

AMENDMENT
TO
COVENANTS, CONDITIONS AND RESTRICTIONS
MASTER ASSOCIATION

AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

"THE FOOTHILLS"
(MASTER RESTRICTIONS)

KNOW ALL MEN BY THESE PRESENTS:

The undersigned, representing more than ninety percent
(90%) of the ownership interest in the property described as
Section 4, T13S, R14E, G&SRB&M, Pima County, Arizona; wish to
revoke by voiding the Declaration of Covenants, Conditions
and Restrictions recorded in Book 4593, at pages 123 through
125 and in Book 4976 pages 660 through 675 and in Book 5028
pages 160 through 161.

The purpose of this amendment is to void the master
covenants, conditions and restrictions previously recorded
and completely restate the Master Declaration of Covenants,
Conditions and Restrictions to govern "THE FOOTHILLS" development.

THIS DECLARATION, made on the date hereinafter set
forth by Transamerica Title Company and The Estes Company
hereinafter referred to as "DECLARANT".

WITNESSETH:

WHEREAS, DECLARANT is the owner of certain
property in the County of Pima, State of Arizona, which is
more particularly described as:

The Foothills, Lots 1-37; 38-47; 48-140, according to
the plats thereof of record in the office of the County Recorder
of Pima County, Arizona, in Books 25, 25, and 26 of Maps and Plats
at pages 33, 100 and 96 thereof, respectively;

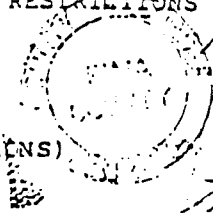
The Foothills, Lots 141-213, according to the Plats thereof
of record in the office of the County Recorder of Pima County,
Arizona, in Book 27, page 24 thereof respectively;

The Foothills Clusters, Phase I, Lots 214-372 according to
the Plat thereof of record in the office of the County Recorder
of Pima County, Arizona, in Book 27 of Maps and Plats at page 15.

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STATE OF ARIZONA
COUNTY OF PIMA

I hereby certify that the within instrument



Richard Bernabete
5057 156-171
Mary J. K...

NOW THEREFORE, DECLARANT hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements, restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

ARTICLE I

DEFINITIONS

Section 1. ASSOCIATION shall mean and refer to THE FOOTHILLS HOMEOWNERS MASTER ASSOCIATION, its successors and assigns.

Section 2. OWNER shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot 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.

Section 3. PROPERTIES shall mean and refer to that certain real property hereinbefore described.

Section 4. COMMON AREA shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the owners. The COMMON

AREA to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Those parcels of real property designated Common Area as shown on the recorded Plat of The Foothills Clusters, Phase I, Lots 214-372 according to the Plat thereof of record in the office of the County Recorder of Pima County, Arizona, in Book 27 of Maps and Plats at page 15, and those parcels of real property designated Common Area as shown on the plat of The Foothills, Lots 141-213 in Book 27 of Maps and Plats at page 24.

The COMMON AREA shall also include other property to be designated in subsequent phases of development similar to the above described subdivision conveyed to the Association.

Section 5. LOT shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the COMMON AREA and streets and roadways.

Section 6. DECLARANT shall mean and refer to Transamerica Title Company, its successors and assigns if such successors or assigns should acquire more than one undeveloped Lot from the DECLARANT for the purpose of development.

ARTICLE II

PROPERTY RIGHTS

Section 1. OWNERS' EASEMENTS OF ENJOYMENT. Every owner shall have a right and easement of enjoyment in and to the COMMON AREA which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(a) the right of the Association to promulgate rules and regulations for the use of any recreational facility situated upon the COMMON AREA;

(b) the right of the Association to suspend the voting rights and right to use of the recreational facilities by an owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.

(c) 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 and subject to present or future County Zoning Ordinances and Subdivision Regulations.

No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by 2/3rds of each class of members has been recorded.

Section 2. DELEGATION OF USE. Any owner may delegate, in accordance with the By-Laws, his right of enjoyment to the COMMON AREA and facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every owner of a lot which 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 which is subject to assessment.

Section 2. The Association shall have two classes of voting membership:

Class A. Class A members shall be all Owners, with the exception of the DECLARANT, and 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. 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 Lot.

