

DECLARATION OF ESTABLISHMENT OF
CONDITIONS AND RESTRICTIONS FOR
FORTY NINERS COUNTRY CLUB ESTATES

KNOW ALL MEN BY THESE PRESENTS:

That Arizona Land Title & Trust Co., as Trustee under Trust No. 5883-T; Horizon Land Corporation, a corporation; and Leiber & McCarthy Land and Investment Corporation, a corporation, being the owners of the following described premises:

LOTS numbered ONE. (1) to THREE HUNDRED TWENTY SIX (326), inclusive, FORTY-NINERS COUNTRY CLUB ESTATES, a subdivision of Pima County, Arizona, according to the map or plat thereof of record in the office of the County Recorder of Pima County, Arizona, in Book 15 of Maps and Plats at page 39.

DOES HEREBY DECLARE AND ESTABLISH the following covenants, stipulations and restrictions, all of which are to be construed as restrictive covenants running with the title to the said lots in FORTY-NINERS COUNTRY CLUB ESTATES to provide a uniform plan for the use and enjoyment thereof; and that all conveyances of said lots, with the exception of Lots 1, 2 and 3, hereafter made shall be subject to the said covenants, stipulations and restrictions.

1. Each and every lot shall be used for private residence purposes only, and no structure whatever other than the one first-class, private, one-family residence, together with private garage, guest house and the necessary outbuildings shall be erected, placed or maintained on any lot.

2. No store, office or other place of business of any kind and no hospital, sanatorium or other place for the care or treatment of the sick or disabled, physically or mentally, nor any theatre, saloon or other place of entertainment, nor any church, organization headquarters, meeting place or assembly hall, shall ever be erected or permitted upon any of the lots or any part thereof, and no business of any kind or character whatever shall be conducted in or from any residence on the lots.

3. The principal dwelling shall have a minimum fully enclosed floor area devoted to living purposes, exclusive of porches, terraces, garage and servant quarters, of 1500 square feet on all of said lots.

4. All building plans for any building, swimming pool, wall, fence, coping, or other structure whatever to be erected on or moved upon or to any part of said property, and the proposed location thereof on any lot, and the exterior color scheme thereof, and any changes after approval thereof, and any remodeling, reconstruction, alteration, or additions to any building or other structure on any lot in said property shall be subject to approval in writing of an architect or agent appointed from time to time by the Leiber & McCarthy Land and Investment Corporation, its successors and assigns, as its representative authorized for such purpose. The architect shall establish a reasonable fee to cover his services in studying the plans and specifications submitted to him and for inspecting the premises and such fee shall be paid to him by the owner at the time such plans are submitted to him for approval.

5. Before the owner of any lot shall commence the construction or alteration of any building, swimming pool, patio wall, fence, coping or other structure whatsoever on any lot, such owner shall submit to the architect or agent mentioned above, two complete sets of plans, specifications and construction details for said structure showing the nature, kind, shape, height, materials, exterior color scheme, location and approximate cost of such structure and the grading of the lot to be built upon, including location, size and depth of septic tanks or cesspools, and no structure of any kind shall be erected, altered, placed or maintained upon any lot unless and until the plans, specifications and construction details therefor shall have received the written approval of such architect or agent.

6. The architect or agent shall either approve or disapprove said plans, specifications and construction details, within fifteen (15) days from the receipt thereof. One set of said plans, specifications, and construction details with the architect's or agent's approval or disapproval endorsed thereon, shall be delivered to the person submitting said plans, specifications, and construction details by the architect or agent; and the other copy thereof shall be retained by the Leiber & McCarthy Land and Investment Corporation. If said architect shall fail in writing to approve or disapprove of such plans, specifications, and construction details within fifteen (15) days after the delivery thereof to him, and no action has been instituted to enjoin the doing of the proposal work the provisions of this paragraph shall be deemed waived.

7. Said architect or agent shall have the right to disapprove any plans, specifications, and construction details submitted to him as aforesaid if such plans, specifications, and construction details are not in accordance with all of the provisions of this declaration or if, in the opinion of the architect or agent the site, design or color scheme of the proposed building or other structure is not in harmony with the general surroundings of such lot or with the adjacent buildings or structures, or if the plans, specifications, and construction details submitted are incomplete. The decision of such architect or agent shall be final.

8. Neither the Leiber & McCarthy Land and Investment Corporation nor any architect or agent of the Leiber & McCarthy Land and Investment Corporation shall be responsible in any way for any defects in any plans, specifications, and construction details submitted in accordance with the foregoing, nor for any structural defects in any building or structure erected according to such plans, specifications, and/or construction details.

