 10. The portions of the Properties governed by applicable provisions of the Scenic Route Ordinance shall comply therewith, and development shall comply with all other applicable City of Tucson ordinances, including the Hillside Development Ordinance, as may be amended, in the absence of a variance.

Section 11. Home construction shall be of a quality at least comparable to immediately surrounding neighborhoods, or better.

Section 12. Subject to rules of Pima County, neighboring property owners will be provided access through the Properties along dedicated roadways, to Tucson Mountain Park. Neither Declarant nor any other party is, by reason of this provision, promising to build or maintain any roads or streets.

Section 13. Until a parcel of land is ready for development of buildings, offsite or onsite utilities, roads or curbs, drainage structures or sewers, the land shall not be graded.

Section 14. Satellite dishes shall not be visible from public view outside the Properties.

Section 15. The entrances to the Properties, from Anklam and 22nd Street, including lighting and entranceway signs, shall be first class in appearance.

Section 16. Outside storage areas, transformers, meters and appurtenances shall be screened and/or landscaped in a first class manner with materials of desert or earth tones.

Section 17. No manufactured housing shall be permitted anywhere within the Properties.

Section 18. Any pedestrian movement or equestrian use of washes or trails shall not be encouraged to enter upon private property outside the Properties.

#### ARTICLE IX EASEMENTS

Section 1. Maintenance Easement. An easement is reserved and granted to the Master Association, its officers, agents, employees, and assigns upon, across, over, in, and under the Common Property and Common Areas to enable the Master Association to perform the duties and functions which it is obligated or permitted to perform pursuant to this Master Declaration.

Additionally, an easement five feet in width on each side of any public road through the Properties shall exist in favor of the Master Association and in favor of the Declarant for general landscaping and related amenities benefitting the overall appearance of the Properties.

Section 2. Utilities. A blanket easement is reserved and granted upon, across, over, and under the Common Property and Common Areas for utilities and the installation, replacement, repair, and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity, and cable television systems and master television antenna systems, if any, provided that said blanket easement shall not extend upon, across, over, or under any Residence constructed on a Lot. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment, and appurtenances on the Properties and to affix, repair, and maintain water and sewer pipes, gas, electric, telephone, and television wires, circuits, conduits and meters.

In the event any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over, or under any part or all of



the Common Property or Common Areas without conflicting with the terms hereof; provided, however, that such right and authority in the Declarant shall cease and terminate upon conveyance by Declarant of the last Lot and Planned Lot in the Annexation Land to the first Owner thereof (other than Declarant). The easement provided for in this Section shall in no way affect, avoid, extinguish, or modify any other recorded easement(s) on the Properties.

Section 3. Rights of Declarant Incident to Construction.

An easement is reserved by and granted to Declarant, its successors and assigns, and unto all Developers for access, ingress, and egress over, in, upon, under, and across the Common Property and Common Areas, including but not limited to the right to store materials thereon and to make such other use thereof as may be reasonably necessary or incidental to Declarant's construction on the Properties; provided, however, that no such rights or easements shall be exercised in such a manner as to unreasonably interfere with the occupancy, use, enjoyment, or access by any Owner, his family members, guests, or invitees, to or of that Owner's Lot, or any recreational facility completed upon the Common Property and Common Areas.

Section 4. Maintenance of Perimeter Walls.

An easement is reserved and granted in favor of Declarant, the Master Association, their successors, assigns, employees, and agents, upon, over and across each Lot adjacent to the perimeter boundaries of the Properties for reasonable ingress, egress, installation, replacement, maintenance, and repair of any perimeter wall which Declarant may construct or cause to be constructed. The Master Association shall have the responsibility for the maintenance or repair of such perimeter wall.

Section 5. Lodge, Guest Ranch, Resort, Hotel, Golf Course and Related Facilities. An easement is reserved and granted across the Common Property and all Common Areas to permit full use of and access to any lodge, guest ranch, resort, hotel or other such facility within the Properties or adjacent to the Properties as provided herein.

Section 6. Easement And Access to Blocks. An easement is reserved across the Common Property, and across all existing or future roads constructed in any Block, for access to any Lot or Block.

Section 7. Easements Deemed Created. All conveyances of Lots or Blocks hereafter made, whether by the Declarant or

otherwise, shall be construed to be subject to the easements contained in this Article, even though no specific reference to such easements or to this Article appears in the instrument of such conveyance.

ARTICLE X  
RESTRICTIONS APPLICABLE TO GOLF COURSE AT STARR PASS

Section 1. Golf Course. No Owner, nor the public at large, shall have any right, by virtue of ownership of any Lot, whether or not contiguous to the Golf Course, of access, entry, or other use of the Golf Course or Clubhouse, which are private membership facilities. While Owners of Lots contiguous to the Golf Course shall have the right to quiet enjoyment of their property, there shall be no activity on any contiguous Lots that unreasonably disturbs play, or the enjoyment of the Golf Course, by members and guests thereof, including, without limitation, undue noise, unsightly trash and debris, or any other noxious or offensive activity. All fencing contiguous to the Golf Course shall be subject to the approval of the Architectural Control Committee.

Section 2. Golf Tournament. In addition to the above restrictions pertaining to the Golf Course, during any Golf Tournament, there shall be no construction or other activity that, in the judgment of the Declarant disturbs the play of golf.

Section 3. Tournaments; Reserved Easements. Each Owner, Occupant, or other Person acquiring any interest in the Properties is hereby deemed to acknowledge that the owner of the Golf Course may stage golf tournaments or other special events at the Golf Course. In connection with the staging of such tournaments, it can be expected that the volume of vehicular and pedestrian traffic to, from and within the Properties will significantly increase. The owner or operator of the Golf Course, and all employees, agents, invitees, and licensees thereof, are hereby expressly given the right to use all roads and other portions of the Common Property and Common Areas for parking and other purposes incidental to such tournaments or events, subject only to reasonable rules established by the Board. Ownership of a Lot shall not entitle an Owner to the right of admission to any tournament or other special event at the Golf Course.

Section 4. Expected Activities. Each Owner, occupant, or other person acquiring any interest in the Properties is hereby deemed to acknowledge being aware that for such period of time as the Golf Course is being utilized as a Golf Course, it can be expected that (a) maintenance activities on the Golf Course shall

begin early in the morning and extend late into the evening; (b) during certain periods of the year, the Golf Course will be heavily fertilized; and (c) golf balls are not susceptible of being easily controlled and accordingly may land or strike beyond the Golf Course boundaries. Neither the Declarant, nor any employee or agent of the Declarant, nor any Developer, nor the Golf Course owner or operator, shall be liable for personal injury or property damage caused by golf balls.

ARTICLE XI  
GENERAL PROVISIONS

Section 1. Declarant's Approval of Supplemental Declarations. In addition to the requirement that all construction, repair, alteration, or other work as set forth herein be approved by the Architectural Control Committee, so long as Declarant owns a single Lot, Block, or Planned Lot from within the Properties, or until December 31, 2010, whichever is earlier, each Supplemental Declaration affecting Starr Pass or the Properties must be approved by Declarant, and no Supplemental Declaration may be amended, once approved by Declarant, without Declarant's written consent.

Each Supplemental Declaration shall be consistent with and subordinate to this Master Declaration and shall contain a provision so affirming. So long as Declarant owns any Lots governed by the Supplemental Declaration, Declarant's approval must be obtained prior to the Subassociation setting the initial maximum annual assessment applicable thereto. Each Subassociation shall adopt rules and regulations in accordance with the Supplemental Declaration setting forth its own supplemental design guidelines (unless already provided for in the Supplemental Declaration) for construction of improvements and the text of said design guidelines shall require Declarant's approval. No provision of the supplemental design guidelines may be waived without the written consent of the Declarant hereunder.

Each Supplemental Declaration shall, unless waived in writing by the Declarant, contain provisions for a Subassociation to enforce its provisions, to collect and pay to the Master Association all assessments levied by said Master Association, to advise the Master Association of each Lot sold and owned by an ultimate purchaser, to collect assessments, and to perform such other customary or necessary functions, and shall expressly empower the Master Association to enforce its provisions. A separate Subassociation may not, in the discretion of Declarant, be required of certain detached dwelling unit projects.

Section 2. Declarant's Approval of Plats.

Prior to the time that any tentative or final subdivision plat of any portion of any Block shown on the Block Plat or of any other portion of the Properties is submitted to the local governmental agencies for approval, such plat shall first be submitted to the Declarant for its approval along with a fee for Declarant's time and expense estimated to be incurred in the review process. The fee will differ from case to case and will be set by Declarant. Failure to obtain Declarant's approval shall be deemed a violation of this Master Declaration rendering any such plat void and entitling Declarant to seek injunctive relief against any further subdivision or development until Declarant's consent is given to the tentative subdivision plat. Declarant assumes no liability by approving a plat and the person or entity submitting the plat shall indemnify Declarant from any liability relating thereto.

Declarant shall also have the right to approve street names, subdivision names, and design of improvements as more specifically set forth herein.

Declarant's rights pursuant to this section shall endure until Declarant no longer owns a single Lot or Planned Lot in the Annexation Land, or until December 31, 2010, whichever is earlier.

Section 3. Enforcement. The Master Association, any Subassociation regarding portions of the Properties which are subject to the Supplemental Declaration of such Subassociation, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Master Declaration. Failure by the Master Association, any Subassociation as aforesaid, or any Owner, to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Further, the Master Association shall have the authority to bring an action at law or in equity to enforce any of the provisions of this Master Declaration or of any Supplemental Declaration for subdivisions of the Properties. Expenses of enforcement, in the event the Master Association is a substantially prevailing party, shall be paid to the Master Association by the Owner against whom enforcement action was commenced. The Master Association shall have the right to enter upon the property of any Owner for the purpose of repairing, modifying, or demolishing improvements which are not in conformance with the provisions of



this Master Declaration or any Supplemental Declaration and all expense incurred in connection therewith shall be paid to the Master Association by the Owner in violation.

Section 4. Severability. Invalidation of any provision of this Master Declaration by judgment or court order shall in no way affect or limit any other provisions which shall remain in full force and effect.

Section 5. Conflicts of Provisions. In case of any conflict between this Master Declaration, the Articles of Incorporation, or Bylaws of the Master Association, this Master Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Master Association, the Articles of Incorporation shall control. In case of any conflict between this Master Declaration and any Supplemental Declaration, this Master Declaration shall control.

In case of conflict between any provision of this Master Declaration and any provision of law, whereby the conflicting provision is thereby rendered unenforceable, the law shall control, provided that all other provisions hereof shall remain in full force and effect.

Section 6. Annexation. Additional property may be annexed hereunder with the consent of two-thirds (2/3) of the votes of the votes of the total Membership.

Notwithstanding the foregoing, the Declarant may, so long as it retains the Type B Membership, annex into the Properties additional property from lands immediately adjacent to the Properties without the consent of any First Mortgagees, insurers, or guarantors, Members or Owners whomsoever.

Each such annexation shall be effected, if at all, by recording a document entitled Declaration of Annexation in the office of the Recorder of the County of Pima, Arizona, which document shall provide for annexation to this Master Declaration of the property described in such document. Declarant shall have the right of annexation referred to herein regardless of whether the Declaration of Annexation as recorded prior to or after sale or prior to or after recording of a deed to a third party or Developer of the Block, Blocks, or portion thereof to be annexed. Any purchaser of a portion of the said land is deemed irrevocably to consent to annexation under the purview of this Master Declaration.



Declarant expressly reserves the right in the course of development to convey to the Master Association, and the Master Association shall accept, certain areas such as open spaces, peaks, ridges, and washes which for any reason are not intended to be developed and which are deemed by Declarant to be most suitable as Common Property of the Master Association as opposed to a Common Area of a Subassociation within the Properties.

Section 7. Condemnation. In the event proceedings are initiated by any government or agency thereof, seeking to take by eminent domain the Common Property, any part thereof or any interest therein, any improvement thereon, or any interest therein, with a value (including loss of value to the balance of the Common Property and improvements thereof), as reasonably determined by the Master Association in excess of Ten Thousand Dollars (\$10,000), the Master Association shall give prompt notice thereof, including a description of the part of or interest in the Common Property or improvement thereon sought to be so condemned, to all First Mortgagees of Lots, all Members, and to the Declarant. The Master Association shall have full power and authority to defend in said proceedings, and to represent the Owners in any negotiations, settlements, and agreements with a condemning authority for acquisition of the Common Property or part thereof, but the Master Association shall not enter into any such proceedings, settlement, or agreements, pursuant to which the Common Property or any part thereof or any interest therein, or any improvement thereon or any part thereof or interest therein is relinquished, without giving all First Mortgagees of Lots, all Members, and Declarant at least fifteen (15) days' prior written notice thereof.

In the event, following such proceedings, there is such a taking in condemnation or by eminent domain of a part or all of the Common Property, the award made for such taking, shall be applied by the Master Association to such repair and restoration. If the full amount of such award is not expended to repair and restore the Common Property, the Master Association shall disburse the net proceeds of such award to the Owners, the Owner of each Lot to receive one (1) equal share, provided that the Master Association shall first pay out of the share of each Owner the amount of any unpaid liens or encumbrances on his Lot in the order of the priority of such liens or encumbrances. No provision of this Declaration or of any other document relating to the Properties shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee pursuant to a First Mortgage in the case of a distribution to an owner of insurance proceeds or condemnation award for losses to or taking of Lots, Common Property, or Common Areas, or any combination thereof.

Section 8. Duration and Amendment.

(a) Duration. Each and every provision of this Master Declaration shall run with and bind the land for a term of twenty-five (25) years from the date of recording of this Master Declaration, after which time this Master Declaration shall be automatically extended for successive periods of ten (10) years each unless prior to the beginning of any single ten (10) extension period, such extension is disapproved at a regular or special meeting of the Members by the affirmative vote of at least seventy-five (75) percent of the votes of the total number of votes of the Membership.

(b) Amendment. This Master Declaration may be amended during the first twenty-five (25) year period, and during subsequent extensions thereof, by an instrument in writing signed by: a) the President and Secretary of the Master Association following a meeting at which the proposed amendment was approved by not less than seventy-five percent (75%) of the total votes of the Membership, or b) the Owners of at least seventy-five (75) percent of the Lots and Planned Lots within the Properties (except that for purposes of these sub-parts (a) and (b), a condominium unit shall be deemed to be one-half of a Lot and an apartment unit one-fourth of a Lot).

Notwithstanding anything to the contrary contained in this Master Declaration:

(i) If Declarant shall determine that any amendments to this Master Declaration or any amendments to the Articles of Incorporation or Bylaws of the Master Association shall be necessary in order for existing or future mortgages, deeds of trust, or other security instruments to be acceptable to the Veterans Administration, the Federal Housing Administration of the U.S. Department of Housing and Urban Development, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, then Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners, Members, First Mortgagees or if any other person or entity whomsoever.

(ii) In the event this Master Declaration is recorded or used for any purpose prior to having been approved by the Veterans Administration, Federal National Mortgage Association, or Federal Housing Administration, then notwithstanding Section 10 below, Declarant shall have the absolute right to amend the

provisions hereof without the approval of any agency or any percentage of the Membership whatsoever until such approval is first obtained. Such amendment shall be effective when signed by the Declarant and duly recorded.

(iii) No amendment to the provisions hereof may restrict, limit or eliminate any easement reserved or granted by the provisions hereof, unless Declarant consents in writing to such amendment.

Section 9. Registration by Owner of Mailing Address.

Each Owner shall register his mailing address with the Master Association, and except for monthly statements and other routine notices, all other notices or demands intended to be served upon an Owner shall be sent by either registered or certified mail, postage prepaid, addressed in the name of the Owner at such registered mailing address. All notices, demands, or other notices intended to be served upon the Board of Directors of the Master Association or the Master Association shall be sent by certified mail, postage prepaid, to Starr Pass Master Homeowners Association, Inc., 3645 West 22nd Street, Tucson, Arizona.

Section 10. FHA/VA Approval. Following approval of this Master Declaration by the Veterans Administration or the Federal Housing Administration, as long as there is a Type B Membership the following actions shall require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties (not already provided for herein), dedication of Common Property, and amendment of this Master Declaration.

Section 11. Dedication of Common Property. Declarant expressly reserves the right to convey or dedicate streets and roads throughout the Properties to the City of Tucson or County of Pima. Declarant may, in its sole discretion, determine that it is in the best interests of the Properties to dedicate or convey such land as provided above. No consent, vote, or approval whatsoever shall be necessary to accomplish such conveyance or dedication.

Declarant in recording this Declaration has designated certain areas of land as Common Property intended to the common use and enjoyment of Owners for recreation and other related activities. The Common Property, with the exception noted above, is not dedicated hereby for use by the general public but is dedicated to the common use and enjoyment of the Owners, as more fully provided in this Declaration.

Section 12. Future Development and Amendment of Block Plat. Nothing contained on the Block Plat shall be deemed to prevent Declarant from amending the Block Plat and changing the plan of development for Starr Pass, provided that any such change shall comply with law. In the event of Declarant's amendment of the Block Plat, Declarant shall have the right to record a "Notice of Designation" which shall expressly refer to this Master Declaration and describe the changes made to the Block Plat, the nature of the Lots to be included in any new block created, and the basis for assessment in each new block or amended block. Declarant may exercise this right without a vote of the Members hereunder.

In addition to Declarant's right of amendment as set forth above, Declarant shall have the right at any time to record a Notice of Designation which serves to change the number of Planned Lots as set forth herein. In the course of the subdivision of the Blocks shown on the Block Plat, it is likely that the number of Planned Lots in other Blocks may change from time to time and the Declarant shall have the right, without a vote of the members and without any other consent, to record a Notice of Designation which shall serve to clarify future progress of the development.

Declarant shall also have the right to record a Notice of Designation reflecting Planned Lots for areas lying outside of the boundaries of the particular Blocks on the Block Plat for which Declarant has specifically reserved the right of annexation.

