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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

TALARA

THIS DECLARATION of Covenants, Conditions, Restrictions, Assessments, Charges, Servitudes, Liens, Reservations and Easements (hereinafter termed the "Declaration") is made on the 21st day of January, 1992, by DEL WEBB'S COVENTRY HOMES CONSTRUCTION CO., Arizona corporation (hereinafter sometimes termed "Declarant").

W I T N E S S E T H:

WHEREAS, Declarant is the developer of the real property described on Exhibit "A" attached hereto and by reference made a part hereof, which real property consists of approximately 37.4 gross acres, which has been subdivided into one hundred four (104) Lots and Tracts A thru I, also referred to in its entirety as Talara; and

WHEREAS, such community will collectively have one or more open spaces, walkways, landscaped drainage areas and entryways; and

WHEREAS, as part of the development of the aforesaid land, Declarant intends, without obligation, to dedicate portions of Talara for drainage, flood control, and general public use; and to record various Tract Declarations covering portions of Talara, which Tract Declarations will designate the purposes for which such portions of Talara may be used and may set forth additional covenants, conditions, and restrictions, assessments, charges, servitudes, liens, reservations, and easements applicable to such portions of Talara; and

WHEREAS, Declarant desires to form a non-profit corporation for the maintenance and social purposes of benefitting Talara, the Owners, the Lessees, and the Residents (as said terms are defined hereinbelow), which non-profit corporation (hereinafter termed the "Association") will (1) acquire, construct, operate, manage, and maintain any Common Areas; (2) establish, levy, collect, and disburse any Assessments and other charges imposed hereunder; and (3) as the agent and representative of the Members of the Association and Residents of Talara, administer and enforce all provisions hereof and enforce use and other restrictions imposed on various parts of Talara; and

WHEREAS, Declarant is preparing the necessary documents for the incorporation and organization of the Association; and

WHEREAS, the Declarant therefore wishes to subject all of Talara to the Covenants, Conditions, Restrictions (hereinafter collectively called "Covenants") hereinafter set forth; and

WHEREAS, in order to cause the Covenants to run with Talara and to be binding upon Talara and the Owners and Lessees thereof from and after the date of recordation of this Declaration, Declarant hereby makes all conveyances of Talara, whether or not so provided therein, subject to the Covenants herein set forth, and by accepting deeds, leases, easements, or other grants or conveyances to any portion of Talara, the Owners, Lessees, and other transferees for themselves and their heirs, executors, administrators, trustees, personal representatives, successors and assigns, agree that they shall be personally bound by all the

Covenants (including, but not limited to, the obligation to pay Assessments) hereinafter set forth except to the extent such persons are specifically excepted herefrom.

NOW, THEREFORE, DECLARANT hereby declares, covenants, and agrees as follows:

**ARTICLE I  
DEFINITIONS**

The following words, phrases, or terms used in this Declaration shall have the following meanings:

A. "Annual Assessment" shall mean the charges levied and assessed each year against each Lot pursuant to Article VII, Section 4, hereof.

B. "Architectural Control Committee" shall mean the committee created pursuant to Article XI below.

C. "Articles" shall mean the Articles of Incorporation of the Association as the same may from time to time be amended or supplemented.

D. "Assessable Property" shall mean any Lot or Parcel, except such part or parts thereof as may from time to time constitute Exempt Property.

E. "Assessment" shall mean an Annual Assessment, Special Assessment, or a Maintenance Charge.

F. "Assessment Lien" shall mean the lien created and imposed by Article VII.

G. "Association" shall mean the Arizona non-profit corporation, organized by Declarant to administer and enforce the Covenants and to exercise the rights, powers and duties set forth in this Declaration, its successors and assigns. The Association name is Talara Homeowners' Association, Inc.

H. "Association Land" shall mean such part or parts of Talara, together with the buildings, structures and improvements thereon, and other real property which the Association may at any time own in fee or in which the Association may at any time have a leasehold interest, for as long as the Association is the owner of the fee or leasehold interest.

I. "Board" shall mean the Board of Directors of the Association.

J. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended or supplemented from time to time.