9. The following building location and height restrictions shall apply:

a) No structure, other than a fence or patio wall, shall be located nearer than twenty-five (25) feet to any street property line.

b) No structure, other than a fence or patio wall, shall be located nearer than forty (40) feet to any property line abutting on the golf course property.

c) No structure, other than a fence or patio wall, shall be located nearer than twenty-five (25) feet to the rear property line.

d) No structure, other than a fence or patio wall, shall be located nearer than twenty (20) feet to any side property line. For the purpose of this restriction, eaves, steps and open porches shall be considered as part of the structure.

e) No structure shall be erected, altered, placed or permitted on said lots which exceeds in height sixteen (16) feet from the highest finished grade line immediately adjoining the foundation of the structure.

f) No patio wall, coping, or fence exceeding six (6) feet in height may be erected or maintained on any lot; and no fence, wall or hedge shall be erected or maintained nearer than twenty-five (25) feet to any property line abutting on the golf course property.

PROVIDED HOWEVER, where the topography or location of the property lines of any lot, or the configuration of the structure, or the combination thereof, prevent reasonable construction of the permitted structures, including fences and walls, within the specified area and height, the said architect or agent, may by affirmative action permit a variation from the requirements of these restrictions. In no event, shall the said architect or agent permit a structure other than a fence or patio wall to be located nearer than ten (10) feet to any property line. If any dispute arises as to what constitutes a street, rear or side line, the decision of the architect or agent shall be final.

10. The said architect or agent shall approve the location, height and size of all power poles, radio and TV antennas on said lots.

11. When seventy-five percent (75%) or more of the lots in said property have been sold by the Leiber & McCarthy Land and Investment Corporation, then at any time thereafter the owners of the majority of all lots contained in said property may organize a neighborhood association or committee. Such neighborhood association or committee shall succeed to all of the powers and authority of the Leiber & McCarthy Land and Investment Corporation as to the manner in which the matters covered in paragraphs 4, 5, 6, 7, 8, 9, and 10 hereof shall be enforced.

12. Any lot may be subdivided into smaller parcels, provided no additional lot is created thereby and further provided that the size thereof is not reduced in any particular to below the minimum required by any zoning ordinance or regulation then in force or effect. Any ownership or single holding by any person comprising a part of a lot, parts of two adjoining lots or of the one lot and part or parts of one or more adjoining lots shall, for all purposes of this declaration of conditions and restrictions, be deemed as constituting a single lot.

13. An entire lot, together with the improvements thereon, may be rented by the owner to a single family, but not otherwise.

14. No horses, cattle, sheep, goats, pigs, rabbits, poultry or other livestock shall be kept or maintained on any part of said property. This restriction shall not be construed, however, as prohibiting the keeping of ordinary domestic pet fowls or animals upon said property; provided, however, that the Leiber & McCarthy Land and Investment Corporation, its successors and assigns shall have the right to order the removal from any lot of any birds, fowls, or animals which may be objectionable to any of the residents of adjacent property. The owner of said birds, fowls, or animals shall immediately remove the same from the premises upon receipt of said notice in writing from the Leiber & McCarthy Land and Investment Corporation, its successors and assigns.

15. No temporary house, trailer, tent, garage or other outbuildings shall be placed or erected on the lots, and no dwelling shall be occupied in any manner at any time prior to completion; provided, however, that during the actual construction or alteration of a building on any lot, necessary temporary buildings for storage of materials, etc., may be erected and maintained by the person doing such work. The work of constructing the dwelling shall be prosecuted diligently from the commencement thereof until completion. In no event shall construction time be over one (1) year.

16. With the exception of one "For Rent" or "For Sale" sign (which shall not be over fifteen by twenty-five (15 x 25) inches) no advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any lot; nor shall the lots be used in any way or for any purpose which may endanger the health or unreasonably disturb the holder of any other lot.

17. No building of any nature shall be removed from without said property to any lot within said property without the consent of the Leiber & McCarthy Land and Investment Corporation, its successors and assigns, and in the event a building shall be so placed from without on any lot, said building shall comply in all respects with each and every provision of this declaration of conditions and restrictions relating thereto.

18. No elevated tanks, of any kind shall be erected, placed or permitted upon any part of said property, excepting water storage tanks for the use of Forty-Niner Water Company or Forty-Niners Country Club Estates or any subsidiary, assignee or successor thereof. Any tanks for use in connection with any residence constructed on said property, including tanks for the storage of gas and fuel oil, gasoline or oil, must be buried or walled in or kept screened by adequate planting or walls to conceal them from the view of the neighboring lots, roads or streets. All evaporative or other air conditioning units or towers shall not be placed on the roof of any structure, and any such

units, clotheslines, equipment, service yards, wood piles or storage piles shall be walled in or kept screened by adequate planting, walls or other means in such manner as to conceal them from the view of the neighboring lots, streets or from the view of the golf course property.