Dated: November 18, 1992

Chicago Trust Company, an Arizona corporation, as Trustees under Trust No. 12,059

By [Signature]  
Trust Officer

StarPass Properties L.P., a Delaware Limited Partnership  
by StarPass Development Corporation, General Partner

by [Signature]  
Its President

-53-

STATE OF ARIZONA )  
COUNTY OF PIMA )

The foregoing instrument was acknowledged before me this  
18 day of November, 1992, by F. Christopher Amaley, the  
President of Star Road Development Corporation,  
as General Partner of Star Road Properties L.P.  
Mary Fazio  
Notary Public

My Commission Expires:



STATE OF ARIZONA )  
COUNTY OF PIMA )

The foregoing instrument was acknowledged before me this  
17th day of November, 1992, by WYNDELL D. TAYLOR, Trust  
Officer of Chicago Trust Company, an Arizona Corporation, as  
Trustee under Trust No. 12,059.

Merrill Jo Olson  
Notary Public

My Commission Expires:

04-23-93





F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: RBJ  
DEPUTY RECORDER  
2234 RD11

TTITI  
CHICAGO TITLE INSURANCE CO

6245 E BROADWAY  
TUCSON AZ 85711



DOCKET: 9782  
PAGE: 5008  
NO. OF PAGES: 9  
SEQUENCE: 94087528  
04/29/94  
ARSTR 17:28:00  
PICKUP  
AMOUNT PAID \$ 13.00

**FIRST AMENDMENT TO  
AMENDMENT AND RESTATEMENT  
OF MASTER DECLARATION CREATING  
COVENANTS, CONDITIONS, RESTRICTIONS,  
AND EASEMENTS FOR STARR PASS**

This First Amendment to Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions, and Easements for Starr Pass (this "Amendment") is made and entered into as of the 29 day of April, 1994, by CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, as Trustee under Trust No. 12,059, and not otherwise, and STARPASS PROPERTIES L.P., a Delaware limited partnership (collectively, "Declarant").

**Preliminary Statements**

A. Declarant previously had recorded a certain Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions, and Easements for Starr Pass dated November 18, 1992, and recorded in the office of the Pima County, Arizona, Recorder on November 25, 1992, at Docket 9425, Page 1719 and rerecorded December 21, 1992, at Docket 9442, Page 599 (the "Master Declaration"), which Master Declaration concerns and affects that certain real property located in Pima County, Arizona, known as Starr Pass, a subdivision, according to the Block Plat (as defined in the Master Declaration) of record in the office of the Pima County, Arizona, Recorder, at Book 44 of Maps and Plats at Page 60 thereof (the "Property").

9

B. Declarant is the Owner of more than seventy-five percent (75%) of the Lots and Planned Lots (as those terms are defined in the Master Declaration) within the Property.

C. Declarant desires to amend the Master Declaration for the purpose of clarifying and creating easement rights in favor of Blocks 26 and 27 of the Property.

D. Declarant also desires to amend the Master Declaration for the purpose of establishing the assessments that may be charged with respect to Block 1 of the Property.

#### Amendments

##### A. Easement Rights.

1. Notwithstanding any provisions or implications to the contrary found in the Master Declaration, including without limitation any such provisions or implications to the contrary pertaining to or arising out of the definitions of the terms "Properties," "Common Areas," "Common Property," and "Golf Course" in the Master Declaration, there is hereby permanently established an easement over, under and across all of the Common Areas and Common Property created by the Block Plat and Common Areas and Common Property previously created or created in the future by Subdivision Plats (as defined in the Master Declaration), other than any Common Areas or Common Property in Blocks 2, 26, and 27 of the Property, for the purpose of placement of, full-time and full use of and access to and from, and maintenance and repair of all golf course facilities and improvements now located thereon or thereunder

or that may be located thereon or thereunder in the future at the option of Declarant or its successors or assigns, including without limitation golf course tees and tee areas, greens, fairways, and any and all other portions of any golf course, golf cart and pedestrian paths, irrigation systems, and electrical and other irrigation system components.

The easement established by this Amendment is appurtenant to and benefits the real property legally described as Blocks 26 and 27 of the Property and shall run with the land and shall be binding upon all of the Property other than Blocks 26 and 27 of the Property and shall inure to the benefit of the owner of Blocks 26 and 27 of the Property and its successors and assigns forever.

2. The easement established by this Amendment is in addition to and supplements any and all easements granted by the Master Declaration for the benefit of Blocks 26 and 27 of the Property.

3. This Amendment shall have the benefit of, without limitation, the provisions of Article IX, Section 7, and Article XI, Section 8(B)(iii) of the Master Declaration.

4. The easement created by this Amendment may not be revoked or amended without the prior written consent of any first mortgagee having a lien encumbering Block 26 or Block 27, or both, of the Property and of the owner of Block 26 or Block 27, or both, of the Property.

/ / / /

**B. Block 2 of the Property.**

1. Block 2 of the Property shall be developed as apartments. Notwithstanding the provisions of Article IV, Section 6 of the Master Declaration, upon the conveyance of title to Block 2 of the Property to a party other than Declarant, the following provisions shall apply with respect to annual assessments chargeable to Block 2 of the Property:

(a) upon such conveyance of title, the annual assessment shall initially be \$72.00 per year per apartment unit, payable \$6.00 per month per apartment unit; if such conveyance of title takes place other than on the first day of a month, such annual assessment shall be prorated based upon the number of days in the month in which such conveyance occurs;

(b) such annual assessment shall initially be payable with respect to 224 apartment units;

(c) at such time as the construction of apartments on Block 2 of the Property is fully completed, which shall be the date on which a certificate of occupancy is issued, such annual assessment shall be payable with respect to the actual number of apartment units constructed;

(d) if the construction of apartments on Block 2 of the Property is not fully completed, such annual

assessment shall continue to be payable with respect to 224 apartment units; and

(a) the annual assessment imposed upon Block 2 of the Property hereunder shall be subject to increase under the provisions of Article IV, Section 3 of the Master Declaration at the same rate of increase as for Lots (as defined in the Master Declaration).

2. Notwithstanding the provisions of Article IV, Section 6 of the Master Declaration, special assessments shall be imposed upon Block 2 of the Property at twenty-five percent (25%) of the amount applicable to Lots not owned by Declarant or a designated Developer, i.e., if there are 224 apartment units, the special assessment for Block 2 would be the full special assessment for 56 Lots.

3. The location of a management office of an apartment project on Block 2 of the Property shall not be deemed to be a violation of any use restrictions in the Master Declaration.

4. Carports may be utilized instead of garages for an apartment project on Block 2 of the Property.

5. The owner of Block 2 of the Property shall be responsible for the maintenance and repair of all amenities located within Block 2 of the Property, including without limitation roadways, sidewalks, parking lots, private water and sewer lines, carport structures, swimming pools, spas, jacuzzis, tennis courts and other recreational amenities, retaining walls, landscaping, area



lighting and the apartment buildings and units themselves. Additionally, the owner of Block 2 of the Property shall otherwise be subject to the provisions of the Master Declaration relating to use, upkeep and rights of enforcement under the Master Declaration. Declarant or the Master Association shall be responsible for the maintenance and repair of the sidewalk adjacent to Block 2 of the Property within the right of way of Players Club Drive until acceptance of the dedication of Players Club Drive by the City of Tucson.

C. General.

1. In the event of any conflict between the provisions of this Amendment and the Master Declaration, then the provisions of this Amendment shall control.

2. With the exception of the amendments set forth in this Amendment, the terms and provisions of the Master Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has set its hand as of the date and year first above written.

CHICAGO TITLE INSURANCE COMPANY, a  
Missouri corporation, as Trustee under  
Trust No. 12,059, and not otherwise

By:

  
Title: TRUST AGENT

STARPASS PROPERTIES L.P., a Delaware limited partnership

By: STARPASS DEVELOPMENT CORPORATION, a Delaware corporation, General Partner

By: F. Christopher Ansley, President

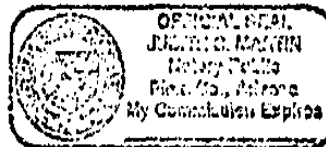
STATE OF ARIZONA }  
COUNTY OF PIMA } ss.

This instrument was acknowledged before me this 29<sup>th</sup> day of April, 1994, by Lyndell D. Taylor as \_\_\_\_\_ of Chicago Title Insurance Company, a Missouri corporation, as Trustee under Trust No. 12,059, and not otherwise.

Justin Chusella, me  
Notary Public

My Commission Expires:

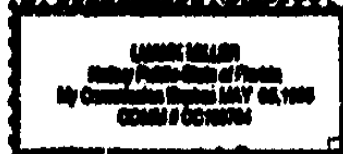
Florida  
STATE OF ARIZONA }  
Lake  
COUNTY OF PIMA } ss.



This instrument was acknowledged before me this 28<sup>th</sup> day of April, 1994, by F. Christopher Ansley, as President of StarPass Development Corporation, a Delaware corporation, as general partner of StarPass Properties L.P., a Delaware limited partnership, for and on behalf of such corporation and limited partnership.

Lu Ann Miller  
Notary Public

My Commission Expires:



CONSENT AND SUBORDINATION

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, hereby consents to the execution, delivery and recording of the foregoing First Amendment to Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions and Easements for Starr Pass and hereby subordinates the lien of the following instruments to such First Amendment: (1) Deed of Trust recorded in Docket 9250 at Page 2566 and re-recorded in Docket 9257 at Page 751; and (2) Uniform Commercial Code Financing Statement recorded in Docket 9250 at Page 2634 and re-recorded in Docket 9257 at Page 822.

DATED this 27<sup>th</sup> day of April, 1994.

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, acting through its San Francisco Agency

By: [Signature]

Title: REPRESENTATIVE

STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO ) ss.

The foregoing Consent was acknowledged before me this 27<sup>th</sup> day of April, 1994, by Margery Becken as Representative of THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, acting through its San Francisco Agency, for and on behalf of such bank.

Margery Becken  
Notary Public

My Commission Expires: 6/19/97



9782 5015

CONSENT AND SUBORDINATION

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, hereby consents to the execution, delivery and recording of the foregoing First Amendment to Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions and Easements for Starr Pass and hereby subordinates the lien of the following instruments to such First Amendment: (1) Deed of Trust recorded in Docket 9448 at Page 2746 and modified by Modification Agreement recorded in Docket 9641 at Page 1912; and (2) Assignment of Leases recorded in Docket 9448 at Page 2767.

DATED this 27<sup>th</sup> day of APRIL, 1994.

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation

By: George Wilson

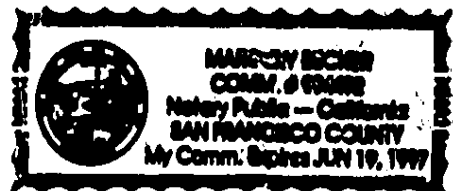
Title: REPRESENTATIVE

STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO ) ss.

The foregoing Consent was acknowledged before me this 27<sup>th</sup> day of April, 1994, by George Wilson as Representative of THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, for and on behalf of such bank.

Margery Becker  
Notary Public

My Commission Expires: 6/19/97



F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: JEB  
DEPUTY RECORDER  
2012 RD10

TTITI  
CHICAGO TITLE INSURANCE CO

6245 E BROADWAY  
TUCSON AZ 85711



DOCKET: 9942  
PAGE: 2011  
NO. OF PAGES: 9  
SEQUENCE: 94228948  
12/19/94  
NOTICE 16:01:00  
PICKUP  
AMOUNT PAID \$ 10.00

*Chicago Title*  
(6) 504647-Jms

**NOTICE OF DESIGNATION  
CONCERNING CHANGE IN  
PLAT OF STARR PASS**

This Notice of Designation Concerning Change in Plat of Starr Pass (this "Notice of Designation") is made as of the 19<sup>th</sup> day of December, 1994, by CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, as Trustee under its Trust Number 12,059, and not otherwise ("Declarant").

Declarant is the named Declarant under a certain Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions, and Easements for Starr Pass dated November 18, 1992, and recorded in the office of the Pima County, Arizona, Recorder on November 25, 1992, at Docket 9425, Page 1719, and rerecorded December 21, 1992, at Docket 9442, Page 599 (the "Master Declaration"), as amended by a certain First Amendment thereto dated April 29, 1994, and recorded April 29, 1994, at Docket 9782, Page 5008 (the "Amendment"), which Master Declaration and Amendment concern and affect that certain real property located in Pima County, Arizona, known as Starr Pass, a subdivision, according to the Block Plat (as defined in the Master Declaration) of record in the office of the Pima County, Arizona, Recorder, at Book 44 of Maps and Plats at Page 60 thereof.

Article XI, Section 12, of the Master Declaration provides that Declarant may amend the Block Plat and change the plan of development for Starr Pass, provided that any such change shall



comply with law and further provided that Declarant may record a "Notice of Designation" to describe the changes made to the Block Plat.

Notice is hereby given pursuant to such Article XI, Section 12, of the Master Declaration by this Notice of Designation that Declarant has changed the Block Plat by the recordation of the plat of Starr Pass II ("Starr Pass II") at Book 46 of Maps and Plats at Page 50, records of Pima County, Arizona. The plat of Starr Pass II is a resubdivision of Blocks 9, 10E, 16 and 18, and a resubdivision of portions of Blocks 26 and 27 and Common Property "B" from their original subdivision by the Block Plat.

The terms, provisions and definitions of the Master Declaration and the Amendment shall apply with full force and effect within Starr Pass II to Blocks 9, 10E, 16, 18, 26 and 27 and Common Property "B", as each of the foregoing has been reconfigured and redesignated by the plat of Starr Pass II and not as they were originally configured by the Block Plat. All of the "Blocks" and Common Property (as defined in the Block Plat) that: (1) were designated in the Block Plat and (2) are not included in the plat of Starr Pass II, together with Blocks 26 and 27, as the same remain within the Block Plat after the recordation of the plat of Starr Pass II, remain subject in all respects to the Master Declaration and the Amendment and each and every provision thereof. Without limiting the generality of the foregoing, the amendment stated in

Section 1 of the Amendment shall continue in full force and effect for respective Blocks 26 and 27, as the same do and shall subsist in both the Block Plat and the plat of Starr Pass II.

DECLARANT:

CHICAGO TITLE INSURANCE COMPANY, a  
Missouri corporation, as Trustee under  
Trust No. 12,059, and not otherwise

By: Paul R. Hagan

Title: Deputy

SOLE BENEFICIARY OF DECLARANT:

STARPASS PROPERTIES L.P., a Delaware  
limited partnership

By: STARPASS DEVELOPMENT CORPORATION, a  
Delaware corporation, General Partner

By: Richard V. Rahn

Title: SVP

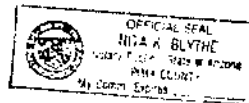
STATE OF ARIZONA }  
COUNTY OF PIMA } ss.

This instrument was acknowledged before me this 1st day of December, 1994, by Deane R. House as Vice President of Chicago Title Insurance Company, a Missouri corporation, as Trustee under Trust No. 12,059, and not otherwise.

Nida A. Blythe  
Notary Public

My Commission Expires:

4-23-98



STATE OF ARIZONA }  
COUNTY OF PIMA } ss.

This instrument was acknowledged before me this 19<sup>th</sup> day of December, 1994, by Richard D. Rubin as Vice President of StarPass Development Corporation, a Delaware corporation, as general partner of StarPass Properties L.P., a Delaware limited partnership, for and on behalf of such corporation and limited partnership.

Joe F. Tarver  
Notary Public

My Commission Expires:



DEC 16 01:45PM CHANDLER, TULLER, URBAL, SPED HARRIS  
19942 2014 P.S.25

CONSENT AND SUBORDINATION

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, hereby consents to the execution, delivery and recording of the plat of Starr Pass II, a subdivision recorded in Book 46 of Maps and Plats at Page 50, records of Pima County, Arizona, and of the foregoing Notice of Designation Concerning Change in Plat of Starr Pass and hereby subordinates the lien of the following instruments to such First Amendment: (1) Deed of Trust recorded in Docket 9448 at Page 2746 and modified by Modification Agreement recorded in Docket 9541 at Page 1912 and by Modification Agreement recorded in Docket 9888 at Page 544; and (2) Assignment of Leases recorded in Docket 9448 at Page 2767.

DATED this 15<sup>th</sup> day of December, 1994.

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation

By:

[Signature]  
Title: REGIONAL MANAGER

PROVINCE OF ONTARIO, CANADA )

COUNTY OF YORK )

ss.

The foregoing Consent and Subordination was acknowledged before me this \_\_\_\_\_ day of December, 1994, by \_\_\_\_\_ ss  
\_\_\_\_\_ of THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, for and on behalf of such bank.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF CALIFORNIA )  
 )  
COUNTY OF SAN FRANCISCO )

On December 15, 1994, before me, Margery Becker, personally appeared F. GEORGE WILSON

[X] personally known to me            [ ] proved to me on the basis  
of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Margery Becker  
Signature of Notary

9942 2016



CONSENT AND SUBORDINATION

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, hereby consents to the execution, delivery and recording of the plat of Starr Pass II, a subdivision recorded in Book 46 of Maps and Plats at Page 50, records of Pima County, Arizona, and of the foregoing Notice of Designation Concerning Change in Plat of Starr Pass and hereby subordinates the lien of the following instruments to such First Amendment: (1) Deed of Trust recorded in Docket 9250 at Page 2568 and re-recorded in Docket 9257 at Page 751; and (2) Uniform Commercial Code Financing Statement recorded in Docket 9250 at Page 2634 and re-recorded in Docket 9257 at Page 822.

DATED this 15<sup>th</sup> day of December, 1994.

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, acting through its San Francisco Agency

By: [Signature]

Title: RELATIONSHIP MANAGER

STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO ) ss.