K. "Common Area and Common Areas" shall mean:

(a) all Association Land;

(b) all land within Talara which the Declarant, by this Declaration or other recorded instrument, makes or has made available for use by Members of the Association or evidences its intent to convey to the Association at a later date;

(c) all land within Talara which the Declarant indicates on a recorded subdivision plat or Tract

Declaration is to be used for landscaping, drainage, and/or flood control for the benefit of Talara and/or the general public and is to be dedicated to the public or the City of Scottsdale upon the expiration of a fixed period of time, ~~but only until~~ such land is so dedicated;

(d) all other lands within the drainage easement areas as set forth by Tract Declarations or other recorded instruments;

(e) areas on a Lot within easements granted to the Association or its Members for the location, construction, maintenance, repair, and replacement of a wall, which easement may be granted or created on a recorded subdivision plat or Tract Declaration or by a deed or other conveyance accepted by the Association; and

(f) public rights-of-way which the Association, by agreement with governmental or other authorities, has agreed to maintain for the purpose of generally improving the quality of landscaping and maintenance for the mutual benefit of all Declarants.

L. "Covenants" shall mean the covenants, conditions, and restrictions, assessments, charges, servitudes, liens, reservations, and easements set forth herein.

M. "Declarant" shall mean Del Webb's Coventry Homes Construction Co., an Arizona corporation, but for purposes of the foregoing, no individual, corporation, trust, partnership, or other entity who or which has purchased property within the Project from Declarant, or whose title to such property is derived from a person who has purchased such property from Declarant, shall be deemed to be a successor or assign of Declarant.

N. "Declaration" shall mean this Declaration of Covenants, Conditions and Restrictions, as same may from time to time be amended or supplemented.

O. "Deed" shall mean a deed or other instrument conveying the fee simple title in a "Lot".

P. "Designee" shall mean a person designated by a Member pursuant to Article VI, Section 8, to exercise certain of the rights of a Member.

Q. "Dwelling Unit" shall mean any building or portion of a building situated upon a Lot designated and intended for use and occupancy as a residence by a single family.

R. "Exempt Property" shall mean the following parts of Talara:

- (1) All land and improvements owned by or dedicated to and accepted by the United States, the State of Arizona, Maricopa County, the City of Scottsdale, or any political subdivision thereof, for as long as any such entity or political subdivision is the owner thereof or for so long as said dedication remains effective;
- (2) All Association Land, for as long as the Association is the owner thereof.

S. "Government Mortgage Agency" shall mean the Federal Housing Administration, the Veteran's Administration, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or the Federal National Mortgage Association or any similar entity, public or private, authorized, approved, or sponsored by any governmental agency to insure, guarantee, make or purchase mortgage loans.

T. "Lessee" shall mean the lessee under a Lease, including an assignee of a Lease, but excluding any person who has assigned all of his interest in a Lease.

U. "Lot" shall mean any area of real property within Talara designated as a Lot on the subdivision plat recorded by a Tract Declaration to Single Family Residential Use.

V. "Maintenance Charges" shall mean any and all costs assessed pursuant to Article X, Sections 1 and 2.

W. "Master Development Plan" shall mean the Talara Development Plan, as the same may be from time to time amended, a copy of which shall be on file at all times in the office of the Association.

X. "Member" shall mean any person holding a Membership in the Association pursuant to this Declaration.

Y. "Membership" shall mean a Membership to the Association and the rights granted to the Owners, Lessees, and Declarant pursuant to Article VI to participate in the Association.

Z. "Owner" shall mean (when so capitalized) the record holder of legal title to the fee simple interest in any Lot, including contract sellers, but excluding others who hold such title merely as security. In the case of Lots, the fee simple title to which is vested of record in a trustee, legal title shall be deemed to be in the Trustor. An Owner shall include any person who holds record title to a Lot in joint ownership with any other person or holds an undivided fee interest in any Lot.

Aa. "Project" shall mean the property situated in the City of Scottsdale, County of Maricopa, State of Arizona, as described on Exhibit "A" to this Declaration.

Bb. "Recording" shall mean placing an instrument of public record in the office of the County Recorder of Maricopa County, Arizona, and "Recorded" shall mean having been so placed of public record.