Class B. The Class B member(s) shall be the DECLARANT and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of the following events, whichever occurs earlier:

(a) when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(b) on January 1, 1981.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. CREATION OF THE LIEN AND PERSONAL OBLIGATION OF ASSESSMENTS. The DECLARANT, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot 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 or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. PURPOSE OF ASSESSMENTS. The assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties and for the improvement and maintenance of the COMMON AREA.

Section 3. MAXIMUM ANNUAL ASSESSMENT. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be ONE HUNDRED DOLLARS (\$100.00) per lot.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased each year not more than 5% above the maximum assessment for the previous year without a vote of the membership.

(b) From and after January 1 of the year immediately following the conveyance of the first lot to an owner, the maximum annual assessment may be increased above 3% by a vote of two-thirds (2/3) of each class of members who are voting in person or by proxy, at a meeting duly called for this purpose.

(c) The Board of Directors may fix the annual assessment at an amount not in excess of the maximum.

Section 4. SPECIAL ASSESSMENTS FOR CAPITAL IMPROVEMENTS. In addition to the annual assessments authorized above, 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, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class by members 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 Section 3 or 4 shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the meeting called, the presence of members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum.

Section 6. UNIFORM RATE OF ASSESSMENT. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. DATE OF COMMENCEMENT OF ANNUAL ASSESSMENTS: DUE DATES. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the COMMON AREA. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a lot is binding upon the Association as of the date of its issuance.

Section 8. EFFECT OF NONPAYMENT OF ASSESSMENTS: REMEDIES OF THE ASSOCIATION. Any assessment not paid within thirty (30) days after the due date shall bear

interest from the due date at a rate of 6 percent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, and shall be entitled to any amount found to be due and reasonable attorney's fees and Court costs. 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 shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE V

ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the

Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

ARTICLE VI

GENERAL PROVISIONS

Section 1. ENFORCEMENT. The Association, 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 Declaration. Failure by the Association or by 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.

Section 2. SEVERABILITY. Invalidation of any one of these covenants or restrictions by judgment or Court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. AMENDMENT. The covenants and restrictions of this Declaration shall run with and bind the land, for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the Lot Owners, and thereafter by an instrument signed by not less than

seventy-five percent (75%) of the Lot Owners. Any amendment must be recorded and prior to amending must be approved by Pima County for conformance to present or future Zoning Ordinances and Subdivision Regulations.

Section 4. STAGED DEVELOPMENT. Additional land within the area previously described may be annexed by the DECLARANT without the consent of members within 5 years of the date of this instrument provided that the FHA and the VA determine that the annexation is in accord with the general plan heretofore approved by them.

Section 5. FHA/VA APPROVAL. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Phasing of additional properties, dedication of COMMON AREA, and amendment of this Declaration of Covenants, Conditions and Restrictions.

ARTICLE VII

USE RESTRICTIONS

Section 1. RESIDENTIAL USE. Such Lots, and each and every one thereof, are for single family residential purposes only. No building or structure intended for or adapted to business purposes shall be erected, placed, permitted or maintained on such premises, or on any part thereof. No improvement or structure whatsoever, other than a first class private dwelling house, patio walls, swimming pool, and customary out buildings, garage, carport, servants' quarters, or guest house may be erected, placed, or maintained on any Lot in such premises.

Section 2. OCCUPANCY. No private dwelling house erected upon any Lot shall be occupied in any manner while in the course of construction, nor at any time prior to its being fully completed, as herein required, except the Declarant's Sales Office and private guard quarters, nor shall

any completed structure be in any manner occupied until made to comply with the approved plans and all the Covenants, Conditions and Restrictions herein set forth.

Section 3. UTILITY LINES AND RADIO AND TELEVISION ANTENNAS. All electrical service and telephone lines from the utility company pole shall be placed underground and no outside electrical lines shall be placed overhead except during construction when temporary overhead power lines may be utilized. No exposed or exterior radio, television, or serial transmission and/or receiving antennas shall be erected, placed or maintained on any of the premises, except the construction or installation of an antenna upon the roof of the dwelling house, customary out buildings, garage, carport, servants' quarters or guest house which does not extend beyond five feet from the highest point on the roof.