The foregoing Consent and Subordination was acknowledged before me this \_\_\_\_\_ day of December, 1994, by \_\_\_\_\_ as \_\_\_\_\_ of THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, acting through its San Francisco Agency, for and on behalf of such bank.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO )

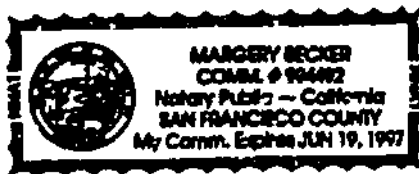
On December 15, 1994, before me, Margery Becker,  
personally appeared F. GEORGE WILSON

[X] personally known to me [ ] proved to me on the basis of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Margery Becker  
Signature of Notary



CONSENT AND SUBORDINATION

STARPASS MASTER HOMEOWNERS ASSOCIATION, INC., an Arizona nonprofit corporation, hereby consents to the execution, delivery and recording of the plat of Starr Pass II, a subdivision recorded in Book 48 of Maps and Plats at Page 50, records of Pima County, Arizona, and of the foregoing Notice of Designation Concerning Change in Plat of Starr Pass and hereby subordinates any of its rights and entitlements thereto.

DATED this 19<sup>th</sup> day of December, 1994.

STARPASS MASTER HOMEOWNERS ASSOCIATION,  
INC., an Arizona nonprofit corporation

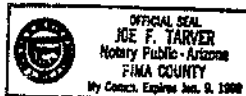
By: Richard A. Rehn  
Title: CEO

STATE OF ARIZONA                    )  
COUNTY OF PIMA                    ) ss.

The foregoing Consent and Subordination was acknowledged before me this 19<sup>th</sup> day of December, 1994, by Richard A. Rehn as Vice-President of STARPASS MASTER HOMEOWNERS ASSOCIATION, an Arizona nonprofit corporation, for and on behalf of such corporation.

Joe F. Tarver  
Notary Public

My Commission Expires:



F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: CML  
DEPUTY RECORDER  
1951 RD35



DOCKET: 9970  
PAGE: 349  
NO. OF PAGES: 10  
SEQUENCE: 95013976  
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CHICAGO TITLE INSURANCE CO

6245 E BROADWAY  
TUCSON AZ 85711

PICKUP  
AMOUNT PAID \$ 14.00

EASTSIDE

*Chicago Title  
# 561315-2ms*

9

SECOND AMENDMENT TO  
AMENDMENT AND RESTATEMENT  
OF MASTER DECLARATION CREATING  
COVENANTS, CONDITIONS, RESTRICTIONS,  
AND EASEMENTS FOR STARR PASS

This Second Amendment to Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions, and Easements for Starr Pass (this "Amendment") is made and entered into as of the 30<sup>th</sup> day of January, 1995, by CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, as Trustee under Trust No. 12,059, and not otherwise, and STARPASS PROPERTIES L.P., a Delaware limited partnership (collectively, "Declarant").

Preliminary Statements

A. Declarant previously had recorded a certain Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions, and Easements for Starr Pass dated November 18, 1992, and recorded in the office of the Pima County, Arizona, Recorder on November 25, 1992, at Docket 9425, Page 1719 and rerecorded December 21, 1992, at Docket 9442, Page 599 (the "Master Declaration"), which was amended by a certain First Amendment thereto dated as of April 29, 1994, and recorded in the office of the Pima County, Arizona, Recorder on April 29, 1994, at Docket 9782, Page 5008, which Master Declaration and First Amendment thereto concern and affect that certain real property located in Pima County, Arizona, known as

Starr Pass, a subdivision, according to the Block Plat (as defined in the Master Declaration) of record in the office of the Pima County, Arizona, Recorder, at Book 44 of Maps and Plats at Page 60 thereof (the "Property").

B. Declarant also previously recorded a certain Notice of Designation Concerning Change in Plat of Starr Pass dated as of December 19, 1994, and recorded in the office of the Pima County, Arizona, Recorder on December 19, 1994, at Docket 9942, Page 2011 (the "Notice of Designation"). The Notice of Designation gave notice of the changing of the Block Plat by the recordation of the plat of Starr Pass II ("Starr Pass II") at Book 46 of Maps and Plats at Page 50, records of Pima County, Arizona. The plat of Starr Pass II is a resubdivision of Blocks 9, 10E, 16 and 18, and a resubdivision of portions of Blocks 26 and 27 and Common Property "B" from their original subdivision by the Block Plat.

C. Declarant is the Owner of more than seventy-five percent (75%) of the Lots and Planned Lots (as those terms are defined in the Master Declaration) within the Property.

D. Declarant desires to amend the Master Declaration for the purpose of clarifying restrictions on overnight parking of vehicles.

E. Declarant also desires to amend the Master Declaration for the purpose of establishing the assessments that may be charged with respect to Block 10E of Starr Pass II, a portion of the Property.

Amendments

A. Overnight Parking.

Subsection (d) of Section 8 (Vehicular Parking, Storage and Repairs) of Article VII (Use Restrictions) of the Master Declaration is hereby deleted in its entirety and replaced with the following:

"(d) All ordinary motor vehicles used for daily transportation, and not governed by the above provisions, shall be stored only on the driveways of each Lot, and not on any road or street, and with the garage door shut if the dwelling contains a garage."

B. Block 10E of Starr Pass II.

1. Block 10E of Starr Pass II shall be developed as apartments. Notwithstanding the provisions of Article IV, Section 6 of the Master Declaration, upon the conveyance of title to Block 10E of Starr Pass II to a party other than Declarant, the following provisions shall apply with respect to annual assessments chargeable to Block 10E of Starr Pass II:

(a) upon such conveyance of title, the annual assessment shall initially be \$72.00 per year per apartment unit, payable \$6.00 per month per apartment unit; if such conveyance of title takes place other than on the first day of a month, such annual assessment shall be prorated based upon the number of days in the month in which such conveyance occurs;

(b) such annual assessment shall initially be payable with respect to 176 apartment units;



(c) at such time as the construction of apartments on Block 10E of Starr Pass II is fully completed, which shall be the date on which a certificate of occupancy is issued, such annual assessment shall be payable with respect to the actual number of apartment units constructed;

(d) if the construction of apartments on Block 10E of Starr Pass II is not fully completed, such annual assessment shall continue to be payable with respect to 176 apartment units; and

(e) the annual assessment imposed upon Block 10E of Starr Pass II hereunder shall be subject to increase under the provisions of Article IV, Section 3 of the Master Declaration at the same rate of increase as for Lots (as defined in the Master Declaration).

2. Notwithstanding the provisions of Article IV, Section 6 of the Master Declaration, special assessments shall be imposed upon Block 10E of Starr Pass II at twenty-five percent (25%) of the amount applicable to Lots not owned by Declarant or a designated Developer, i.e., if there are 176 apartment units, the special assessment for Block 10E would be the full special assessment for 44 Lots.

3. The location of a management office of an apartment project on Block 10E of Starr Pass II shall not be deemed to be a violation of any use restrictions in the Master Declaration.

4. Carports may be utilized instead of garages for an apartment project on Block 10E of Starr Pass II.

5. The owner of Block 10E of Starr Pass II shall be responsible for the maintenance and repair of all amenities located within Block 10E of Starr Pass II, including without limitation roadways, sidewalks, parking lots, private water and sewer lines, carport structures, swimming pools, spas, jacuzzis, tennis courts and other recreational amenities, retaining walls, landscaping, area lighting and the apartment buildings and units themselves. Additionally, the owner of Block 10E of Starr Pass II shall otherwise be subject to the provisions of the Master Declaration, as previously amended, relating to use, upkeep and rights of enforcement under the Master Declaration, as previously amended.

C. General.

1. In the event of any conflict between the provisions of this Amendment and the Master Declaration, as previously amended, then the provisions of this Amendment shall control.

2. With the exception of the amendments set forth in this Amendment, the terms and provisions of the Master Declaration, as previously amended, shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has set its hand as of the date and year first above written.

CHICAGO TITLE INSURANCE COMPANY, a  
Missouri corporation, as Trustee under  
Trust No. 12,059, and not otherwise

By: *James W. Dyer*  
Title: TRUST OFFICER

STARPASS PROPERTIES L.P., a Delaware  
limited partnership

By: STARPASS DEVELOPMENT CORPORATION, a  
Delaware corporation, General Partner

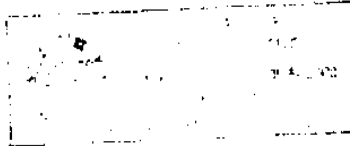
By: Richard D. Rahn  
Richard D. Rahn  
Assistant Vice President

STATE OF ARIZONA     )  
                              ) ss.  
COUNTY OF PIMA     )

This instrument was acknowledged before me this 30th day of  
January, 1995, by Lyndell D. Taylor as Trust Officer of  
Chicago Title Insurance Company, a Missouri corporation, as Trustee  
under Trust No. 12,059, and not otherwise.

[Signature]  
Notary Public

My Commission Expires:  
4-23-98

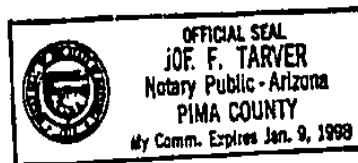


STATE OF ARIZONA     )  
                              ) ss.  
COUNTY OF PIMA     )

This instrument was acknowledged before me this 30<sup>th</sup> day of  
January, 1995, by Richard D. Rahn, as Assistant Vice President of  
Starpass Development Corporation, a Delaware corporation, as general  
partner of Starpass Properties L.P., a Delaware limited partnership,  
for and on behalf of such corporation and limited partnership.

[Signature]  
Notary Public

My Commission Expires:  
1-9-98



CONSENT AND SUBORDINATION

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, hereby consents to the execution, delivery and recording of the foregoing Second Amendment to Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions and Easements for Starr Pass and hereby subordinates the lien of the following instruments to such Second Amendment: (1) Deed of Trust recorded in Docket 9250 at Page 2568 and re-recorded in Docket 9257 at Page 751 and modified by First Modification Agreement recorded in Docket 9942 at Page 1977; and (2) Uniform Commercial Code Financing Statement recorded in Docket 9250 at Page 2634 and re-recorded in Docket 9257 at Page 822.

DATED this 27<sup>th</sup> day of January, 1995.

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, acting through its San Francisco Agency

By: 

Title: RELATIONSHIP MANAGER

STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO ) ss.

The foregoing Consent was acknowledged before me this \_\_\_\_ day of January, 1995, by \_\_\_\_\_ as \_\_\_\_\_ of THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, acting through its San Francisco Agency, for and on behalf of such bank.

\_\_\_\_\_  
Notary Public

My Commission Expires:

STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO )

On January 27, 1995, before me, Margery Becker, personally appeared George Wilson,

[X] personally known to me            [ ] proved to me on the basis  
of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Margery Becker  
Signature of Notary

CONSENT AND SUBORDINATION

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, hereby consents to the execution, delivery and recording of the foregoing Second Amendment to Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions and Easements for Starr Pass and hereby subordinates the lien of the following instruments to such Second Amendment: (1) Deed of Trust recorded in Docket 9448 at Page 2746 and modified by First Modification Agreement recorded in Docket 9641 at Page 1912 and modified by Second Modification Agreement recorded in Docket 9888 at Page 544 and modified by Third Modification Agreement recorded in Docket 9942 at Page 1983; and (2) Assignment of Leases recorded in Docket 9448 at Page 2767.

DATED this 27<sup>th</sup> day of January, 1995.

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation

By: 

Title: RELATIONSHIP MANAGER

STATE OF CALIFORNIA )  
 ) ss.  
COUNTY OF SAN FRANCISCO )

The foregoing Consent was acknowledged before me this \_\_\_\_ day of January, 1995, by \_\_\_\_\_ as \_\_\_\_\_ of THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, for and on behalf of such bank.

\_\_\_\_\_  
Notary Public

My Commission Expires:

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STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO )

On January 27, 1995, before me, Margery Becker,  
personally appeared George Wilson,

[X] personally known to me            [ ] proved to me on the basis  
of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Margery Becker  
Signature of Notary

EASTSIDE

F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: CML  
DEPUTY RECORDER  
1951 RD35

TTITI  
CHICAGO TITLE INSURANCE CO

6245 E BROADWAY  
TUCSON AZ 85711



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PICKUP  
AMOUNT PAID \$ 14.00

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DECLARATION OF COVENANTS, CONDITIONS,  
AND RESTRICTIONS

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this "Declaration") is made and entered into as of the 30<sup>th</sup> day of January, 1995, by CHICAGO TITLE INSURANCE COMPANY, as Trustee of its Trust Number 12,059, and not otherwise ("Declarant").

Preliminary Statements

A. Declarant is the owner of that certain real property located in Pima County, Arizona, which is legally described in Exhibit "A" hereto and is by this reference incorporated herein (the "Burdened Property").

B. This Declaration is for the benefit of that certain real property legally described as (1) Block 2 of Starr Pass, Book 44 of Maps and Plats at Page 60, Pima County, Arizona, Records, and thereafter Declaration of Scrivener's Error recorded in Docket 9479 at Page 1040 and in Docket 9691 at Page 1703, which is owned by Moonrise/DEC Limited Partnership, an Ohio limited partnership ("Moonrise/DEC"); and (2) Block 10E of Starr Pass II, Book 46 of Maps and Plats at Page 50, Pima County, Arizona, Records, which is owned by Moonrise II Limited Partnership, an Ohio limited partnership ("Moonrise II") (collectively, the "Benefitted Property").

9970 363

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C. Declarant for itself and its successors and assigns hereby declares that the Burdened Property shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions, which are for the purpose of protecting the value and desirability of the Benefitted Property, which shall run with the Benefitted Property and bind the Burdened Property and be binding on all parties having any right, title or interest therein or any part thereof, their heirs, successors, and assigns and which shall inure to the benefit of Moonrise/DEC and Moonrise II, their respective successors and assigns and the Benefitted Property.

COVENANTS, CONDITIONS, AND RESTRICTIONS  
ARTICLE I  
RESTRICTIONS

Section 1. Restrictions Imposed. Declarant hereby declares that all of the Burdened Property shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, and resided upon, subject to the provisions, conditions, limitations, restrictions, and covenants of this Article I.

Section 2. There shall be no construction of apartment buildings or apartment houses upon any portion of the Burdened Property.

Section 3. The restrictions set forth in Section 2 hereof immediately above shall not apply to hotels or hotel rooms located or to be located upon the Burdened Property or to single

family residences, multi-unit townhomes and/or casitas located or to be located upon the Burdened Property that may be rented from time to time, even if such hotel use or rental use may require rezoning in the future to permit such uses.

## ARTICLE II

### GENERAL PROVISIONS

Section 1. Enforcement. Enforcement of the covenants, conditions, restrictions, and other provisions contained in this Declaration shall be by any proceeding at law or in equity by Moonrise/DSC or Moonrise II and their successors and assigns against Declarant, its successors and assigns and any person or persons violating or attempting to violate any such provision, to enjoin or restrain such violation or attempted violations or to recover damages, or both. In any such action, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees incurred in connection therewith. Failure by the owners of the Benefitted Property to enforce any provision of this Declaration shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidity of any of the covenants or restrictions set forth in this Declaration by judgment or court order shall in no way affect or limit any other provisions, which shall remain in full force and effect.

Section 3. Duration. Each and every provision of this Declaration shall run with and bind the land for a term of twenty-five (25) years from the date of recording of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless prior to the beginning of any single 10-year extension period, such extension is cancelled by all of the then owners of the Benefitted Property.

Section 4. Amendment. This Declaration may be amended only by an instrument in writing duly executed by Moonrise/DEC, Moonrise II and Declarant, their successors and assigns.

IN WITNESS WHEREOF, the undersigned Declarants have set their hands as of the day and year first above written.

CHICAGO TITLE INSURANCE COMPANY, a  
Missouri corporation, as Trustee of its  
Trust Number 12,059, and not otherwise

By: [Signature]  
Title: TRUST OFFICER

SOLE BENEFICIARY:

STARPASS PROPERTIES L.P., a Delaware  
limited partnership

By: Starpass Development Corp., a  
Delaware corporation, General Partner

By: [Signature]  
Richard D. Rahn, Assistant  
Vice President

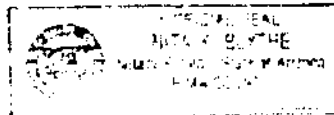
STATE OF ARIZONA       )  
                              ) ss.  
COUNTY OF PIMA       )

The foregoing instrument was acknowledged before me this 30th  
day of January, 1995, by Lyndell D. Taylor as Trust Officer  
of CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, as  
Trustee under Trust No. 12,059, and not otherwise.

  
Notary Public

My Commission Expires:

4-23-98

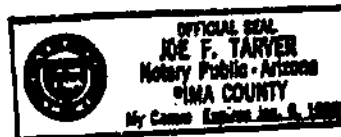


STATE OF ARIZONA       )  
                              ) ss.  
COUNTY OF PIMA       )

This instrument was acknowledged before me this 30th day of  
January, 1995, by Richard D. Rahn, as Assistant Vice President of  
Starpass Development Corporation, a Delaware corporation, as general  
partner of Starpass Properties L.P., a Delaware limited partnership,  
for and on behalf of such corporation and limited partnership.

  
Notary Public

My Commission Expires:





CONSENT AND SUBORDINATION

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, hereby consents to the execution, delivery and recording of the foregoing Declaration of Covenants, Conditions and Restrictions and hereby subordinates the lien of the following instruments to such Declaration: (1) Deed of Trust recorded in Docket 9250 at Page 2568 and re-recorded in Docket 9257 at Page 751 and modified by First Modification Agreement recorded in Docket 9942 at Page 1977; and (2) Uniform Commercial Code Financing Statement recorded in Docket 9250 at Page 2634 and re-recorded in Docket 9257 at Page 522.

DATED this 27<sup>th</sup> day of January, 1995.

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, acting through its San Francisco Agency

By: 

Title: RELATIONSHIP MANAGER

STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO ) ss.