Cc. "Resident" shall mean:

- (1) Each buyer under a contract of sale covering any part of the Assessable Property, regardless of whether the contract is recorded, and each Tenant (other than a Lessee) actually residing on any part of the Assessable Property; and
- (2) Members of the immediate family of each Owner and Lessee and of each buyer and Tenant referred to in subparagraph (1) actually living in the same household with such Owner or Lessee or such buyer or Tenant.

Subject to such rules and regulations as the Association may hereafter specify (including the position of special non-resident fees for use of the Association Land if the Association shall so direct), the term "Resident" also shall include the guests or invitees of any such Owner, Lessee, buyer or tenant, if and to the extent the Board in its absolute discretion by resolution, so directs.

Dd. "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three (3) persons not all so related, who maintain a common household in a Dwelling Unit.

Ee. "Special Assessment" shall mean any assessment levied and assessed pursuant to Article VII, Section 6.

Ff. "Special Use Fee" shall mean special fees authorized by this Declaration which an Owner, Lessee, Resident, or any other person is obligated to pay to the Association over, above and in addition to any annual, special or maintenance charges imposed or payable hereunder.

Gg. "Tenant" shall mean any person who occupies property located on Talara under any type of rental or letting arrangement.

Hh. "Visible From Neighboring Property" shall mean with respect to any given object, that such object is or would be visible to a person six feet tall, standing at ground level on any part of such neighboring property.

## ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION

Section 1. General Declaration. Declarant hereby declares that Lot Numbers 1 - 104 of Talara, as recorded in Book 347, Page 6 of Maps, Maricopa County Recorders Office, plus Tracts A, B, C, D, F, G, H, and I, is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred in whole or in part, subject to this Declaration, as amended or modified from time to time. This Declaration is declared and agreed to be in furtherance of a general plan for the subdivision, improvement and sale of said Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of said Property and every part thereof. All of this Declaration shall run with all of said Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, all Owners and their successors in interest.

Section 2. Association Bound. Upon issuance of a Certificate of Incorporation by the Arizona Corporation Commission to the Association, the Covenants shall be binding and shall benefit the Association.

Section 3. Los Portones Community Association. All Owners in Talara shall be members of the Los Portones Community Association, Inc., an Arizona non-profit corporation ("the Master Association"), which membership is governed by:

- a. The Articles of Incorporation of Los Portones Community Association, Inc.;
- b. The Bylaws of the Master Association;

- c. The Master Declaration of Covenants, Conditions and Restrictions for Pinnacle Peak Villas recorded May 29, 1986 at Document Number 86-264470 of the records of the County Recorder of Maricopa County, Arizona,
- d. The rules and regulations promulgated by the Master Association from time to time (collectively "the Master Documents");
- e. The First Amended and Restated Declaration of Covenants, Conditions and Restrictions, recorded January 16, 1986, as Document Number 86-024566 of the records of the County Recorder of Maricopa County, Arizona ("the Rawhide declaration");
- f. The Reciprocal Easement Agreement, recorded January 16, 1986, as Document Number 86-024575 of the records of the County Recorder of Maricopa County, Arizona ("the Los Portones Reciprocal Easement Agreement"); and

This Declaration and other Constituent Documents of the Association shall at all times be subject and subordinate to the Master Documents reflected in Paragraphs a through f above.

### ARTICLE III PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Owner, Lessee, and other member of the Association shall have a right and easement of enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Lot,

- a. 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 Association. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of Owners agreeing to such dedication or transfer has been recorded, except that the Board shall have the authority to transfer to such public agencies, authorities, or utility, any easements and rights-of-way which are intended to benefit Talara and which do not have any substantial adverse affect in the enjoyment of the Common Areas by the Members.
- b. The right of the Association to regulate the use of the Common Areas through the Talara Rules and to prohibit access to those Common Areas not intended for use by the Members. The Talara Rules shall be intended, in the absolute discretion of the Board, to enhance the preservation of the Common Areas or the safety and convenience of the users thereof, or otherwise shall serve to promote the best interests of the Owners, Lessees, and Residents.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of enjoyment to the Common Area Facilities to the members of his family, his tenants, or contract purchasers who reside on the property.