19. All rubbish, trash or garbage shall be removed from the lots and shall not be allowed to accumulate thereon, and shall not be burned except by use of incinerator and then only between the hours of six (6) A.M. and ten (10) A.M., during week days.

20. An easement and right-of-way in perpetuity is hereby reserved for the benefit of all lots in said property for the erection, construction, maintenance and operation of pole lines with the necessary cross arms for wires for the transmission of electrical energy and for telephone lines and telegraph lines and for the laying and maintaining of pipes, mains and conduits for the furnishing of water, gas, sewer service or for other purposes, together with the right of entry for the purpose of installing, maintaining and reading electric and water meters, together with the further right to Leiber & McCarthy Land and Investment Corporation, or any subsidiary, assignee or successor thereof, to convey or lease the whole or any portion of such easement, right-of-way, and right of entry to any person or persons or to any corporation or municipal body over, under, along, across, upon and through the easements as shown on the map or plat of said Forty-Niners Country Club Estates, as filed of record in the office of the County Recorder of Pima County, Arizona.

As herein used, "utility easement strip" refers to and means, with respect to a given lot, the portion of such lot, 75 feet or 10 feet in width, along the outer boundary or boundaries, that is designated "utility easement" on the map.

"Street" includes thoroughfares, drainageways, drainage easements and bridle trail easements shown on the map.

"Service installations" means pole lines (including wires,) pipes, mains, conduits and other appliances, whether similar or dissimilar, for which easements are reserved, as stated elsewhere in this Declaration, or which have been installed, or are used, or are intended for supplying (whether in a private capacity or as a public utility), water, gas, telephone, electric power, television, and sewer service at or to the lands or any land embraced within said subdivision.

When any land within the subdivision is conveyed subsequent to recording this Declaration, there shall be deemed to have been reserved and/or excepted from such land, without so stating in the deed or other instrument by which such conveyance is made, the following:

a) All service installations within the subdivision, wherever situated, and whether owned by the first grantor or others;

b) An easement and right of way in, on, over and across the land conveyed and in, on, over and across, all "streets" within the subdivision, whether abutting upon the land conveyed, or not, for maintaining, operating, repairing, replacing, relocating, enlarging and constricting existing installations or any installation; and

c) An easement and right of way in, on, over and across any utility easement strip on the land conveyed, and in, on, over and across all "streets" within the subdivision, whether abutting upon the land conveyed, or not, for installing, maintaining, operating, repairing, replacing, relocating, enlarging and constricting, without limit upon the number of times the right is exercised, pole lines, (including wires), pipes, mains, conduits, and other appliances, whether similar or dissimilar, for supplying (whether in a private capacity or as a public utility) water, gas, telephone, electric power, television and sewer service at or to the lands or any land embraced within said subdivision.

21. Leiber & McCarthy Land & Investment Corporation, or any subsidiary assignee, or successor thereof, may build hotels, clubhouse facilities, cottages, golf course, recreational facilities and other facilities for lease or sale in tracts shown on Forty-Niners Country Club Estates plat

without consent or approval of any owner, mortgagee or other person, firm or corporation, owning or having any interest in any lot or part of premises owned by Leiber & McCarthy Land & Investment Corporation.

22. The native growth on said property, including cacti, mesquite and palo verde trees shall not be destroyed or removed from any of the lots in said subdivision by any of the lot owners, except such native growth as may be necessary for the construction and maintenance of roads, driveways, residences, garages and other outbuildings, and/or walled in service yards and patios, which native growth shall not be removed prior to commencement of construction, and unless written permission be first had and obtained from the Leiber & McCarthy Land & Investment Corporation, its successors and assigns.

23. The aforesaid provision, conditions, restrictions and covenants, and each and all thereof, shall run with the land and continue and remain in full force and effect at all times and against all persons until January 1, 1999, at which time they shall terminate and end and thereafter be of no further legal or equitable effect on said property or any owner thereof unless prior to January 1, 1999, seventy-five percent (75%) of the owners of record of the lots in said subdivision shall by written instrument duly recorded declare a continuation or modification of the same.

24. All provisions, conditions, restrictions, and covenants herein shall be binding on all lots and parcels of real estate and the owners thereof, regardless of the source of title of such owners, and any breach thereof, if continued for a period of thirty (30) days from and after the date that the Leiber & McCarthy Land & Investment Corporation or other property owner shall have notified in writing the owner or lessee in possession of a lot upon which such breach has been committed to refrain from a continuance of such action and to correct such breach shall warrant the Leiber & McCarthy Land & Investment Corporation or other lot owner to apply to any court of law or equity having jurisdiction thereof for an injunction or other proper relief, and is such relief he granted the court may in its discretion award to the plaintiff in such action his reasonable expenses in prosecuting such suit, including attorney's fees.