The foregoing Consent and Subordination was acknowledged before me this \_\_\_\_ day of January, 1995, by \_\_\_\_\_ as \_\_\_\_\_ of THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, acting through its San Francisco Agency, for and on behalf of such bank.

\_\_\_\_\_  
Notary Public

My Commission Expires:

On January 27, 1995, before me, Margery Becker, personally appeared George Wilson,

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

 **MARGERY BECKER**  
**COMA # 99482**  
**Notary Public — California**  
**SAN FRANCISCO COUNTY**  
**My Comm. Expires JUN 19, 1997**

9970 369

CONSENT AND SUBORDINATION

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, hereby consents to the execution, delivery and recording of the foregoing Declaration of Covenants, Conditions and Restrictions and hereby subordinates the lien of the following instruments to such Declaration: (1) Deed of Trust recorded in Docket 9448 at Page 2746 and modified by First Modification Agreement recorded in Docket 9641 at Page 1912 and modified by Second Modification Agreement recorded in Docket 9888 at Page 544 and modified by Third Modification Agreement recorded in Docket 9942 at Page 1983; and (2) Assignment of Leases recorded in Docket 9448 at Page 2767.

DATED this 27<sup>th</sup> day of January, 1995.

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation

By: [Signature]

Title: RELATIONSHIP MANAGER

STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO ) ss.

The foregoing Consent and Subordination was acknowledged before me this \_\_\_\_ day of January, 1995, by \_\_\_\_\_ as \_\_\_\_\_ of THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, for and on behalf of such bank.

\_\_\_\_\_  
Notary Public

My Commission Expires:

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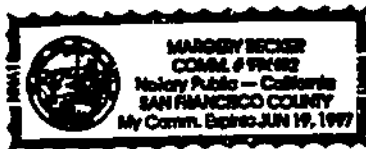
STATE OF CALIFORNIA )  
COUNTY OF SAN FRANCISCO )

On January 27, 1995, before me, Margery Becker, personally appeared George Wilson,

[X] personally known to me            [ ] proved to me on the basis  
of satisfactory evidence

to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



Margery Becker  
Signature of Notary

**EXHIBIT "A"**  
**Burdened Property**

**PARCEL I**

Blocks 5, 8, 9, 10W, 12, 14, 17, 19, 20, 21, 23, 24, 25, 26, and 27 of Starr Pass, Book 44 of Maps and Plats at Page 60, Pima County Records;

and by Declaration of Scrivener's Error recorded in Docket 9479 at Page 1040 and Docket 9691 at Page 1703;

Except those portions of Blocks 9, 26 and 27 now known as Starr Pass II, a subdivision recorded in Book 46 of Maps at Page 50, records of Pima County, Arizona.

**PARCEL II**

Blocks ., 26 and 27 of Starr Pass II, a subdivision recorded in Book 46 of Maps at Page 50, records of Pima County, Arizona;

and by Declaration of Scrivener's Error recorded in Docket 9928 at Page 737.

**PARCEL III**

Lots 33 through 80, inclusive, and Block "A", Block "B", of Starr Pass/Golf Casitas 2, a subdivision recorded in Book 45 of Maps at Page 27, records of Pima County, Arizona;

and by Declaration of Scrivener's Error recorded in Docket 9657 at Page 992.

F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: RAA  
DEPUTY RECORDER  
2484 R02F



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PAGE: 594  
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CHICAGO TITLE INSURANCE CO

6245 E BROADWAY  
TUCSON AZ 85711

*Chicago Title*

*615510-JMS*

THIRD AMENDMENT TO  
AMENDMENT AND RESTATEMENT  
OF MASTER DECLARATION CREATING  
COVENANTS, CONDITIONS, RESTRICTIONS,  
AND EASEMENTS FOR STARR PASS

This Third Amendment to Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions, and Easements for Starr Pass (this "Amendment") is made and entered into as of the 28<sup>th</sup> day of May, 1997, by CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, as Trustee under its Trust No. 12,059, and not otherwise, and STARPASS PROPERTIES L.P., a Delaware limited partnership, doing business in Arizona as Starpass Development Properties Limited Partnership (collectively, "Declarant").

Preliminary Statements

A. Declarant previously had recorded a certain Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions, and Easements for Starr Pass dated November 18, 1992, and recorded in the office of the Pima County, Arizona, Recorder on November 25, 1992, at Docket 9425, Page 1719 and rerecorded December 21, 1992, at Docket 9442, Page 599 (the "Master Declaration"), which was amended by (i) a certain First Amendment thereto dated as of April 29, 1994, and recorded in the office of the Pima County, Arizona, Recorder on April 29, 1994, at Docket 9782, Page 5008, and (ii) a certain Second Amendment thereto dated as of January 30,



1995, and recorded in the office of the Pima County, Arizona, Recorder on January 31, 1995, at Docket 9970, Page 349, which Master Declaration and First and Second Amendment thereto concern and affect that certain real property located in Pima County, Arizona, known as Starr Pass, a subdivision, according to the Block Plat (as defined in the Master Declaration) of record in the office of the Pima County, Arizona, Recorder, at Book 44 of Maps and Plats at Page 60 thereof ("Starr Pass").

B. Declarant also previously recorded a certain Notice of Designation Concerning Change in Plat of Starr Pass dated as of December 19, 1994, and recorded in the office of the Pima County, Arizona, Recorder on December 19, 1994, at Docket 9942, Page 2011 (the "Notice of Designation"). The Notice of Designation gave notice of the changing of the Block Plat by the recordation of the plat of Starr Pass II ("Starr Pass II") at Book 46 of Maps and Plats at Page 50, records of Pima County, Arizona. The plat of Starr Pass II is a resubdivision of Blocks 9, 10E, 16 and 18 of Starr Pass, and a resubdivision of portions of Blocks 26 and 27 and Common Property "B" of Starr Pass, from their original subdivision by the Block Plat.

C. Declarant is the Owner of more than seventy-five percent (75%) of the Lots and Planned Lots (as those terms are defined in the Master Declaration) within Starr Pass.

D. Declarant desires to amend the Master Declaration for the purpose of clarifying that the provisions of the Master Declaration, as amended, apply to original Block 13 of Starr Pass, which has now

been subdivided into Starr Pass/Golf Casitas, a subdivision according to Book 44 of Maps and Plats at Page 73, records of Pima County, Arizona ("Starr Pass/Golf Casitas"), and Starr Pass/Golf Casitas 2, a subdivision according to Book 45 of Maps and Plats at Page 27, and by Declaration of Scrivener's Error recorded at Docket 9657, Page 993, records of Pima County, Arizona ("Starr Pass/Golf Casitas 2").

#### Amendments

A. The Master Declaration Applies to Block 13 of Starr Pass (Starr Pass/Golf Casitas and Starr Pass/Golf Casitas 2).

Notwithstanding any possible implication to the contrary by virtue of the use of the word "casitas" or for any other reason, the terms and provisions of the Master Declaration, as amended, have always applied and still do apply to Block 13 of Starr Pass, as it has now been resubdivided as Starr Pass/Golf Casitas and Starr Pass/Golf Casitas 2, in that the development of same has been as a residential project and not as a "Guest Ranch" or "Resort" as defined by Article I, Section 15 of the Master Declaration. Furthermore, the terms and provisions of the Master Declaration, as amended, will continue to apply to Block 13 of Starr Pass, as it has so been resubdivided, in the event that such property is utilized as a time share project, and the sale of undivided interests in Lots or the use of separate portions of Lots by separate interval owners or their invitees in connection with a time share project shall not be deemed to be or constitute a breach or violation of Article VII, Section 10, of the Master Declaration. Without limiting the

generality of the foregoing, the various grants of easements for ingress and egress over Common Property and Common Areas (as those terms are defined in the Master Declaration) benefit Starr Pass/Golf Casitas and Starr Pass/Golf Casitas 2 and the owners of property therein in the same fashion and to the same extent as with any other residentially developed Block of Starr Pass.

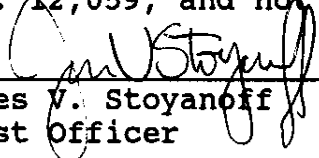
B. General.

1. In the event of any conflict between the provisions of this Amendment and the Master Declaration, as previously amended, then the provisions of this Amendment shall control.

2. With the exception of the amendments set forth in this Amendment, the terms and provisions of the Master Declaration, as previously amended, shall remain in full force and effect.

IN WITNESS WHEREOF, Declarant has set its hand as of the date and year first above written.

CHICAGO TITLE INSURANCE COMPANY, a  
Missouri corporation, as Trustee under its  
Trust No. 12,059, and not otherwise

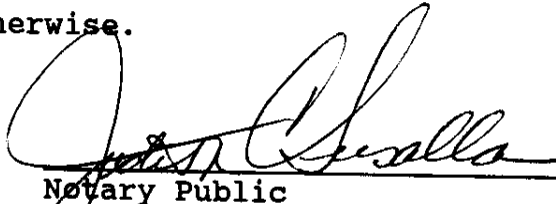
By:   
James V. Stoyanoff  
Trust Officer

STARRPASS PROPERTIES L.P. a Delaware  
limited partnership

By:   
F. Christopher Analey  
Authorized Agent

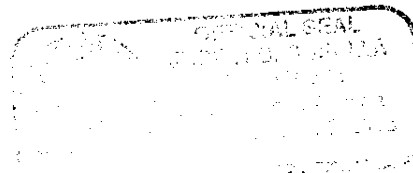
STATE OF ARIZONA       )  
                                  ) ss.  
COUNTY OF PIMA       )

This instrument was acknowledged before me this 28<sup>th</sup> day of May, 1997, by James V. Stoyanoff as Trust Officer of Chicago Title Insurance Company, a Missouri corporation, as Trustee under Trust No. 12,059, and not otherwise.

  
\_\_\_\_\_  
Notary Public

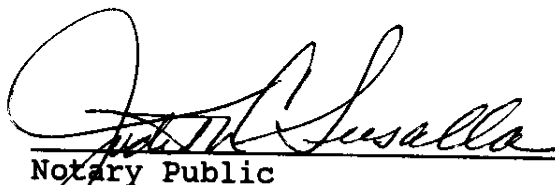
My Commission Expires:

12/10/2000



STATE OF ARIZONA       )  
                                  ) ss.  
COUNTY OF PIMA       )

This instrument was acknowledged before me this 28<sup>th</sup> day of May, 1997, by F. Christopher Ansley as Authorized Agent of Starpass Properties L.P., a Delaware limited partnership, for and on behalf of such partnership.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

12/10/2000

CONSENT AND SUBORDINATION

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, hereby consents to the execution, delivery and recording of the foregoing Third Amendment to Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions and Easements for Starr Pass and hereby subordinates the lien of the following instruments to such Third Amendment: (1) Deed of Trust recorded in Docket 9250 at Page 2568 and re-recorded in Docket 9257 at Page 751 and modified by First Modification Agreement recorded in Docket 9942 at Page 1977; and (2) Uniform Commercial Code Financing Statement recorded in Docket 9250 at Page 2634 and re-recorded in Docket 9257 at Page 822.

DATED this 28 day of May, 1997.

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, acting through its San Francisco Agency

By:

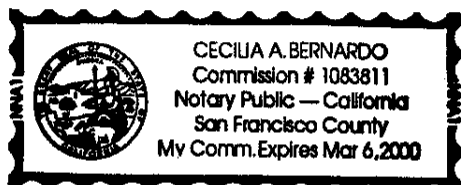
Title:

OFFICE HEAD.

State of California )  
County of San Francisco ) ss.

On May 27, 1997, before me, CECILIA A. BERNARDO <sup>NOTARY PUBLIC</sup>, personally appeared B.L. OSMUNDSON, personally known to me to be the person ~~(s)~~ whose name ~~(s)~~ is/~~is~~ subscribed to the within instrument and acknowledged to me that he/~~she~~/~~they~~ executed the same in his/~~her~~/~~their~~ authorized capacity ~~(ies)~~, and that by his/~~her~~/~~their~~ signature ~~(s)~~ on the instrument the person ~~(s)~~, or the entity upon behalf of which the person ~~(s)~~ acted, executed the instrument.

WITNESS my hand and official seal.



[Signature]  
Signature of Notary

CONSENT AND SUBORDINATION

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation, hereby consents to the execution, delivery and recording of the foregoing Third Amendment to Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions and Easements for Starr Pass and hereby subordinates the lien of the following instruments to such Third Amendment: (1) Deed of Trust recorded in Docket 9448 at Page 2746 and modified by First Modification Agreement recorded in Docket 9641 at Page 1912 and modified by Second Modification Agreement recorded in Docket 9888 at Page 544 and modified by Third Modification Agreement recorded in Docket 9942 at Page 1983; and (2) Assignment of Leases recorded in Docket 9448 at Page 2767.

DATED this 28 day of May, 1997.

THE BANK OF NOVA SCOTIA, a Canadian chartered bank, also called a Canadian banking corporation

By: B.L. Omondson

Title: OFFICE HEAD

State of California  
County of San Francisco

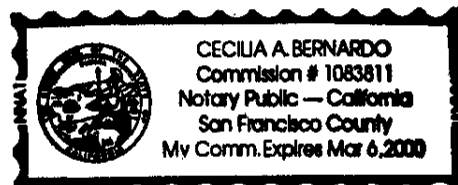
) ss.

On May 28, 1997, before me, CECILIA A. BERNARDO <sup>NOTARY PUBLIC</sup> personally appeared B.L. Omondson, personally known to me to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

[Signature]  
Signature of Notary

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F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: HEM  
DEPUTY RECORDER  
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DOCKET: 10975  
PAGE: 2224  
NO. OF PAGES: 4  
SEQUENCE: 19990210794  
02/02/1999  
NOTICE 17:00  
PICKUP  
AMOUNT PAID \$ 12.00

TTITI  
CHICAGO TITLE INSURANCE CO  
6245 E BROADWAY  
TUCSON AZ 85711

*Chicago Title*

*Tr. # 12,059*

NOTICE OF DESIGNATION  
CONCERNING STARR PASS

This Notice of Designation Concerning Starr Pass (this "Notice of Designation") is made as of the first day of May, 1998, by CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, as Trustee under its Trust Number 12,059, and not otherwise ("Declarant").

Declarant is the named Declarant under a certain Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions, and Easements for Starr Pass dated November 18, 1992, and recorded in the office of the Pima County, Arizona, Recorder on November 25, 1992, at Docket 9425, Page 1719, and re-recorded December 21, 1992, at Docket 9442, Page 599 (the "Master Declaration"), as amended by a certain First Amendment thereto dated April 29, 1994, and recorded April 29, 1994, at Docket 9782, Page 5008, a certain Second Amendment thereto dated January 30, 1995, and recorded January 31, 1995, at Docket 9970, Page 349, and a certain Third Amendment thereto dated May 28, 1997, and recorded May 29, 1997, at Docket 10555, Page 594 (the "Amendments"), which Master Declaration and Amendments concern and affect that certain

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real property located in Pima County, Arizona, known as Starr Pass, a subdivision, according to the Block Plat (as defined in the Master Declaration) of record in the office of the Pima County, Arizona, Recorder, at Book 44 of Maps and Plats at Page 60 thereof, as amended by the plat of Starr Pass II of record at Book 46 of Maps and Plats at Page 50 thereof and reflected by that certain Notice of Designation Concerning Change in Plat of Starr Pass dated December 19, 1994, and recorded December 19, 1994, at Docket 9942 at Page 2011.

Article XI, Section 12, of the Master Declaration provides that Declarant shall have the right at any time to change the number of "Planned Lots", as defined by Article I, Section 22, of the Master Declaration, and that Declarant may record a "Notice of Designation" to reflect such change and to clarify future progress of the development of Starr Pass.

Notice is hereby given pursuant to such Article XI, Section 12, of the Master Declaration by this Notice of Designation that Declarant has, effective May 1, 1998, changed the number of Planned Lots, as defined in the Master Declaration, from 1,253 Planned Lots (including 53 Lots at Champagne, as defined by the Master Declaration) to the maximum of 1,553 Planned Lots (including 53 Lots at Champagne), in view of the contemplated changes in the

1007522211

development of Block 25 and other Blocks of Starr Pass and the possible annexation of other land into Starr Pass for development.

DECLARANT:

CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, as Trustee under Trust No. 12,059, and not otherwise

By: 

James Stoyanoff, Trust Officer

SOLE BENEFICIARY OF DECLARANT:

STARPASS PROPERTIES L.P., a Delaware limited partnership

By: STARPASS DEVELOPMENT CORPORATION, a Delaware corporation, General Partner

By: 

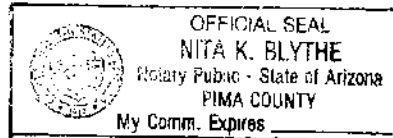
F. Christopher Ansley, President

STATE OF ARIZONA     )  
                                  ) ss.  
COUNTY OF PIMA     )

This instrument was acknowledged before me this second day of February, 1999, by James Stoyanoff, as Trust Officer of Chicago Title Insurance Company, a Missouri corporation, as Trustee under Trust No. 12,059, and not otherwise.


  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
4-23-2002

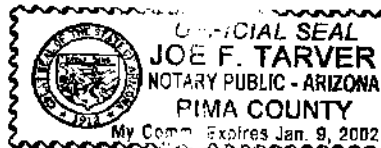


STATE OF ARIZONA     )  
                                  ) ss.  
COUNTY OF PIMA     )

This instrument was acknowledged before me this first day of February, 1999, by F. Christopher Ansley, as President of StarPass Development Corporation, a Delaware corporation, as general partner of StarPass Properties L.P., a Delaware limited partnership, for and on behalf of such corporation and limited partnership.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:  
1/9/2002



1000-10-2000

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F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: JEC  
DEPUTY RECORDER  
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TTITI  
CHICAGO TITLE INSURANCE CO  
6245 E BROADWAY  
TUCSON AZ 85711



DOCKET: 11059  
PAGE: 123  
NO. OF PAGES: 6  
SEQUENCE: 19991050036  
06/02/1999  
ARSTR 09:55  
PICKUP

AMOUNT PAID \$ 13.00

FOURTH AMENDMENT TO  
AMENDMENT AND RESTATEMENT  
OF MASTER DECLARATION CREATING  
COVENANTS, CONDITIONS, RESTRICTIONS,  
AND EASEMENTS FOR STARR PASS

*Bayle B.*

This Fourth Amendment to Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions, and Easements for Starr Pass (this "Amendment") is made and entered into as of the 5th day of February, 1999, by CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, as Trustee under its Trust No. 12,059, and not otherwise ("Declarant").