### ARTICLE IV USE RESTRICTIONS

The following Covenants, Conditions, Restrictions, and Reservations of Easements and Rights shall apply to all Lots, the Owners and Lessees thereof, and all Residents:

- a. Animals. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Property covered by this Declaration and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry or livestock shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing, or confinement of any animal, bird, fowl, poultry or livestock shall be maintained so as to be visible from neighboring property. Upon the written request of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph, a particular animal, bird, fowl, poultry or livestock is a generally recognized house or yard pet, or a nuisance, or whether the number of animals or birds on any such Property is reasonable. Any decision rendered by the Board shall be enforceable as other restrictions contained herein.
- b. Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Property whether attached to a building or structure or otherwise, unless approved by the Architectural Control Committee.
- c. Architectural Control. No improvements, alterations, repairs, painting, excavation or other work which in any way alters the exterior appearance of any Property or the Improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed or transferred by Declarant to a public purchaser shall be made or done without the prior approval of the Architectural Control Committee, except as otherwise expressly provided in this Declaration. No building, fence, wall or other structure shall be commenced, erected, maintained, improved, altered, made or done without the prior written approval of the Architectural Control Committee or any committee established by the Architectural Control Committee for this purpose. Pursuant to its rulemaking power, the Architectural Control Committee shall establish a procedure for the preparation, submission and determination of applications for any such alteration or improvement. The Architectural Control Committee shall have the right to refuse to approve any plans or specifications or grading plans which are not suitable or desirable, in its opinion, for aesthetic or other reasons, and in so passing upon such plans, specifications and grading plans, and without any limitation of the foregoing, it shall have the right to take into consideration the suitability of the proposed building or other structure, and of the materials of which it is to be built, the site upon which it is proposed to erect the same, the harmony thereof with the surroundings and the effect of the building or other structure as planned, on the outlook from the adjacent or neighboring Property. All subsequent additions to or changes or alterations in any building, fence, wall or other structure, including exterior color scheme and building materials, shall be subject to the prior approval of the Architectural Control Committee. No changes or deviations in or from such plans and specifications once approved shall be made without the prior written approval of the Architectural Control Committee. All decisions of the Architectural Control Committee shall be final and no Lot Owner or other

parties shall have recourse against the Architectural Control Committee or any of its members, for or with respect to any decisions made in good faith.

- d. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Property unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be visible from neighboring property.
- e. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of improvements or signs necessary or convenient to the development or sale of Lots and the Property.
- f. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any Property which shall induce, breed or harbor infectious plant diseases or noxious insects.
- g. Drainage Easement. There is hereby created a blanket easement for drainage of groundwater on, over and across the Property. No Owner shall obstruct, divert, alter or interfere in any way with the drainage of groundwater upon, across or over any portion of the Property. Each Owner shall at his own expense maintain the drainageways and channels on his Lot in proper condition free from obstruction. The Association shall have the right, after thirty (30) days notice to an Owner, to repair or otherwise maintain the drainageway or channel on said Owner's Lot, which the Association, acting through its Board, determines has not been maintained by the Owner in compliance with this provision. All costs and expenses including reasonable attorneys fees incurred by the Association shall be borne by the Owner, and shall be paid to the Association upon demand, plus interest at an annual rate of twelve percent (12%) from ten days after said demand until paid in full. Any sum not paid by an Owner may be treated as an assessment and collected in like manner as assessments levied pursuant to Article VII of this Declaration.
- h. Easement for Subsequent Construction. There is hereby created an easement running in favor of Declarant, the Declarant's successors, assigns, and its or their agents, employees, or independent contractors, to enter upon any portion of the Property for the purpose of constructing or installing improvements on any additional land annexed to the Property.
- i. Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be nuisance or to adversely affect the health, safety, or welfare of Owners, Lessees and Residents, the Board may make rules restricting or regulating their presence on Talara as part of the Talara Rules or may direct the Architectural Control Committee to make rules governing their presence on Lots.
- j. Incidental Uses. The Board may approve uses of property which are incidental to the full enjoyment by the Owners of the property. Such approval may be subject to such regulations, limitations, and restrictions, including termination of the use, as the Board may wish to impose, in its sole discretion, for the benefit of Talara as a whole.



By way of example and not of limitation, the uses which the Board may permit are recreational facilities intended for usage by the Residents or Owners of more than a single Lot within any area classified for residential use, and a sales, information and marketing center operated by Declarant.