Provided, that any violation of the foregoing provisions, conditions, restrictions or covenants shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value as to any portion of said property but such provisions, conditions, restrictions, and covenants shall be enforceable against any portion of said property acquired by any person through foreclosure or by deed in lieu of foreclosure for any violation of the provisions, conditions, restrictions and covenants herein contained occurring after the acquisition of said property through foreclosure or deed in lieu of foreclosure.

25. No delay or omission on the part of the Leiber & McCarthy Land & Investment Corporation or its successors or assigns in interest, or the owner or owners of any other lot or lots in said property in exercising any right, power or remedy herein provided for in the event of any breach of any of the provisions, shall be construed as a waiver thereof or acquiescence therein; and no right of action shall accrue nor shall be brought or maintained by anyone whomsoever against the Leiber & McCarthy Land and Investment Corporation, its successors or assigns, nor shall the Leiber & McCarthy Land and Investment Corporation be liable for any damages for or on account of its failure or neglect to exercise any right, power or remedy herein provided for in the event of any such breach, or for imposing herein provisions, conditions, restrictions or covenants which may be unenforceable.

26. In the event that any one or more of the provisions, conditions, restrictions, and covenants herein set forth shall be held by any court of competent jurisdiction to be null and void, all remaining provisions, conditions, restrictions, and covenants herein set forth shall continue unimpaired and in full force and effect.

When recorded, return to:
David G. Dalby
8987 E. Tanque Verde Road, Suite 309-169
Tucson, Arizona 85749-9399

**FIRST AMENDMENT TO DECLARATION OF ESTABLISHMENT OF
CONDITIONS AND RESTRICTIONS FOR FORTY-NINERS COUNTRY CLUB
ESTATES**

This First Amendment is made effective as of the 1 st day of December, 1998, by the seventy-five percent (75%) of the owners of record of the lots within the Subdivision (as defined below).

RECITALS

A. Arizona Land Title & Trust Co., as Trustee under Trust No. 5883-T, Horizon Land Corporation, a corporation, and Leiber & McCarthy Land and Investment Corporation, a corporation, as the former owners of the legal and equitable interest in the certain real property located in Pima County, Arizona, described as:

Lots 1 through 326, inclusive, of Forty-Niners Country Club Estates, a subdivision in Pima County, Arizona, according to the map or plat thereof of record in the office of the County Recorder of Pima County, Arizona, in Book 15 of Maps and Plats at page 39 thereof ("Subdivision")

caused to be established and recorded that certain Declaration of Establishment of Conditions and Restrictions for Forty-Niners Country Club Estates (" Declaration") dated as of March 8, 1961, and recorded as of March 10, 1961, in Book 1746, commencing at page 265 of the official records of Pima County, Arizona.

B. The undersigned owners desire to amend the Declaration by extending its term.

NOW THEREFORE, pursuant to paragraph 23 of the Declaration, the undersigned owners hereby amend to extend the expiration of the term of the Declaration from January 1, 1999, until January 1, 2030. This First Amendment will be effective upon

the date of recondition hereof and, as amended from time to time, will continue in full force and effect until January 1, 2030, and will be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote or written consent to terminate the Declaration, as amended, by seventy-five percent (.75%) of the owners of record of the lots within the Subdivision for such purpose. If the necessary votes and/or consents are obtained to so terminate the Declaration, as amended, or to further modify the Declaration, as amended, the Forty-Niners Estates Homeowners Association, an Arizona corporation ("Association"), will cause to be recorded in the official records of Pima County, Arizona, a certificate of termination or further amendment instrument, as the case may be, duly signed by the President or Vice President and attested by the Secretary of the Association, with the signatures acknowledged. Upon such a termination, the Declaration, as amended, will have no further force and effect, and the Association will be dissolved pursuant to the terms set forth in its Articles and otherwise in accordance with the procedures for voluntary dissolution under Arizona law.

IN WITNESS WHEREOF, the undersigned owners have signed this First Amendment to be effective as of the day and year first above written.

REST OF PAGE LEFT BLANK INTENTIONALLY: COUNTERPART SIGNATURE
PAGES ARE ATTACHED HERETO

IN WITNESS WHEREOF this covenant has been executed by the duly authorized officers
of the above mentioned corporation this 8th day of December, 1961.

LEIBER & McCARTHY Land and Investment
Corporation