Preliminary Statements

A. Declarant previously had recorded a certain Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions, and Easements for Starr Pass dated November 18, 1992, and recorded in the office of the Pima County, Arizona, Recorder on November 25, 1992, at Docket 9425, Page 1719 and rerecorded December 21, 1992, at Docket 9442, Page 599 (the "Master Declaration"), which was amended by (i) a certain First Amendment thereto dated as of April 29, 1994, and recorded in the office of the Pima County, Arizona, Recorder on April 29, 1994, at Docket 9782, Page 5008, (ii) a certain Second Amendment thereto dated as

of January 30, 1995, and recorded in the office of the Pima County, Arizona, Recorder on January 31, 1995, at Docket 9970, Page 349, and (iii) a certain Third Amendment thereto dated as of May 28, 1997, and recorded in the office of the Pima County, Arizona, Recorder on May 29, 1997, at Docket 10555, Page 594, which Master Declaration and First, Second and Third Amendments thereto concern and affect that certain real property located in Pima County, Arizona, known as Starr Pass, a subdivision, according to the Block Plat (as defined in the Master Declaration) of record in the office of the Pima County, Arizona, Recorder, at Book 44 of Maps and Plats at Page 60 thereof, as such Block Plat was modified by the recordation of the plat of Starr Pass II at Book 46 of Maps and Plats at Page 50 thereof ("Starr Pass").

B. Declarant is the Owner of more than seventy-five percent (75%) of the Lots and Planned Lots (as those terms are defined in the Master Declaration) within Starr Pass.

C. Declarant desires to amend the Master Declaration further on the terms and provisions set forth in this Amendment.

#### Amendments

1. Board of Directors. The second sentence of Article III, Section 5, of the Master Declaration is hereby deleted in its entirety and replaced with the following sentence:

"For a period of twenty (20) years from and after November 18, 1992, Declarant shall, so long as it owns a single Lot or Planned Lot in the Properties, have the right to appoint all of the members of the Board of Directors without a meeting and without a vote of the Members, and during such twenty (20)-year period no election of the Members to elect the Directors shall be had unless Declarant has in writing relinquished its right of exclusive appointment."

2. Maximum Annual Assessment. The last sentence of Article IV, Section 3(a), of the Master Declaration is hereby deleted in its entirety and replaced with the following sentence:

"Further, without a vote of the Members, the Board of Directors shall have the discretion to raise the annual assessment by 10 percent in the event the CPI shall provide for a smaller increase."

3. Payment of Annual Assessments. The second sentence of Article IV, Section 7, of the Master Declaration is hereby deleted in its entirety and replaced with the following sentence:

"The annual assessments shall be made due and payable at such intervals (but no less frequently than yearly) and on such dates as determined by the Board of Directors of the Master Association, provided that the first annual assessment shall be adjusted according to the number of months in the first annual assessment year."

4. Signs and Advertising. Article VII, Section 6, of the Master Declaration is hereby deleted in its entirety and replaced with the following new Section 6:

"Except as may be required by legal proceedings or as otherwise permitted by the Master Association, no sign, advertisement, unsightly object, nuisance of any kind or notice of any type or nature whatsoever may be displayed

or erected or permitted to remain in or on any Lot, yard, Common Property or Common Area, or from any window or tree, unless express prior written approval of the size, shape, content and location thereof has been obtained from the Architectural Control Committee, which approval may be withheld in its sole discretion for any reason. If after demand and reasonable notice to an Owner or other person such Owner or other person has not removed an unapproved sign or other object, the Master Association may, through a representative, enter upon the Owner's Lot and remove such sign or other object without liability therefor. All Owners hereby grant a license to the Master Association for such purpose.

"Notwithstanding the foregoing, signs, advertising, or billboards used by Declarant in connection with its sale or rental of Lots or Blocks, or otherwise in connection with its development of the Properties, shall be permissible, provided that such use shall not physically interfere with the Owners' use of their Lots, the Common Property or Common Areas, to which such Owners have a right of use, nor interfere with their ingress and egress from a public way to the Common Property or Common Areas, or their Lots.

All signs shall comply with the design criteria established by the Master Association."

5. Annexation. The following provision shall be added to the second sentence of the second paragraph Article XI, Section 6, of the Master Declaration:

"Further notwithstanding the foregoing, the Declarant may at any time, at its sole discretion, annex the property immediately to the east of and adjacent to Starr Pass or any portions thereof in any increments of any size whatsoever and in any given order without the consent, approval, assent or vote of the Membership or any First Mortgagees, insurers, guarantors, Members or Owners whomsoever."



6. General.

6.1. In the event of any conflict between the provisions of this Amendment and the Master Declaration, as previously amended, then the provisions of this Amendment shall control.

6.2. With the exception of the amendments set forth in this Amendment, the terms and provisions of the Master Declaration, as previously amended, shall remain in full force and effect.

DECLARANT:

CHICAGO TITLE INSURANCE COMPANY, a Missouri corporation, as Trustee under its Trust No. 12,059, and not otherwise

By: Gayle Bourdeau  
GAYLE BOURDEAU , Trust Officer

SOLE BENEFICIARY OF DECLARANT:

STARPASS PROPERTIES L.P., a Delaware limited partnership


By: STARPASS DEVELOPMENT CORPORATION, a Delaware corporation, General Partner

By: F. Christopher Ansley  
F. Christopher Ansley, President

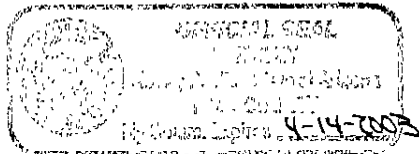
2013-01-23

STATE OF ARIZONA       )  
                                  ) ss.  
COUNTY OF PIMA       )

This instrument was acknowledged before me this 1st day of June, 1999, by Gayle Bourdeau, as Trust Officer of Chicago Title Insurance Company, a Missouri corporation, as Trustee under Trust No. 12,059, and not otherwise.


  
\_\_\_\_\_  
Notary Public

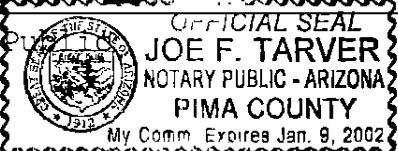
My Commission Expires: April 14, 2003



STATE OF ARIZONA       )  
                                  ) ss.  
COUNTY OF PIMA       )

This instrument was acknowledged before me this fifth day of February, 1999, by F. Christopher Ansley as President of StarPass Development Corporation, a Delaware corporation, as general partner of StarPass Properties L.P., a Delaware limited partnership, for and on behalf of such corporation and limited partnership.

  
\_\_\_\_\_  
Notary Public



My Commission Expires:

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F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: YRN  
DEPUTY RECORDER  
5131 ES3

TTISE  
JOE F TARVER  
4710 N CAIDA PL  
TUCSON AZ 85718



DOCKET: 12017  
PAGE: 472  
NO. OF PAGES: 3  
SEQUENCE: 20030600165  
03/28/2003  
NOTICE 11:06

~~2003~~ Pickup

AMOUNT PAID \$ 10.00

Serial # 410-01403-Jes  
Title # 6-02-460AB

NOTICE OF DESIGNATION  
CONCERNING CHANGE IN  
PLAT OF STARR PASS  
(STARR PASS III)

This Notice of Designation Concerning Change in Plat of Starr Pass (this "Notice of Designation") is made as of the 25<sup>th</sup> day of March, 2003, by TITLE SECURITY AGENCY OF ARIZONA, an Arizona corporation, as Trustee under its Trust Number 708 only and not in its corporate capacity ("Declarant").

Preliminary Statements

A. Declarant is the successor Declarant under that certain Amendment and Restatement of Master Declaration Creating Covenants, Conditions, Restrictions, and Easements for Starr Pass dated November 18, 1992, and recorded in the office of the Pima County, Arizona, Recorder on November 25, 1992, at Docket 9425, Page 1719, and rerecorded December 21, 1992, at Docket 9442, Page 599 (the "Master Declaration"), as amended and supplemented by: (i) a certain First Amendment thereto dated April 29, 1994, and recorded April 29, 1994, at Docket 9782, Page 5008 (the "First Amendment"); (ii) a certain Notice of Designation Concerning Change in Plat of Starr Pass dated December 19, 1994, and recorded on December 19, 1994, at Docket 9942, Page 2011 (the "First Notice of Designation"); (iii) a certain Second Amendment thereto dated January 30, 1995, and recorded January 31, 1995, at Docket 9970, Page 349 (the "Second Amendment"); (iv) a certain Third Amendment thereto dated May 28, 1997, and recorded May 29, 1997, at Docket 10555, Page 594 (the "Third Amendment"); (v) a certain Notice of Designation Starr Pass dated May 1, 1998, and recorded on February 2, 1999, at Docket 10975, Page 2224 (the "Second Notice of Designation"); and (vi) a certain Fourth Amendment thereto dated February 5, 1999, and recorded June 2, 1999, at Docket 11059, Page 123 (the "Fourth Amendment") (the First Amendment, the First Notice of Designation, the Second Amendment, the Third Amendment, the Second Notice of Designation and the Fourth Amendment being referred to herein collectively as the "Amendments"), which Master Declaration and Amendments concern and affect that certain real property located in Pima County, Arizona, known as Starr Pass, a subdivision, according to the Block Plat (as defined in the Master Declaration) of record in the office of the Pima County, Arizona,

Recorder, at Book 44 of Maps and Plats at Page 60 thereof (the "Original Plat"), as modified by the recordation of the plat of Starr Pass II of record in the office of the Pima County, Arizona, Recorder, at Book 46 of Maps and Plats at Page 50 thereof (the "Starr Pass II Plat").

B. Article XI, Section 12, of the Master Declaration provides that Declarant may amend the Block Plat and change the plan of development for Starr Pass, provided that any such change shall comply with law and further provided that Declarant may record a "Notice of Designation" to describe the changes made to the Block Plat.

#### Notice

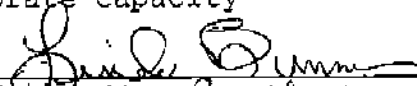
1. Notice is hereby given pursuant to Article XI, Section 12, of the Master Declaration by this Notice of Designation that Declarant has changed the Block Plat by the recordation of the plat of Starr Pass III ("Starr Pass III") at Book 56 of Maps and Plats at Page 61, records of Pima County, Arizona. The plat of Starr Pass III is a resubdivision of Block 5 and a portion of Block 25 of the Original Plat, Block "A" of Starr Pass/Golf Casitas 2, as recorded in Book 45 of Maps and Plats at Page 27, records of Pima County, Arizona, from their original subdivision by the Original Plat, and unsubdivided parcels located in Section 18, Township 14 South, Range 13 East, G.&S.R.M, Pima County, Arizona.

2. Blocks 1 and 4 of Starr Pass III and Block 14 of the Original Plat shall for all purposes be deemed to be "Golf Course", as defined in the Master Declaration and in the First Amendment, and shall be entitled to all of the rights, benefits and easements of the "Golf Course" as so defined, and shall also be exempted from the effect and burden of the Master Declaration and the Amendments to the full extent contemplated for the "Golf Course", and such Blocks 1 and 4 shall be exempt from paying any assessments, whether annual, special or otherwise, that may be levied under the Master Declaration. Without limiting the generality of the foregoing, the easement stated in Section 1 of the First Amendment shall apply to and benefit such Blocks 1 and 4.

DECLARANT:

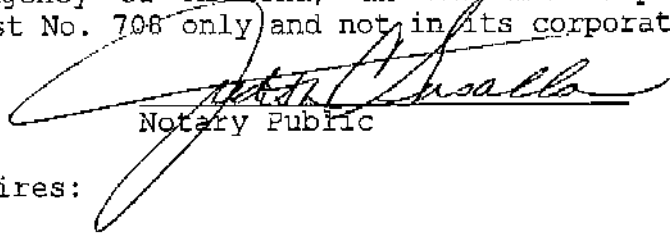
TITLE SECURITY AGENCY OF ARIZONA, an  
Arizona corporation, as Trustee under  
Trust No. 708 only and not in its  
corporate capacity

By:

  
Title: Vice-President

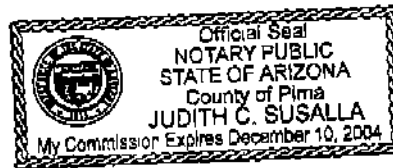
STATE OF ARIZONA     )  
                              ) ss.  
COUNTY OF PIMA     )

This instrument was acknowledged before me this 25<sup>th</sup> day of March, 2003, by Linda Burreson as Vice President of Title Security Agency of Arizona, an Arizona corporation, as Trustee under Trust No. 708 only and not in its corporate capacity.

  
Notary Public

My Commission Expires:

12/10/04



F. ANN RODRIGUEZ, RECORDER  
RECORDED BY: RBP  
DEPUTY RECORDER  
3591 PE2



DOCKET: 12017  
PAGE: 5130  
NO. OF PAGES: 22  
SEQUENCE: 20030601196  
03/28/2003  
REST 15:58  
PICKUP

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TUCSON CITY CLERK  
PICKUP

AMOUNT PAID \$ 26.00

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR  
COYOTE PASS LOTS 1 THROUGH 23, COMMON AREAS 'A' AND 'B', AND  
BLOCKS 'A' THROUGH 'D'**

THIS DECLARATION is made as of the 6th day of January 2003,  
by Title Security Agency of Arizona, an Arizona Corporation, as Trustee under its Trust  
No. 708, referred to herein a "Declarant".

Declarant is the owner of that certain real property in Pima County, Arizona, legally de-  
scribed as:

*Lots 1 through 23, Common Areas 'A' and 'B' and Blocks 'A', 'B', 'C', and 'D' of COYOTE  
PASS, according to the Map or Plat thereof of record in the Office of the County Re-  
corder, Pima County, Arizona, in Book \_\_\_\_\_ of Maps and Plats, Page \_\_\_\_\_*

Declarant desires to provide for the orderly development of the Properties, in accordance  
with the Tentative Plat, and to provide a general plan for the development and sale of the  
Properties.

This instrument (this "Declaration") is executed by Declarant, being empowered by law  
as the owner of the Properties.

**ARTICLE I: DEFINITIONS**

Section 1: "Architectural Control Committee" shall mean the committee appointed by  
Declarant or by the Board of Directors of the Association pursuant to this Declaration.

Section 2: "Association" shall mean and refer to the Coyote Pass Homeowners Associa-  
tion, an Arizona non-profit corporation, its successors and assigns.

Section 3: "Board" shall mean and refer to the Board of Directors of the Association.

Section 4: "Common Area" shall mean and refer to all property (including the improve-  
ments thereto) owned by the Association for the common use and enjoyment of the Own-  
ers and that shown as Common Areas A through D on the plat and excluding any lands  
within the lot lines.

Section 5: "Declarant" shall mean and refer to Title Security Agency of Arizona, an Ari-  
zona corporation, as Trustee under its Trust No. 708, its successors and assigns, if such  
successors or assigns have acquired all or substantially all of the properties from Decla-  
rant for the purpose of development and if Declarant has in writing assigned its rights  
hereunder to such successors.

Section 6: "First Mortgage" shall mean and refer to any unpaid and outstanding mort-  
gage, deed of trust, or other security instrument recorded in the office of Pima County,  
Arizona, Recorder, having priority of record over all other recorded liens except those  
governmental liens made superior by statute (such as general ad valorem tax liens and  
special assessments).

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Section 7: "First Mortgagee" shall mean and refer to any person named as a mortgagee or beneficiary under any First Mortgage or any successor to the interest of any such person under such First Mortgage.

Section 8: "Lot" shall mean and refer to Lots 1 through 23, with the exception of the Common Area and any private streets, but together with all appurtenances and improvements now or hereafter thereon. The term "lot" shall also include any adjacent lots or areas combined into one lot and used as one lot. Any two or more lots so combined, and identified in public records as one tax parcel, shall be considered one Lot for all purposes, including voting and assessment.

Section 9: "Master Association" shall mean Starr Pass Master Homeowners Association, Inc., and its successors and assigns.

Section 10: "Master Declaration" shall mean that certain Amended and Restated Master Declaration Creating Covenants, Conditions, Restrictions and Easements for Starr Pass, which instrument is recorded in the office of the Pima County, Arizona, Recorder at Docket 9425, Page 1719, and re-recorded at Docket 9442, Page 599, and as thereafter amended.

Section 11: "Member" shall mean and refer to each Owner of a Lot that is subject to assessment. Membership in the Association shall be appurtenant to, and may not be separate from, ownership of a Lot. Reference to "Membership" shall mean both classes of Membership unless stated to the contrary.

Section 12: "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot that is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 13: "Original Builder" shall mean a successor in interest to Declarant that has purchased or optioned all or substantially all of the Properties from Declarant for purposes of developing residential dwellings.

Section 14: "Plat" shall mean the plat of the real estate subject to this Declaration and identified above as the Properties.

Section 15: "Properties" shall mean and refer to all of the property shown on the Plat, together with the Common Area, as described above.

## **ARTICLE II: PROPERTY RIGHTS IN THE COMMON AREA**

Section 1: Owners' Easements of Enjoyment. Subject to the provisions of Section 2 of this Article, every Owners shall have a non-exclusive right and easement of enjoyment in and to the Common Area, and such easement shall be appurtenant to and shall pass with the title to every Lot.