- k. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, or maintained upon or adjacent to any Property except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of buildings, improvements or structures which are within the permitted uses of such property, and except that which Declarant or the Association may require for the operation and maintenance of the Common Area.
- l. Maintenance of Lawns and Plantings. The Association shall maintain the lawns and plantings on all Common Areas, and for this purpose, Declarant and the Association shall have the right, at any time, to plant, replace, maintain and cultivate landscaping, shrubs, trees, grass and plantings on any Common Area and on such easements over an Owner's Lot as may have been granted to Declarant or the Association, regardless of whether any Owner or the Association is responsible hereunder for maintenance of such areas. No Owner shall remove, alter, injure or interfere in any way with any landscaping, shrubs, trees, grass or plantings placed upon any Common Area by Declarant or the Association without the written consent of the Association having first been obtained. The Association or its authorized agents shall have the right to enter upon any Lot, at any reasonable time, for the purpose of planting, replacing, maintaining or cultivating such landscaping, shrubs, trees, grass or plantings in the Common Area and shall not be liable for trespass for so doing.
- m. Mineral Exploration. No Property shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind.
- n. Model Homes. The provisions of this Declaration which prohibit non-residential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons engaged in the construction of residential dwellings on Talara and parking incidental to the visiting of such model homes so long as the location of such model homes are approved by the Architectural Control Committee, the opening and closing hours are approved by the Board, and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The Architectural Control Committee may also permit Lots and other areas to be used for parking in connection with showing of model homes so long as such parking and parking areas are in compliance with the ordinance of the City of Scottsdale and any rules of the Architectural Control Committee. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner, builder, or builders successor in rights thereof is not actively engaged in the construction and sale of such homes.
- o. Nuisances. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Property, and no odors shall be permitted to arise therefrom, so as to render any such Property or any portion thereof unsanitary,

uninsightly, offensive or detrimental to any other Property in the vicinity thereof or to its occupants. No nuisance shall be permitted to exist or operate upon any such Property so as to be offensive or detrimental to any other Property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Property. The Board in its sole discretion shall have the right to determine the existence of any such nuisance. No motorcycles or motor driven vehicles (except lawn maintenance equipment) shall be operated on any walkways or sidewalks within the Property.

- p. Overhangs. No tree, shrub, or planting of any kind on any Property shall be allowed to overhang or to otherwise encroach upon any Common Area from ground level to a height of twelve (12) feet, without the prior approval of the Architectural Control Committee.
- q. Parking. It is the intent of the Declarant to restrict on-street parking as much as possible. Vehicles of all Owners, Lessees and Residents, and of their employees, guests and invitees, are to be kept in garages, residential driveways of the Owner, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a lot; provided, however, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking on Palara is otherwise prohibited or the parking of any inoperable vehicle.
- r. Party Walls and Fences. The rights and duties of Owners with respect to Party Walls or Party Fences shall be as follows:
1. The Owners of contiguous lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of said by the other Owner.
  2. In the event that any party wall or party fence is damaged or destroyed through the act of an Owner or any of his agents or guests or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the other adjoining Lot Owner or Owners.
  3. In the event any such party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other than by the act of an adjoining Owner, his agents, guests or family, it shall be the obligation of all Owners whose lots adjoin such wall or fence to rebuild and repair such wall or fence at their joint and equal expense.
  4. Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence

- without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.
5. In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding.
  6. Each Owner shall permit the Owners of adjoining Lots, or their representative, when reasonably required, to enter his Lot for purpose of repairing or maintaining a party wall or party fence or for the purpose of performing installation, alterations or repairs to the property of such adjoining Owners, provided that requests for entry is at a time reasonably convenient to the Owner. In case of an emergency, such right to entry shall be immediate. An adjoining Owner making entry pursuant to the terms of this paragraph shall not be deemed guilty of trespass by reason of such entry.
  7. Surfaces of party walls or party fences on property which is generally accessible or viewable from only the adjoining property may be planted against, painted, maintained and used by the adjoining Owners. If such surfaces are viewable from public streets or the Common Area, the color scheme shall not be changed without the written consent of the Architectural ~~Control Committee.~~
  8. In the event that any of the subdivision perimeter fencing on an Owner's Lot of Talara is damaged or destroyed, it shall be the obligation of the Owner of such Lot to rebuild and/or repair such perimeter fence so that the exterior surface will match in material and color the surface of the perimeter fence of the subdivision.
- s. Repair of Buildings. No improvement upon any Property shall be permitted to fall into disrepair, and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. The Association shall have right, after thirty (30) days notice to an Owner, to repair, paint, or otherwise maintain the exterior of any improvement (and without notice in the event of an emergency) which the Association, acting through its Board, determines in its discretion is in violation of this provision. All costs and expenses, including reasonable attorneys fees, incurred by the Association shall be borne by the Owner, and shall be paid to the Association on demand plus interest at the rate of twelve percent (12%) from ten (10) days after said demand until paid in full. Any sum not paid by an Owner may be treated as an assessment and collected in a like manner as assessments levied pursuant to Article VII of this Declaration.
- t. Restrictions on Further Subdivision. No Lot shall be further subdivided or separated into smaller lots by any Owner, and no portion less than all of any such lot, nor any easement of other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board. No Lot may be converted into a condominium or cooperative or

other similar type of entity without the prior written approval of the Board.

- u. Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a lot, any member of the Architectural Committee, any member of the Board, or any authorized representative of either of them shall have the right to enter upon and inspect any Lot, and the improvements thereon, except for the interior portions of any completed residence, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.
- v. Signs. No sign (other than a name and address sign, not exceeding 9" x 30" in size) of any nature shall be permitted on any Lot; provided, however, that one sign of not more than five square feet may be temporarily erected or placed on a Lot for the purpose of advertising the property for sale or rent; and provided further the builder may erect any signs during construction; and provided further, this restriction shall not apply to the Association in furtherance of its powers and purposes herein set forth.
- w. Single Family Residential Use. All Property classified as "Single Family" shall be used, improved, and devoted exclusively to Single Family Residential Use. No gainful occupation, profession, trade or other non-residential use shall be conducted on any such Property. Nothing herein shall be deemed to prevent the leasing of any such Property to a single family from time to time by the Owner thereof, subject to all of the provisions of the Declaration. No structure whatsoever, other than one private single family residence, together with a private garage, shall be erected, placed or permitted to remain on any Lot.
- x. Temporary Occupancy. No trailer, basement of any incomplete improvement, building, tent, shack, garage or barn, and no temporary improvement of any kind shall be used at any time for a residence on any Property either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any such Property shall be removed immediately after the completion of construction.
- y. Trailers and Motor Vehicles. No motor vehicle classed by manufacturer rating as exceeding 3/4 ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other equipment or vehicle may be parked or maintained on any Lot or street so as to be visible from neighboring property, the Common Areas, or the streets. They may, however, be concealed in attractively screened areas with prior approval by the Architectural Control Committee. The provisions of this Section shall not apply to pick-up trucks of less than 3/4 ton capacity with camper shells not exceeding seven feet in height measured from ground level and mini-motorhomes not exceeding seven feet in height and eighteen feet in length. No mobile home, motorhome, boat, recreational vehicle, trailer of any kind, truck, camper, permanent tent, or similar structure shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any motor vehicle be constructed, reconstructed, or repaired upon any Property; provided, however, that the provisions of this paragraph shall not apply to emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used

- exclusively in connection with, the construction of any improvement approved by the Architectural Control Committee. Garages shall be used for parking vehicles and storage purposes only, and shall not be converted for living or recreational activities without the written consent of the Architectural Control Committee. Except as provided above, only vehicles in operating conditions shall be parked in uncovered parking areas.
- z. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Property except in covered containers. In no event shall such containers be maintained so as to be visible from neighboring property, except to make the same available for collection, and then only the shortest time reasonably necessary to effect such collection. All rubbish, trash or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No incinerators shall be kept or maintained on any Lot.
- Aa. Utility Easements. There is hereby created a blanket easement upon, across, over and under the above described Property for ingress, egress, installation, replacement, repair and maintenance of all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on said Property and to affix and maintain wires, circuits and conduits on, in and under roofs and exterior walls of said Property. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on said Property except as initially developed and approved by the Declarant or thereafter approved by the Board. This easement shall in no way affect any other recorded easements on said Property. This easement shall be limited to improvements as originally constructed.
- Bb. Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television and radio signals, shall be erected, placed or maintained anywhere in or upon any Property unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Control Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Control Committee.
- Cc. Water Conservation. Declarant, being sensitive to the fact that Talara is located in a desert environment, desires to develop a community that is conscious of the need to conserve water and maintain the integrity of the desert environment. The Architectural Control Committee responsible for overseeing the architectural control of Talara will promulgate Design Guidelines which contain certain water conservation requirements in an effort to be conscious of any water conservation requirements that may be imposed by the City or the Arizona Department of Water Resources. The Architectural Control Committee shall require that any development of Talara will be sensitive to water conservation by requiring that (i) landscaping of Common Areas, to the