Section 4. CONCEALED ACTIVITIES. All clothes lines, garbage cans, equipment, pool equipment, soft water tanks, wood piles or storage piles shall be enclosed or walled in to conceal them from the view of the neighboring lots, roads, or streets. Plans for all enclosures of this nature must be approved by the Association or the appropriate committee of the Association prior to construction.

Section 5. SIGNS. No billboards or advertising signs of any character shall be erected, placed, permitted or maintained on any Lot or improvement thereon except as herein expressly permitted. A name sign, address sign, and mailbox is expressly permitted if the design meets the approval of the Association or its appropriate committee. The Declarant, its heirs and assigns expressly reserve the right to violate this provision in order to promote the sale and development of the area.

Section 6. NUISANCES. No lot shall be used in whole or in part for the storage of rubbish of any character whatsoever, nor for the storage of any property or thing that will cause such Lot to appear in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept upon any Lot that will emit foul or obnoxious odors, or that will cause any noise that will or might disturb the peace, quiet, comfort, or serenity of the occupants of the surrounding property.

Section 7. ANIMALS AND PETS. No animals, birds, or fowl shall be kept or maintained on any part of the property, except dogs, cats, and pet birds which may be kept thereon in reasonable numbers as pets for the pleasure and use of the occupants, but not for any commercial use or purpose. Birds shall be confined in cages. The Declarant or the Association, their successors or assigns, shall have the right to order the removal from any Lot of any bird, fowl, or animal which may be objectionable to any of the residents of the adjacent property. The owner of said bird, fowl, or animal shall immediately remove the same from the premises upon receipt of written notice.

Section 8. VEHICLES AND EQUIPMENT. No trailers or habitable motor vehicles of any nature, no commercial vehicles, construction vehicles, or like equipment of any nature shall be kept on or stored on any part of the property except within an area which is completely enclosed and approved in writing by the Association or its appropriate committee.

Section 9. NATIVE GROWTH. The native growth on the real property covered herein, including cactii and palo verde trees, shall not be destroyed or removed by any of the Lot Owners, except such native growth as may be necessary for the construction and maintenance of roads, driveways, residences, garages, utilities, customary out buildings, and walled-in service yards and patios. Prior written approval is necessary for the destruction or removal of any native growth by any of the Lot Owners. In the event such growth is removed, except as stated above, the Association may require the replanting or replacement of same, the costs thereof to be borne by the Lot Owner. All transplanting of cactus shall be in accordance with any and all City, County, State or Federal Law.

Section 10. REMEDIES FOR VIOLATIONS-INVALIDATIONS. For a violation or a breach of any of the Use Restrictions by any person claiming by, through, or under the Declarant, or by virtue of any judicial proceeding, the Declarant, the Association, and the Lot Owners, or any of them severally, shall have the right to proceed at law or in equity to compel a compliance with the terms hereof or to prevent the violation or breach of any of them. The failure promptly to enforce any of the Use Restrictions shall not be construed as a waiver of the violation or the enforcement of future violations. The invalidation of any one or more of the Use Restrictions by any Court of competent jurisdiction in no way shall effect any of the Use Restrictions, and all remaining Use Restrictions shall be in full force and effect.

ARTICLE VIII

Section 1. Any and all additional restrictions including those which are peculiar to a particular development which, by nature, may be more restrictive than those included therein, shall be expressly permitted. The Covenants, Conditions and Restrictions included herein shall be known as the "Master Restrictions" and any conflict that may arise with the enactment of any future Covenants, Conditions and Restrictions shall be reconciled by the "Master Restrictions" prevailing.

Section 2. Each party who acquires any interest in all or part of the property described herein further agrees upon such acquisition that it does not have and shall not exert any right against Trustee shown herein for any breach or failure to enforce all or part of the covenants, conditions and restrictions set forth herein, but shall look to other property owners and or the developer, his successors or assigns for any performance or relief deemed equitable, or for enforcement of the covenants, conditions or restrictions contained herein, and shall not exert any claims or damages against Trustee arising as a result or failure to enforce any of the covenants, conditions and restrictions contained herein.