Section 2: Extent of Owners' Easements. The rights and easements of enjoyment created hereby shall be subject to the following:

- (a) The right of the Association, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Area and, with written consent of the Members entitled to vote two-thirds (2/3) of the votes of each class of Membership, to mortgage such property as security for any such loan;
- (b) the right of the Association to take such steps as are reasonably necessary to protect the Common Area against foreclosure;

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- (c) the right of the Association to promulgate and publish rules and regulations with which each Member shall strictly comply, including, but not limited to, the right of the Association to establish reasonable charges for the use of any recreational facilities;
- (d) the right of the Association, as provided herein or in its Articles and Bylaws, to levy reasonable monetary fines and to suspend a Member's voting rights and the right to the use of recreational facilities within the Common Area for any period during which any assessment against his Lot remains unpaid and, for a period not to exceed sixty (60) days, for any infraction of its published rules and regulations;
- (e) the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the Members, provided that no such dedication or transfer shall be effective unless first approved in writing by the Members entitled to vote two-thirds (2/3) of the votes of each class of Membership hereunder, and unless written notice of the proposed agreement and action thereunder is sent to every Member at least thirty (30) days in advance of any action taken. Notwithstanding the foregoing, the granting of permits, licenses, and easements for roads, ingress and egress or for public utilities and/or for other purposes, including public or private purposes deemed proper by the Board, shall not be deemed a transfer within the meaning of this Subsection (e), and, provided further, that this provision in no way limits Declarant's rights of annexation and re-subdivision;
- (f) the right of the Association, without any abatement of assessments, to close or limit the use of the Common Area while maintaining, repairing, and making replacements in the Common Area;
- (g) easements for ingress, egress and utilities reserved hereby or on the Plat or by the Master Declaration;
- (h) an easement for ingress, egress and utilities across all Common Area reserved hereby to Declarant and Declarant's successors and assigns as well as guests, invitees and users of the adjacent golf course for access and service to the golf course and for access and service to all residential subdivision land adjacent to the Properties; and
- (i) the right of the Association to sell and convey all or part of the Common Area with the consent of two-thirds (2/3) of the votes of each class of Members, provided that the Association Board determines that the transfer is consistent with the general scheme of development of the Properties. Notwithstanding the foregoing, and without limitation, the Association may transfer or quit-claim minor or insignificant portions of the Common Area necessitated by incidental construction encroachments or scrivener's error without any vote or consent of the Members.

Section 3: Delegation of Use. Any Owner, subject to the rules of the Association, may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area and facilities to the members of his family, his tenants, or contract purchasers who reside on his Lot.

Section 4: Payment of Taxes or Insurance by Mortgagees. First Mortgagees of Lots shall have the right, jointly or singly, to pay taxes or other charges or assessments that are in default and that may or have become a lien against the Common Area and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage on the lapse of a policy for the Common Area, or the Lot that secures such First Mortgage if the policy therefor is held by the Association, and any First Mortgagees making any such payment shall be owed immediate reimbursement therefor from the Association.

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### ARTICLE III: MEMBERSHIP AND VOTING RIGHTS

Section 1: Membership. Every Owner of a Lot that is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

Section 2: Rights and Responsibilities of Association. The Association, through the Board, unless specifically provided otherwise, shall have the right of enforcement of all of the provisions hereof. The Association shall be responsible for the proper and efficient management and operations of the Common Area, including:

- (a) maintaining, operating, and rebuilding improvements thereon;
- (b) maintaining and landscaping property owned or controlled by the Association, including private roads, paths and easement rights, if any;
- (c) operating, maintaining, rebuilding and insuring improvements originally constructed by the Declarant or Developer or later constructed by the Association on or about the Common Area;
- (d) paying ad valorem real estate taxes, assessments and other charges on the Common Area and for maintaining all pathways, sidewalks and trails shown on the Plat, if any;
- (e) insuring all improvements that the Association is obligated to maintain against damage by casualty with such companies and in such limits as provided herein and as the Association deems appropriate;
- (f) hiring, firing, supervising and paying employees and independent contractors including, but not limited to, workmen, landscapers, attorneys, accountants, architects and contractors to carry out the obligations set forth herein;
- (g) maintaining such liability insurance as the Association deems necessary to protect the Members and the Board of Directors of the Association from any liability caused by occurrences or happenings on or about the Common Areas;
- (h) maintaining workman's compensation insurance for the employees of the Association;
- (i) purchasing all goods, supplies, labor and services reasonably necessary for the performance of the obligations set forth herein;
- (j) establishing and maintaining cash reserves as the Association may, in its sole and absolute discretion, deem reasonably necessary for the periodic maintenance, repair and replacement of the improvements that it is responsible to maintain;
- (k) providing for and payment of all utility services for the Common Area;
- (l) entering into such agreements and taking such actions as are reasonably necessary and convenient for the accomplishment of the obligations set forth above and the operation and maintenance of the Properties as a first-class, multi-use development;
- (m) granting licenses, easements and other agreements for the use of Common Area; and
- (n) maintaining any personal property owned by the Association.

Section 3: Classes of Membership. The Association shall have two classes of voting Membership:

*Class A:* Class A Members shall be all Owners, with the exception of Declarant. Each Class A Member shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members, and the vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any such Lot.

*Class B:* The Class B Member shall be Declarant, and such Class B Member shall be entitled to three (3) votes for each Lot owned that is neither leased nor rented nor otherwise occupied as a residence. Class B Membership shall cease and be converted to Class A Membership on the happening of any of the following events, whichever occurs earliest:

(a) When the total votes outstanding in Class A Membership equal the total votes outstanding in Class B Membership; and

(b) January 1, 2007

Notwithstanding the above, Declarant alone shall, for so long as Class B Membership shall exist, have the exclusive right to vote in matters that require only the vote or approval of the Board of Directors of the Association, and shall have the exclusive right to appoint the Directors of the Association.

Section 4: Non-liability of Officials. To the fullest extent permitted by law, neither Declarant, the Board, nor any committees of the Association nor any member thereof, nor any officers, directors or employees of Declarant or of the Association, shall be liable to any Owner or to the Association or any other person for any damage, loss or prejudice suffered or claimed on account of any decision, course of action, act, inaction, omission, error, negligence or the like made in good faith and that Declarant, and Board or such committees or officers reasonably believed to be within the scope of their respective duties.

#### ARTICLE IV: COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1: Creation of the Lien and Personal Obligation of Assessments. Each Owner of any Lot, including Declarant, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments and charges, and (2) special assessments, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, late charges, costs, and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. The lien may be enforced by foreclosure of the defaulting Owner's Lot by the Association in like manner as a mortgage or deed of trust on real property. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceedings, including reasonable attorneys' fees.

The Board or managing agent of the Association may prepare a written notice setting forth the amount of such unpaid indebtedness, the name of the Owner of the Lot, and a description of the Lot. Such notice shall be signed by one of the Board Members or by the managing agent of the Association and may be recorded in the office of the Pima County, Arizona, Recorder. The lien for each unpaid assessment shall attach to each Lot at the beginning of each assessment period and shall continue to be a lien against such Lot until paid. The costs and expenses for filing any notice of lien shall be added to the assessment for the Lot against which it is filed and collected as part and parcel thereof.

Each assessment, together with interest, late charges, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such Owner's successors in title unless expressly assumed by them. The obligation to pay assessments shall in no manner be subject to any offset or reduction based on claims that an Owner allegedly has against Declarant or the Association. The Association's lien on a Lot for assessment shall be superior to any homestead exemption now or hereafter provided by the laws of the State of Arizona or any exemption now or hereafter provided by the laws of the United States, but shall in all cases be subordinate to the lien of the Master Association. The acceptance of a deed to any Lot subject to this Declaration shall constitute a waiver of the homestead and any other exemption as against such assessment lien.

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Section 2: Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the residents of the Properties, for all of those purposes and activities that may be required of the Association or that the Association may be empowered to pursue pursuant to this Declaration, the Articles of Incorporation, or Bylaws of the Association, including without limitation hazard insurance coverage on the structures located on the Common Area, as more fully provided herein, for the improvement and maintenance of the Common Area, and for the maintenance, repair and replacement of any private sewer system or other private facilities, if any, serving the Properties, as provided for herein.

Section 3: Maximum Annual Assessment. Until commencement of the second annual assessment period, the maximum annual assessment shall be the maximum that has been determined in written minutes of the Board. Such minutes shall be prepared, if reasonably possible, prior to recording of the first deed to an Owner, other than to Declarant or a developer. Delay in establishment of the initial maximum annual assessment, however, shall in no way affect the validity of the initial maximum annual assessment when determined, and the initial annual assessment may be established at less than the maximum.

- (a) Effective with the commencement of the second and each subsequent annual assessment period, the maximum annual assessment shall be increased effective each annual assessment year by the greater of ten percent or in conformance with the rise, if any, of the BLS Consumer Price Index - U.S. published by the U.S. Department of Labor, Washington, F.C., for All Items for All Urban Wage Earners (1982-84 = 100), for the on (1) year period ending with the preceding month of October. This annual increase in the maximum annual assessment shall occur automatically upon the commencement of each annual assessment year without the necessity of any action being taken with respect thereto by the Association. In the event that the aforesaid Consumer Price Index is not published, for whatever reason, then the increase in the maximum annual assessment, as provided herein, shall be calculated by using a substantially comparable index designated by the Board.
- (b) Effective with commencement of the second and each subsequent annual assessment period, the maximum annual assessment may be increased above the greater of ten percent or that established by the Consumer Price Index formula by a vote of the Members, provided that any such increase shall have the assent of the Membership as provided in Section 5 below.
- (c) The Board may, at any time and from time to time, after consideration of the projected maintenance costs and the other financial needs of the Association, fix the actual assessment against each Lot at an amount less than the maximum. In the event that the Board determines, at any time and from time to time, during any annual assessment period in which the Association shall have levied an assessment in an amount less than the maximum, that the rate of assessment then in effect is less than may be necessary to adequately fund all maintenance costs and other financial needs of the Association, then the Board may increase the actual assessment against each Lot upon written notification thereof to each Owner, provided that the amount of the actual assessment against each Lot shall not be increased to an amount in excess of the maximum annual assessment for that annual assessment period.
- (d) The limitations contained in this Section shall not apply to any change in assessments undertaken incident to a merger, consolidation or annexation in which the Association is authorized to participate.
- (e) The Association may, in its sole and absolute discretion, maintain a reserve fund out of the annual assessments for the capital improvements, repair and replacement of those elements of the Common Area that must be maintained or repaired on a periodic basis from the operating budget. The amount thereof shall, from time to time, be established by the Board.



Section 4: Special Assessments. In addition to the annual assessment authorized in this Article, the Association may levy, in any assessment year, a special assessment applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, or for the funding of any operating deficit incurred by the Association. Any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Membership who are voting in person or by proxy at a meeting duly called for this purpose.

Section 5: Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 of this Article shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast fifty percent (50%) of all the votes of the Membership shall constitute a quorum. If the required quorum is not present, other meetings may be called subject to the same notice requirements, and the required quorum at each such subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6: Uniform Rate of Assessment; Obligation of Optionees. Annual and special assessments must be fixed at a uniform rate for all Lots sufficient to meet the expected needs of the Association, provided that, notwithstanding any provision to the contrary contained in this Declaration, the rate of annual and special (including reconstruction) assessments set for the Lots owned by Declarant that are not leased, rented, or otherwise occupied as a residence shall be fixed at one-quarter (1/4) of the assessment rate for the other Lots.

Should Declarant or its successors grant an option to any developer or builder to purchase any of the Lots within the Properties, then the obligation to pay assessments both to the Association and to the Master Association with respect to such Lots subject to the option shall be the obligation of the grantee of such option for so long as the option endures. For such Lots not leased, rented, or occupied as a residence, the rate of assessment shall be fixed at one-quarter (1/4) of the assessment rate for the other Lots. Notwithstanding the obligation of the grantee of any such option to pay such assessment, all lien rights and other provisions hereof shall continue to apply to the Lots in question.

Section 7: Date of Commencement of Annual Assessments. The initial annual assessment shall commence on the first day of the month following conveyance of the first Lot by Declarant to an Owner other than Declarant, and the second and each subsequent annual assessment period shall correspond with the fiscal year of the Association. The annual assessments shall be made due and payable in one (1) annual installment on such date as determined by the Board. Such annual installment may be referred to as "dues" or "fecs." Any Owner purchasing a Lot between installment due dates shall pay a pro rata share of the last installment due.

Section 8: Effect of Non-payment of Assessments; Remedies of the Association. Any assessment not paid within ten (10) days after the due date thereof shall bear interest from and after the due date at the rate of the greater of prime + 5% or twelve (12%) per annum, and the Association may assess a monthly late charge thereon of one percent (1%) per month. The Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against such Owner's Lot, and in the event that a judgment is obtained, such judgment shall in-

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clude interest and late charges on the assessment, as above provided, and a reasonable attorney's fee to be fixed by the court, together with the costs of the action. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.

**Section 9: Subordination of the Lien to Mortgages.** The lien of the assessments provided for herein, including without limitation any fees, costs, late charges or interest that may be levied by the Association in connection with unpaid assessments, shall be subordinate to the lien of any First Mortgage. Sale or transfer of any Lot shall not affect the liens for assessments or charges, except that sale or transfer of any Lot pursuant to foreclosure of any such First Mortgage or deed or proceeding in lien thereof shall extinguish the lien of such assessment charges that became due prior to any such sale or transfer, or foreclosure or any proceeding in lieu thereof, including deed in lieu of foreclosure; provided, however, that any such delinquent assessment charges, including interest, late charges, costs, and reasonable attorneys' fees, that are extinguished as provided herein may be reallocated and assessed to all Lots as a common expense in the sole discretion of the Board. No such sale, transfer, foreclosure or any proceeding in lieu thereof shall relieve such Lot from liability for any assessment charges thereafter becoming due nor from the lien thereof; provided, however, that in the event of foreclosure of a First Mortgage or proceeding or deed in lieu thereof, such First Mortgagee shall not be liable for unpaid assessments or other charges that accrue prior to the acquisition of title to the Lot in question by such First Mortgagee.

#### **ARTICLE V: ARCHITECTURAL CONTROL COMMITTEE**

**Section 1: Composition of Committee.** The Architectural Control Committee shall consist of three (3) or more persons appointed by the Board. The Committee shall review only any changes, additions or alterations to existing improvements. The Architectural Control Committee of the Master HOA will maintain jurisdiction over all original improvements to be built on the Lots.

**Section 2: Review by Committee.** No structure, improvement, or any attachment to an existing structure shall be made or constructed upon the Properties (except by the Association upon the Common Area), and no alteration of the exterior of a structure or improvement shall be made, and no change in the final grade, nor the installation of any landscaping to any part of the Properties, except the Common Area, shall be performed, unless complete plans and specifications, including a construction schedule therefor, shall have first been submitted to and approved in writing by the Architectural Control Committee.

The Architectural Control Committee shall exercise its best judgment to the end that all attachments, improvements, construction, landscaping, and alterations to structures on lands located within the Properties (collectively referred to in this Article V as "Architectural Improvements" or "alterations or modifications") conform to and harmonize with the structures already built or to be built by Declarant or builders who purchase Lots from Declarant. In reviewing plans from alterations, modifications, additions or other changes to a structure upon a Lot, the Architectural Control Committee shall exercise its reasonable discretion in deciding whether or not an alteration or modification is in harmony with the overall scheme of subdivision development. The Architectural Control Committee shall have the right to deny alterations or modifications if the committee considers the alteration or modification to be unattractive in relation to the overall scheme of development, or if it considers the alteration or modification to be a nuisance or upset of design, or if it considers the alteration or modification to be in contrast to or out of harmony with the style of structures built or to be built by Declarant, or if the physical views of the

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Properties will be disrupted by the alteration or modification. The Architectural Control Committee may elicit the opinion of other Owners, including the neighbors of the Owner submitting the plan for alteration or modification, as to the conformity and harmony of the proposed plan with the overall scheme of development, and the effect that the proposed plan might have on the physical views of the other Owners. After eliciting these opinions, the Architectural Control Committee may, but need not, take them into account in making the final decision of approval or disapproval of an alteration or modification to an existing structure. While no single Lot Owner's opinion will control a decision of the Architectural Control Committee, the Architectural Control Committee may attach whatever significance, within its own discretion, it deems sufficient to the statements of residents and neighbors of the Owner submitting the proposed alteration or modification to an existing structure.

Architectural Control Committee approval shall not be required of any structures whatsoever to be erected, modified, painted, repainted, designed or redesigned by Declarant or landscaping installed by Declarant. Declarant is exempt from such approval and from all provisions of this Article and from all other provisions of this Declaration governing architectural approvals or consents.

Furthermore, this Declaration is subject to all provisions of the Master Declaration, and none of the provisions of this Declaration nor of this Article shall be construed to exempt anyone other than Declarant from the requirement of Architectural Control Committee approval pursuant to the provisions hereof and pursuant to the provisions of the Master Declaration, nor shall any provision hereof be interpreted so as to conflict with the Master Declaration. In the event of a conflict, the provisions of the Master Declaration shall control, unless in the case of minor discrepancies the Board of Directors of Starr Pass Master Homeowners Association, Inc., should determine in writing to waive the conflict.

Section 3: Procedures. The Architectural Control Committee shall approve or disapprove all plans within thirty (30) working days after submission and issuance by the Association of a receipt therefor. In the event that the Architectural Control Committee fails to approve or disapprove such design and location within thirty (30) working days after such plans and specifications have been submitted to it, approval shall be deemed denied, except that the party submitting the plans may resubmit the plans, and if no response is given for a period of 30 days after a written request by certified mail for a decision, approval shall be deemed given.

Section 4: Vote. A majority vote of the Architectural Control Committee is required to approve a proposed change or improvement, unless the Architectural Control Committee has designated a representative to act for it, in which case the decision of the representative shall control.