extent practicable, will utilize native and drought tolerant paint materials, and (ii) builders within Talara will be required to install water conserving plumbing fixtures.

**ARTICLE V  
ORGANIZATION OF THE ASSOCIATION**

Section 1. Organization.

- a. The Association. The Association is an Arizona non-profit corporation charged with the duties and invested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.
- b. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Directors may elect or appoint, in accordance with the Articles and Bylaws, as same may be amended from time to time.

Section 2. Powers and Duties of the Association. The Association shall have such rights, duties and powers as set forth in the Articles and Bylaws, as same may be amended from time to time.

Section 3. Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations to be known as the "Rules". The Rules may restrict and govern the use of any area by any Owner, or by any invitee, licensee or lessee of such Owner; provided, however, that the Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. A copy of the Rules as they may from time to time be adopted, amended, or repealed, shall be mailed or otherwise delivered to each Owner and may be recorded. Said Rules shall have the same force and effect as if they were set forth herein and were a part of this Declaration.

Section 4. Personal Liability. No member of the Board or any Committee of the Association, or any officer of the Association, or any Manager, shall be personally liable to any Owner, or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, any Manager, or any other representative or employee of the Association, or the Architectural Committee, or any other Committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

**ARTICLE VI  
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Owners of Lots. Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Each Lot Owner shall have one (1) Membership.

Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable. There shall be only one Membership for each Lot, which Membership shall be shared by any joint owners of, or

owners of undivided interests in, a Lot. Each Membership carries an assessment and every assessment has a vote.

Section 2. Declarant. The Declarant shall be a Member of the Association for so long as he holds a Class B Membership pursuant to Section 3 below or owns any Lot in Talara.

Section 3. Voting. The Association shall have two classes of voting Memberships:

Class A. Class A Memberships shall be all Memberships, except the Class B Memberships held by the Declarant, and each Owner shall be entitled to one vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof.

Class B. There shall be (1) Class B Membership which shall be held by the Declarant and the Class B Membership shall be entitled to three (3) votes for each Lot owned by the Declarant. The Class B Memberships shall cease and be converted to Class A Memberships on the happening of the first of the following events:

- (a) When the Declarant no longer owns Lots at Talara, or
- (b) Declarant notifies the Board in writing that the Class B Membership is extinguished and records such notice, or
- (c) The first day of September, 1998.

Section 4. Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit, and fractional votes shall not be allowed. In the event that a Membership is owned by more than one person or entity and such owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one vote is cast for a particular Membership, none of the said votes shall be counted and all said votes shall be deemed void.

Section 5. Cumulative Voting for Board Members. In any election of the members of the Board, every Owner of a Membership entitled to vote at such election shall have a number of votes for each Membership equal to the number of Directors to be elected, except that the Class B Member shall have the number of votes designated in Section 3 above times the number of Directors to be elected. Each Member shall have the right to cumulate his votes for one candidate or to divide such votes among any number of the candidates. The candidates receiving the highest number of votes, the number of the Board Members to be elected, shall be deemed elected.

Section 6. Membership Rights. Each Member shall have the rights, duties and obligations set forth in the Declaration and

such other rights, duties and obligations as are set forth in the Articles and Bylaws, as the same may be amended from time to time.

Section 7. Transfer of Membership. Except as provided in Section 8 of this Article VI, the rights and obligations of the Owner of a Class B Membership in the Association shall not be assigned, transferred, pledged, conveyed, or alienated in any way except upon transfer of ownership to an Owner's Lot. A transfer of ownership to a Lot may be effected by deed, interstate succession, testamentary disposition, foreclosure in effect, or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership(s) appurtenant to said Lot to the new Owner thereof.