Section 5: Liability. The Architectural Control Committee and the members thereof shall not be liable in damages to any person submitting requests for approval or to any Owner by reason of any action, failure to act, approval, disapproval, or failure to approve or disapprove in regard to any matter within its jurisdiction hereunder.

Section 6: Variance. The Architectural Control Committee may grant reasonable variances or adjustments from any conditions and restrictions imposed by this Article or Article X hereof in order to overcome practical difficulties and to prevent unnecessary hardships arising by reason of the application of the restrictions contained in this Article or Article X hereof. Such variances or adjustments shall be granted only in case the granting thereof shall not be materially detrimental or injurious to the Properties and shall not militate against the general intent and purpose hereof.



Section 7: Nonconforming Architectural Improvements. In the event that the Architectural Improvements do not, upon the proposed date set forth in the construction schedule, conform to the plans submitted to and approved by the Architectural Control Committee, the Architectural Control Committee shall give written notice to the Owner of the Lot upon which such Architectural Improvements have been made. Such notice shall specify the nature of the nonconformity of the Architectural Improvements and shall grant the Owner a hearing before the Architectural Control Committee in accordance with the Bylaws.

If the Owner has not, within 30 days after mailing or delivery of the written notice, corrected the nonconformity of the Architectural Improvements, then the Architectural Control Committee shall have the right and an easement to direct its agents, employees or contractors to enter upon the Owner's property for the purpose of making any or all of such improvements, alterations, or repairs as are necessary to bring the Owner's Architectural Improvements into conformity with the plans submitted to and approved by the Architectural Control Committee.

All costs incurred by the Association in the course of the Architectural Control Committee's efforts to bring nonconforming Architectural Improvements into conformity with the approved plans as provided for in Section 2 of this Article, including costs of labor, materials and all associated administrative costs reasonably incurred by the Association in connection therewith, shall be added to and become part of the Assessment to which such Owner's Lot is subject and shall become a lien on such Owner's Lot and the improvements thereon and shall be enforceable and collected as provided for in herein.

Section 8: Minor Violations of Setback Restrictions. If upon the erection of any residence upon any of the Lots it is disclosed by survey that a minor and incidental violation or infringement of setback or property lines has occurred, such violation or infringement shall be deemed waived by the Owners of the Lots immediately adjoining upon which the violation or infringement occurs, and such waiver shall be binding upon all other Owners who are subject to this Declaration. This provision shall apply only to structures built by Declarant or by Declarant's predecessors or successors in the course of original construction.

Section 9: Color; Building Materials; Antennae; and Satellite Dishes. Without limiting the foregoing, no color changes nor any changes in the original building structure, composition or products shall be permitted without approval of the Architectural Control Committee. Placement of antennae and satellite dishes will be denied in the sole discretion of the Architectural Control Committee based upon such criteria as views and general overall aesthetics of the Properties.

## ARTICLE VI: INSURANCE

Section 1: Insurance on Common Areas. The Association shall maintain insurance covering all insurable improvements located or constructed upon the Common Area. The Association shall maintain the following types of insurance to the extent that such insurance is reasonably available and reasonably priced;

- (a) A policy of property insurance covering all insurable improvements located on the Common Area, with a "Replacement Cost Endorsement," an "Inflation Guard Endorsement," and an "Agreed Amount Endorsement." Such insurance as maintained by the Association pursuant to this subsection shall afford protection against at least the following:
  - (1) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

- (2) such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard all risk endorsement, where such is available.
- (b) A comprehensive policy of public liability insurance covering all of the Common Area, insuring the Association in an amount not less than \$1,000,000 covering bodily injury, including death to person, personal injury, and property damage liability arising out of a single occurrence.
- (c) A policy providing adequate fidelity coverage or fidelity bonds to protect against dishonest acts on the part of officers, directors, trustees, and employees of the Association and all others who handle or are responsible for handling funds of the Association.
- (d) If the Common Area or any portion thereof is located within an area identified by the Federal Emergency Management Agency as having special flood hazards and flood insurance coverage on the Common Area has been made available under the National Flood Insurance Program, then such a policy of flood insurance on the Common Area in an amount at least equal to the lesser of:
  - (1) the maximum coverage available under the National Flood Insurance Program for all buildings and other insurable property located within a designated flood hazard area; or
  - (2) one hundred percent (100%) of current replacement cost of all buildings and other insurable property located within a designated flood hazard area.
- (e) In addition, the Association may obtain insurance against such other risks of a similar or dissimilar nature as it shall deem appropriate, including insurance against loss of assessments, to the extent that such coverage is reasonably available and, without limitation, personal liability insurance to protect directors and officers of the Association from personal liability in relation to their duties and responsibilities in acting as directors and officers on behalf of the Association.

All such policies of insurance shall contain waivers of subrogation and waivers of any defense based on invalidity arising from any acts of a Member of the Association and shall provide that the policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to the insured, as well as to the First Mortgagees of any Lot. Duplicate originals of all policies and renewals thereof, together with proof of payment of premiums, shall be delivered to any First Mortgagee of any Lot upon written request. The insurance shall be carried in blanket forms naming the Association as the insured, as Trustee and attorney-in-fact for all Owners, and each Owner shall be an insured person under such policies with respect to liability arising out of any such Owner's membership in the Association.

Section 2: Insurance on the Structures and Personal Property on Lots. Fire, accident, casualty, liability and property damage insurance coverage on each dwelling and the Lot and upon furnishings and other items of real or personal property belonging to an Owner, including public or general liability insurance coverage upon each Lot, and any other insurance shall be the sole responsibility of the Owner thereof, and the Owner thereof shall at all times maintain such insurance.

Section 3: Annual Review of Insurance Policies. All insurance policies carried by the Association shall be reviewed at least annually by the Board of Directors of the Association to ascertain that the coverage provided by such policies adequately covers those risks insured by the Association.

## ARTICLE VII: DAMAGE OR DESTRUCTION

Section 1: Damage to Common Area. In the event of damage or destruction to all or a portion of the Common Area due to fire or other adversity or disaster, the insur-

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ance proceeds, if sufficient to reconstruct or repair the damage, shall be applied by the Association to such reconstruction and repair. If the insurance proceeds with respect to such Common Area damage or destruction are insufficient to repair and reconstruct the same, the damaged or destroyed Common Area shall be promptly repaired and reconstructed by the Association, using the insurance proceeds and the proceeds of a reconstruction assessment. The reconstruction assessment provided for herein shall be a debt of each Owner and a lien on each Owner's Lot and the improvements thereon shall be enforced and collected as provided herein.

**Section 2: Destruction of Improvements on Lot.** In the event of damage or destruction to a residence located on a Lot due to fire or other adversity or disaster, the insurance proceeds shall be used by the Owner to repair and restore the residence on such Lot to the extent permitted by any First Mortgagee with an interest therein. "Repair and Reconstruction" of any residence located on a Lot, as used in this Section 2, shall mean restoring the improvements to substantially the same condition in which they existed prior to such damage or destruction, with each such residence having the same boundaries as before.

- (a) If such insurance proceeds are sufficient to repair or reconstruct any damaged or destroyed residence, the Association shall promptly authorize the necessary repair and reconstruction work by the Owner, and the insurance proceeds shall be applied by the Owner to pay the cost thereof.
- (b) If the insurance proceeds are insufficient to repair or reconstruct any damaged or destroyed residence located on a Lot, such damage or destruction shall be promptly repaired and reconstructed by the Owner, using the insurance proceeds and other funds supplied by the Owner. If the Owner does not promptly accomplish such repair and reconstruction, and acquire the money to accomplish same, the Association may take possession of the insurance proceeds, accomplish the repair using additional money obtained through a special assessment, and enforce a lien against the Lot or Lots in question and bring personal action for damages against such defaulting Owner or Owners. Alternatively, the Association may use the available proceeds or may use its own funds to clean the Lot and remove any debris and reimburse itself through assessment against the Lot or Lots in question.

## ARTICLE VIII: EXTERIOR MAINTENANCE

**Section 1: General.** Except as otherwise provided herein, the Association shall provide all maintenance, repair, and replacement necessary upon the Common Area and all structures and other improvements located thereon, including without limitation streets, landscaping and drainage facilities. The Association shall be responsible for the maintenance, repair and replacement of any private sewer system serving the Properties. Such responsibility of the Association extends only to those portions of any private sewer system, if any, located on the Common Area or the Common Property.

The Association will contract for the services of a trained wastewater pumping system operator with a State of Arizona certification, so long as the lift station is in operation.

Each Owner shall provide all maintenance and repair of improvements and structures on his or her Lot, including roofs and any portion of any private sewer system located upon each Owner's Lot. All exterior surfaces, when maintained, shall be painted with paint of the same finish, color, and hue as the original paint utilized in painting the same by Declarant, unless the Architectural Control Committee authorizes the use of another paint in accordance with the provisions hereof.

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Each Owner shall be responsible for packaging all garbage and refuse in a manner reasonably required by the collection service employed by the Owner or by the Association and placing such garbage and refuse in the location or in receptacles specified by such collection service. Each Owner shall be responsible for all interior maintenance, repair and replacement of all improvements and structures located upon each Owner's Lot and for the maintenance of all landscaping.

In the event that any Owner does not provide such maintenance, repair and replacement as is required hereby, the Association, acting through its Board or managing agent, shall be entitled, but not obligated, to undertake such maintenance, repair or replacement at such Owner's expense, and all costs, expenses and fees incurred by the Association for such maintenance, repair and replacement shall be the personal obligation of the applicable Owner and shall be added to and become part of the assessment to which such Owner's Lot is subject and shall be a lien on such Owner's Lot and the improvements thereon, and shall be enforceable and collected as provided in Article IV hereof. Any damage occasioned to an adjoining Lot or improvement thereon caused by an Owner undertaking the foregoing obligations shall be the responsibility of the Owner performing the maintenance or repair.

Section 2: Maintenance of Landscaping; Necessary Easement. Except as otherwise provided herein, the Association shall be responsible for the landscaping and maintenance of the Common Area, which shall include having the grass, weeds, trees and vegetation located thereon cut or trimmed when necessary. No Owner shall, in whole or in part, change the landscaping of any portion of the Common Area by the addition or removal of any items thereon without the prior written approval of the Architectural Control Committee.

Each Owner shall be solely responsible for the maintenance and landscaping of all portions of his or her Lot and shall also be solely responsible for the maintenance and landscaping of any area of the Common Area between the front boundary of his or her Lot and the street in front of his or her Lot located upon the Common Area.

Section 3: Access Easement. Each Lot shall be subject to an easement in favor of the Association and the Owners of all adjoining Lots (including their agents, employees, and contractors) for performing maintenance during reasonable hours after reasonable notice to the Owners or occupants of any affected Lot, except that in emergency situations entry upon a Lot may be made at any time, provided that the Owners or occupants of affected Lots shall be warned of impending emergency entry as early as is reasonably possible. The interior of any residence located on a Lot shall not be subject to such easements as provided for in this Section.

Section 4: Owner's Negligence. Notwithstanding anything to the contrary contained in this Article, in the event that the need for maintenance or repair or removal of improvements on the Common Area or a Lot is caused by the willful or negligent act or omission of any Owner or by the willful or negligent act or omission of any member of such family or by a guest or invitee of such Owner, the cost of such repair or maintenance shall be the personal obligation of such Owner, and any costs, expenses, and fees incurred by the Association for such maintenance, repair, or removal shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien against such Owner's Lot as provided in Article IV of this Declaration. A determination of the negligence or willful act or omission of any Owner or any member of an Owner's family or guest or invitee of any Owner and the amount of the Owner's liability therefor shall be determined by the Association at a hearing after notice to the Owner, provided that any such determination that assigns liability to any Owner pursuant to the terms of this Section may be appealed by the Owner to a court of law.

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## ARTICLE IX: RESTRICTIONS

Section 1: General Plan. It is the intention of Declarant to establish and impose a general plan for the improvement, development, use and occupancy of the Properties, all thereof in order to enhance the value, desirability and attractiveness of the Properties and to serve to promote the sale thereof.

Section 2: Restrictions Imposed. Declarant hereby declares that all of the Properties shall be held and shall henceforth be sold, conveyed, used, improved, occupied, owned, resided upon and hypothecated subject to all provisions of the Master Declaration.

Section 3: Use of Common Area.

- (a) No use shall be made of the Common Area that will in any manner violate the statutes, rules, or regulations of any governmental authority having jurisdiction over the Common Area.
- (b) Except as otherwise provided herein, no Owner shall place any structure whatsoever upon the Common Area, nor shall any Owner engage in any activity that will temporarily or permanently deny free access to any part of the Common Area to all Members.
- (c) The use of the Common Area shall be subject to such rules and regulations as may be adopted from time to time by the Board.
- (d) No use shall ever be made of the Common Area that will deny ingress and egress to those Owners having access to Lots only over Common Area, and the right of ingress and egress to such Lots is hereby expressly granted.

Section 4: Residential Use. Lots shall be used for residential purposes only; no business or profession of any nature shall be conducted on any Lot or in any structure constructed thereon, except as hereinafter provided. Notwithstanding the foregoing, Declarant or its designees, including Original Builders, may use Lots and residences or buildings of any nature erected thereon for show homes and sales offices, field construction offices, storage facilities, general business offices and for parking areas adjacent to the facilities—incident to any of the aforesaid.

Section 5: Animals. No animals, livestock, poultry or bees of any kind shall be kept or maintained on any Lot except that Owners may keep dogs, cats, fish, or other household pets so long as no Owner has more than two cats or dogs (not two of each, and no more than three in total) and so long as such pets are not kept for commercial purpose, do not make objectionable noises or are not kept in such number or manner as otherwise to constitute a nuisance or inconvenience to any residents of the Properties and are kept in compliance with all existing applicable local ordinances. Each Owner shall be responsible for the immediate removal and disposal of all solid animal waste of his pet from his Lot or any other area within the Properties. No animals shall be permitted upon the Common Area, except as controlled on a leash or similar device held by its Owner and the Owner immediately collects and removes solid fecal waste deposited by the animal. The Association shall have, and is hereby given, the right and authority reasonably to determine that any household pets are being kept for commercial purposes, are making objectionable noises or are being kept in such number or manner so as to constitute a nuisance or inconvenience to any resident of the Properties and to take such action or actions as it deems reasonably necessary to correct the same.

Notwithstanding the above, the Association may require that dogs and cats be licensed by the Association subject to specific terms and provisions of each such license, and licenses may be revoked if the licensed pet causes any disturbance.

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Section 6: Temporary Structures. Except as hereinafter provided, no structure of a temporary character, including without limitation a house trailer, tent shack, garage or outbuilding, shall be placed or erected upon any Lot, and no residence placed or erected upon any Lot shall be occupied in any manner at any time prior to its being fully completed, nor shall any residence when completed be in any manner occupied until made to comply with all requirements, conditions and restrictions herein set forth; provided, however, that during the actual construction or alteration of a structure on any Lot, necessary temporary structures for storage of materials may be erected and maintained by the person doing such work. The work of constructing, altering or remodeling any structure on any part of any Lot shall be pursued diligently from the commencement thereof until the completion thereof.

Section 7: Miscellaneous Restrictions.

- (a) No advertising or signs of any character shall be erected, placed, permitted or maintained on any Lot other than a name plate of the occupant and a street number, and except for one "For Sale" or "For Rent" sign, which is a standard sign approved by the Master Homeowners Association, not to exceed five (5) square feet, which may be placed in a front yard area of any Lot. Notwithstanding the foregoing, Declarant or Original Builders shall be permitted to use larger, numerous and different signs such as Declarant in its sole discretion may desire or permit.
- (b) Except as may otherwise be permitted by the Architectural Control Committee and except as built by Declarant or its successors, including Original Builders who have Declarant's permission, all types of refrigerating, cooking and heating apparatus shall be concealed.
- (c) Except as may otherwise be permitted by the Architectural Control Committee or as built by Declarant, all antennae shall be installed inside the improvements on any Lot.
- (d) Except as may otherwise be permitted by the Architectural Control Committee or as built by Declarant, no fence shall be constructed, erected or maintained on any Lot.

Section 8: Lots to be Maintained. Each Lot shall at all times be kept in a clean, sightly and wholesome condition. No trash, litter, junk, boxes, containers, bottles, cans, implements, machinery, lumber or other building materials shall be permitted to remain exposed upon any Lot so that the same are visible from any neighboring Lot or street, except as necessary during the period of construction.

Section 9: Lots Not to be Subdivided. No Lot shall be subdivided, except by Declarant or for the purpose of combining portions of a Lot with an adjoining Lot or area, provided that no additional building site is created thereby. Not less than one entire Lot, as so reconfigured, shall be used as a building site. Declarant expressly reserves and shall have the right to resubdivide Lots that it owns without any consent or approval whatsoever of any other Owners or Members or of the Association and may amend this Declaration to reference any new plat of the Properties.

Section 10: Underground Utility Lines. All electric, television, radio and telephone line installations and connections from any property line of a Lot to a residence or other structure shall be placed underground, except that during the construction of a residence the contractor or builder may install a temporary overhead utility line, which shall be promptly removed upon completion of construction.

Section 11: No Noxious or Offensive Activity. No noxious or offensive activity shall be carried on upon any Lot nor shall anything be done or placed on any Lot that is or may become a nuisance or cause embarrassment, disturbance or annoyance to others.

Section 12: No Hazardous Activities. No activities shall be conducted on the Properties or on improvements constructed on the Properties that are or might be unsafe or hazardous to any person or property. Without limiting the generality of the foregoing, no firearms shall be discharged upon the Properties, and no open fires shall be lighted or permitted on the Properties except in a contained barbecue unit while attended and in use for cooking purposes or within a safe and well-designed interior fireplace or firepit or except such campfires or picnic fire on property designated for such use by the Association.

Section 13: No Annoying Light, Sounds, or Odors. No light shall be emitted from any Lot that is unreasonably bright or causes unreasonable glare; no light source shall be directly visible from public areas or adjacent lots; no sound shall be emitted on any Lot that is unreasonably loud or annoying; and no odor shall be emitted on any Lot that is noxious or offensive to others.

Section 14: Restrictions on Parking and Storage. Each house trailer, camping trailer, boat trailer, hauling trailer, running gear, boat, truck larger than ¼ ton, and accessories thereto, motor-driven cycle, self-contained motorized recreational vehicle, van, and other such type of vehicle or vehicular or recreational equipment parked or stored on the properties shall be parked or stored only in an enclosed garage with the door closed. Automobiles shall be parked on the Lot in the driveways only and with the garage door shut if the dwelling contains a garage. There shall be no exceptions to these rules without written approval of the Association; provided, however, that any vehicle may be otherwise parked as a temporary expedience for loading, delivery, or emergency. This restriction shall not restrict trucks or other commercial vehicles within the Properties that are necessary for construction or for the maintenance of the Common Area or Lots. No boats, trailers, motorhomes or similar vehicles will be permitted to be stored on a Lot unless, as stated, within an enclosed garage. No parking area shall be converted to another use unless it is demonstrated to the Architectural Control Committee that sufficient off-street, on-site parking exists. The provisions of this Section shall be subject to and may be modified and supplemented by any rules and regulations of the Association, provided there is no conflict with the Master Declaration.

Section 15: Clothesline and Storage. No clotheslines, dog runs, drying yards, service yards, wood piles, or storage areas shall be so located on any Lot as to be visible from a street, public view, the Common Area, the Common Property, the Golf Course (as defined in Section 23 of this Article), or any clubhouse, pool or related amenities.

Section 16: Garbage and Refusal Disposal. No garbage, refuse, rubbish or cuttings shall be deposited on any street or on any Lot unless placed in a suitable container suitably located solely for the purpose of garbage pickup. All equipment for the storage or disposal of such materials shall be kept in clean and sanitary condition.

Section 17: Repair. No activity such as without limitation maintenance, repair, rebuilding, dismantling, repainting or servicing of any kind of vehicles, trailers or boats may be performed on any Lot or on the Common Area, unless it is done within completely enclosed structures that screen the sight and sound of the activity from the street and from adjoining property.

Section 18: Tanks. No tanks of any kind, either elevated or buried, shall be erected, placed or permitted upon any Lot.

Section 19: Management Agreements and Other Contracts. The Association may utilize professional management in performing its duties hereunder. Any agreement for professional management of the Association's business shall have a maxi-

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man term of one (1) year and shall provide for termination by either party thereto, with or without cause and without payment of a termination fee, upon thirty (30) days' prior written notice. Any such management contracts entered into by the Association with a manager or managing agent while there is a Class B Membership shall terminate absolutely, in any event, not later than thirty (30) days after termination of Class B Membership.

**Section 20: Rules and Regulations.** Reasonable rules and regulations concerning and governing the properties or any portion thereof may be adopted, amended or repealed from time to time by the Board, and the Board may establish and enforce penalties for the infraction thereof, including without limitation the levying and collecting of reasonable monetary fines for the violation of any of such rules and regulations.

Initially, such monetary fines shall not exceed five hundred (500) dollars per infraction but may, effective with the commencement of the second assessment period, be increased in accordance with the rise in the Consumer Price Index as provided for herein. Such fines shall be added to and become part of the assessment to which such Owner's Lot is subject and shall become a lien on such Owner's Lot and the improvements thereon and shall be enforceable and collected as provided herein.

The Association or any aggrieved Owner may take judicial action against any Owner to enforce compliance with such rules and regulations, to collect fines or obtain damages for noncompliance, or for injunctive relief, or all of them, all to the extent permitted by law; in any such action, the prevailing party shall be entitled to recover its costs and reasonable attorney's fees incurred pursuant thereto.

**Section 21: Acts of Declarant: Use of Common Area.** Notwithstanding any other provision hereof, Declarant shall be permitted full use of the properties for any of its activities in connection with the construction, marketing and sale of the Properties and may conduct construction at times and in manners determined in its sole discretion and may erect and maintain permanent and temporary buildings, signs and other improvements on the Common Area and Lots for the marketing and promotion of the Properties. Declarant shall have an easement over and across the Common Area for all such purposes.

Declarant shall have the right to build entry features, perimeter walls and other improvements on the Common Area.

Declarant shall have the right to transfer, deed, or allow easements on any or all parts of the Common Area without a vote of the Association.

**Section 22: Errant Golf Balls.** Each Lot is subject to a perpetual easement for errant golf balls. Each Owner acknowledges and assumes the risk of personal injury or property damage on his Lot due to errant golf balls, it being understood that the Properties are in proximity to a golf course and that incidents involving foul hits and stray balls are inevitable. Each Owner and all occupants, successors and assigns fully release Declarant, all of Declarant's successors and assigns, agents and employees, and Golf Club Owners from any and all liability relating to such matters.

**Section 23: Golf Course – Not a Part of Properties.** Each Owner acknowledges that the existing golf course at Starr Pass (constructed on Blocks 26 and 27 of Starr Pass, a subdivision recorded in the office of the Pima County, Arizona, Recorder in Book 44 at Page 60 of Maps and Plats, as modified by the plat of Starr Pass II, a subdivision recorded in Book 46 at Page 50 of Maps and Plats, as well as the future golf course at Starr Pass, currently contemplated for parts of Blocks 5, 7/8, 13 A, 25, and Starr Pass Vistas (collectively the "Golf Course"), and any and all clubhouse, pool

and related amenities are completely separate and apart from the properties and are not a part of the Properties. No Owner, by purchasing a Lot, shall have any right, title or interest in or to the Golf Course or any such related facilities, nor is the Golf Course or any related facilities a part of any Common Area of the Association or of any Common Property of the Master Association. The Golf Course and all related facilities are privately owned, and the right of any person to use the Golf Course is subject to rules and regulations of the owner of the Golf Course, as such rules may be adopted and amended from time to time at the sole discretion of the owner of the Golf Course.

Whoever owns the Golf Course and related facilities at any particular time has the exclusive right to determine from time to time, in its discretion and without notice of any change, how and by whom such facilities may be used, if at all. By way of example, such entities have the right to approve users and determine eligibility for use, to reserve use rights for future purchasers of Lots, to terminate any or all use rights, to change, eliminate or cease operation of any or all of these facilities, to transfer any or all of these facilities or the operation thereof to anyone (including without limitation a member-owned or equity club) on any terms acceptable to the owner in its discretion, to limit the availability of use privileges, and to require the payment of a purchase price, membership deposit, membership contribution, initiation fee, dues and other charges for use privileges. Use of the Golf Course may be for private membership or public use at the owner's sole discretion, including use by guests and invitees of any resort, hotel, or lodging facility. Regardless of any provisions to the contrary made in any document recorded in the public records against, or otherwise applicable to, the Properties or these facilities, ownership of any or all of the Properties or membership in the Association does not give any vested right or easement, prescriptive, equitable or otherwise, to use or to continue to use the Golf Course or any such facilities or have any membership interest.

Section 24: Access to Golf Course. Perpetual non-exclusive easements are hereby granted and reserved to the owner of the Golf Course, and to all guests, invitees, employees, agents, members and licensees over and across all roadways and Common Areas located within the Properties for the purpose of travelling to and from the Golf Course, from hole to hole, and to all related facilities.

#### **ARTICLE X: FIRST MORTGAGES**

Section 1: Financial Statements. The Association shall provide an annual financial statement for the immediately preceding fiscal year, free of charge to the party so requesting, including any First Mortgagee of a Lot, or any insurer or guarantor of such First Mortgage, within a reasonable time after written request therefor by any such party.

Section 2: Association Books and Records. The Association shall make available to Owners, First Mortgagees of Lots, and insurers or guarantors of any such First Mortgage, current copies of this Declaration, and the Articles of Incorporation, Bylaws, rules and regulations, books, records, and financial statements of the Association. "Available" shall mean available for inspection, upon request, during normal weekday business hours or under other reasonable circumstances.

#### **ARTICLE XI: GENERAL PROVISIONS**

Section 1: Enforcement. Enforcement of the covenants, conditions, restrictions, easements, reservations, rights-of-way, liens, charges and other provisions contained in this Declaration, the Articles of Incorporation and Bylaws of the Association shall

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be by any proceeding at law or in equity against any person or persons violating or attempting to violate any such provision, to enjoin or restrain such violation or attempted violation or to recover damages, or both, and the Association and any aggrieved Owner shall have the right to institute, maintain, and prosecute any such proceedings; in any such action the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees incurred pursuant thereto. Failure by the Association or any Owner to enforce any provision of this Declaration or the Articles of Incorporation or Bylaws of the Association shall in no event be deemed a waiver of the right to do so thereafter.

Prior to any decision by the Board to suspend voting rights or the rights to use the Common Area, impose monetary penalties pursuant to the provisions of this Declaration, or as otherwise provided for in the Articles and Bylaws, the Board shall give the sanctioned party written notice of the basis for such sanction and shall be granted an opportunity to be heard by the Board no less than five (5) working days after such notice has been given.

Section 2: Severability. Invalidation of any of these covenants or restrictions by judgment or court order shall in no way affect or limit any other provisions, which shall remain in full force and effect.

Section 3: Construction and Maintenance Easement. If any portion of any exterior wall of a residence is situated within five feet of any adjoining Lot line, a valid easement for the benefit of the Owner of such residence is hereby created, five feet in width along the open spaces, if any, of the adjoining Lot and adjacent to the Lot line, which easement may be used by such owner for access for the maintenance and repair of the exterior of his or her residence.

Section 4: Easement for Encroachments. If any portion of a residence encroaches upon the Common Area or upon any adjoining Lot, or any portion of the Common Area encroaches upon any residence, including any future encroachments arising or resulting from the repair or reconstruction of a residence subsequent to its damage, destruction, or condemnation, a valid easement on the surface and for subsurface support below such surface and for the maintenance of same, so long as it stands, shall and does exist.

Section 5: Utilities. There is hereby created a blanket easement upon, across, over and under the properties and Common Area for utilities and the installation, replacement, repair and maintenance of utilities, including but not limited to water, sewer, gas, telephone, electricity and master television antenna systems, if any, provided that blanket easement shall not extend under any dwelling located on any Lot. By virtue of this blanket easement, it shall be expressly permissible to erect and maintain the necessary facilities, equipment and appurtenances on the Properties and to affix, repair and maintain water and sewer pipes, gas, electric, telephone and television wires, circuits, conduits and meters. In the event that any utility or quasi-utility company furnishing a service covered by the general easement created herein requests a specific easement by separate recordable document, Declarant reserves and is hereby given the right and authority to grant such easement upon, across, over, or under any part or all of the Common Area without conflicting with the terms hereof; provided, however, that such right and authority shall cease and terminate upon conveyance by Declarant of the last Lot to the first purchaser thereof (other than Declarant).

Section 6: Rights of Declarant Incident to Construction. An easement is hereby retained by and granted to Declarant, its successors and assigns, for access, ingress and egress over, in, upon, under and across the Common Area, including but not limited to the right to store materials thereon and to make such other use thereof as

may be reasonable, necessary or incidental to Declarant's constructions on the Properties.

**Section 7: Conflicts of Provisions.** In case of any conflict between this Declaration, the Articles of Incorporation, or Bylaws of the Association, this Declaration shall control. In case of any conflict between the Articles of Incorporation and the Bylaws of the Association, the Articles of Incorporation shall control.

**Section 8: Condemnation.** In the event that proceedings are initiated by any government or agency thereof seeking to take by condemnation or by the power of eminent domain the Common Area, any material part thereof, or any material interest therein, the Association shall give prompt notice thereof, including a description of the part of or interest in the Common Area sought to be condemned, to all Members. The Association shall have full power and authority to defend in such proceedings and to represent the Owners in any negotiations, settlements, and agreements with a condemning authority for acquisition of the Common Area, any part thereof, any improvements thereon, or any interest therein, and each Owner hereby appoints the Association as its attorney in fact for such purposes. Any award or proceeds of settlement shall be payable to the Association to be used as herein provided.

- (a) In the event that all the Common Area is taken, condemned, sold or otherwise disposed of, in lieu of or in avoidance thereof, any award or settlement shall be apportioned by the Association among the Members and their Mortgagees on a reasonable basis as the Association determines to be equitable in the circumstances or as determined by judicial decree. If the allocation of the condemnation award is already established in the negotiations, judicial decree, or otherwise, then in allocating the condemnation award, the Association shall employ such allocation to the extent that it is relevant and applicable.
- (b) In the event that less than the entire Common Area is taken, condemned, sold or otherwise disposed of, in lieu of or in avoidance thereof, the condemnation award shall first be applied by the Association to the rebuilding and replacement of those improvements on the Common Area damaged or taken by the condemning public authority, unless sixty-seven percent (67%) of the First Mortgagees (based upon one vote for each First Mortgage held) agree otherwise. Any surplus of the award or other portion thereof not used for rebuilding and replacement that is less than or equal to Five Thousand Dollars (\$5,000.00) shall be retained by the Association to offset normal operating expenses, and any excess shall be distributed by the Association on the same basis as indicated in subparagraph (a) of this Section 8. No provision of the Declaration or any other document relating to the properties shall be deemed to give an Owner or any other party priority over the rights of a First Mortgagee pursuant to the terms of a First Mortgage in the case of a distribution to the Owner of insurance proceeds or condemnation awards for losses to or taking of Lots or Common Area or both.

**Section 9: Duration, Revocation, and Amendment.** Each and every provision of this Declaration shall run with and bind the land for a term of twenty-one (21) years from an after the date of recordation of this Declaration, after which time this Declaration shall be automatically extended for successive periods of ten (10) years unless prior to the end of any ten (10)-year extension period the Owners of at least seventy-five percent (75%) of the Lots agree in writing that this Declaration shall terminate at the end of the extension period then applicable. This Declaration may be amended during the first twenty-one (21)-year period, and during subsequent extensions thereof by any instrument approved in writing by the Owners representing not less than seventy-five percent (75%) voting rights of the Members. Such amendment shall be effective when duly recorded in Pima County, Arizona, and no

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such amendment made to the provisions hereof shall be deemed void or ineffective merely because such amendment is non-uniform as to all Lots, but no amendment may be made so long as Declarant owns any Lot if the effect of such amendment is to limit or take from Declarant any of the special or reserved rights or privileges of Declarant.

Notwithstanding anything to the contrary contained in this Declaration, if Declarant shall determine that any amendments to this Declaration or any amendments to the Articles of Incorporation or Bylaws of the Association shall be necessary in order for existing or future mortgages, deeds of trust or other security instruments to be acceptable to the Veterans Administration, the Federal Housing Administration of the U.S. Department of Housing and Urban Development, the Government National Mortgage Association, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation, then Declarant shall have and hereby specifically reserves the right and power to make and execute any such amendments without obtaining the approval of any Owners, First Mortgagees, or any other person or entity.

Section 10: Annexation. Additional residential property and Common Area may be annexed by Declarant to the Property with the recording of a Declaration of Annexation. Declarant, specifically, reserves the right, in its sole discretion, to annex portions of Starr Pass Vistas immediately to the east that are contiguous to the Properties should a residential subdivision project be built thereon. If annexed, the land so annexed shall be subject to all terms and provisions herein, except as may otherwise be set forth in the Declaration of Annexation.

Section 11: FHA/VA Approval. As long as there is Class B membership, the following actions shall require the prior approval of the Federal Housing Administration or the Veterans Administration if such agencies have previously approved of this Declaration: annexation of additional properties to the Properties (except as specifically set forth herein), dedication or transfer of Common Area, and amendment of this Declaration.

Section 12: Nature of Common Area. In recording this Declaration, Declarant has designated certain areas of land as Common Area intended for the common use and enjoyment of Owners for recreation and other related activities. The Common Area is not dedicated to the public, but rather is for the common use and enjoyment of the Owners, as more fully provided in and limited by this Declaration.

Section 13: Non-Liability for Certain Changes and Amendments. Neither the Declarant, the Master HOA, nor their successors shall be liable to, or subject to injunction by, the Association, any Member or Owner or to one another in the event that any change in zoning at Starr Pass or immediately adjacent areas is sought or obtained, including, but not limited to, any change in area, use, or density among the various Blocks of land shown on any Block Plat, any change in the location of subdivisions, and any amendment to any Block Plat itself.

IN WITNESS WHEREOF, the undersigned Declarant has hereunto set its hand and seal as of the day and year first above written.

TITLE SECURITY AGENCY OF ARIZONA, an Arizona corporation, as Trustee under its Trust No. 708.

By: Michael D. Hop



Title: Trust Officer

STATE OF ARIZONA )  
 ) ss.  
COUNTY OF PIMA )

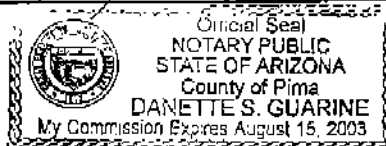
This instrument was acknowledged before me this 13<sup>th</sup> day of January  
2003

by Leslie B. Hogg, as Trust Officer of Title Security

Agency of Arizona, an Arizona corporation, as Trustee under Trust No. 708.

Notary Public: Danette S. Guarine

My Commission Expires: Aug 15, 2003



BENEFICIARY APPROVAL

Starr Pass Holdings, LLC, a Delaware limited liability company, doing business in Arizona as Starr Pass Residential, LLC

By: [Signature]

Title: Pres.

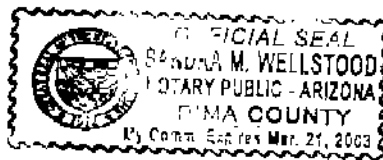
STATE OF ARIZONA )  
 ) ss.  
COUNTY OF PIMA )

This instrument was acknowledged before me this 6<sup>th</sup> day of January  
2003

By Christopher Amole, as President of Starr Pass Residential, LLC

Notary Public: Sandra M. Wellstood

My Commission Expires: Mar 21, 2003



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