Section 8. Use of Membership; Designees. Subject to the Talara Rules, all of the Owners of a Membership may designate one or more non-Members (herein referred to as a "Designee") to exercise all of the rights of the Member under this Declaration except the Member's voting rights, but such designation shall not relieve the Member of any liabilities or obligations as an Owner or with respect to the Membership. So long as such designation is in effect, the Member shall be permitted to exercise only his voting rights and the Board may, among other things, in its discretion, set maximum or minimum periods for which such designation may be in effect and limit the number of persons who may be so designated by any Member at any time.

#### ARTICLE VII COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, 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; (2) special assessments for capital improvements established by this Article VII, and such assessments to be established and collected as hereinafter provided.

The Annual and Special Assessments, together with interest costs and reasonable attorneys fees, shall be a charge on the Lot owned by the Member of the Association and shall be a continuing lien upon his Lot against which each such assessment is made. Each such Annual and Special Assessment against each Lot shall be based on the number of Memberships appurtenant to the Lot, together with interest costs and reasonable attorneys 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 successor in title unless expressly assumed by them.

Section 2. Purpose of Assessments. In order to promote civic betterment and social improvements for the common good of this community, 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 improvements and maintenance of the Common Area.

Section 3. Annual Assessment. In order to provide for the uses and purposes specified in Article IX hereof, including the establishment of replacement and maintenance reserves, the Board



in each year, commencing with the year in which the Talara plat is recorded, shall assess against each Lot an Annual Assessment. The amount of the Annual Assessment, subject to the provisions of Section 5 hereof, shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes.

Section 4. Uniform Rate of Assessment. The amount of any Annual or Special Assessment against each Lot shall be fixed at a uniform rate per Membership, except that the following Owners shall pay only twenty-five percent (25%) of the Annual Assessment otherwise attributable to his Membership during the periods hereafter specified:

The Owner of a Lot shall pay only twenty-five percent (25%) of the Annual Assessment attributable to his Membership until the earlier of (i) the completion of the Dwelling Unit on the Lot, or (ii) January 1, 1995.

For the purposes of this Section, a Dwelling Unit or other building shall be deemed completed when, in the opinion of the Board, the building is ready for occupancy. If the Owner of a Lot ceases to qualify for the reduced twenty-five percent (25%) rate during the period to which an Annual Assessment is attributable, the Assessment attributable to a Membership shall be prorated between the applicable rates on the basis of the number of days in the period that the Owner qualified for each rate. Annual Assessments may be collected on a monthly, quarterly, or annual basis and Special Assessments may be collected as specified by the Board unless otherwise determined by the resolution of the Members of the Association approving the Special Assessment.

Section 5. Maximum Annual Assessment. Until January 1, 1994, the maximum assessment shall be Nineteen Dollars and 50/100 (\$19.50) per month per Lot.

- a. From and after January 1, 1994, the Maximum Annual Assessment shall be increased effective January 1 of each year without a vote of the Membership in conformance with the rise, if any, of the Consumer Price Index as hereinafter defined. The Maximum Annual Assessment for each such period shall be computed by reference to the statistics published in the Monthly Labor Review by the United States Department of Labor, Bureau of Labor Statistics, designated "Consumer Price Index--U.S. City Average for Urban Wage Earners and Clerical Workers, 1967 Equals 100, All Items", hereinafter called the "Consumer Price Index". For purposes of identification, the Consumer Price Index for June 1980 was 247.8. If the Bureau of Labor Statistics shall change the method of determining the Consumer Price Index, the formula for determining the Maximum Annual Assessment shall be altered or amended, if possible, so as to continue the base period and base figure, but in the event it shall be impossible to do so, or in the event the Bureau of Labor Statistics shall cease to publish the said statistical information and such information is not available from any other source, public or private, then and in any such events a new formula for determining the Maximum Annual Assessment shall be adopted by the Board.
- b. From and after January 1, 1994, the Maximum Annual Assessment may be increased above the amount indicated in Article VII,

Section 5 above, 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 6. Special Assessment for Capital Improvements and Extraordinary Expenses. 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 or replacement of damaged or destroyed common elements where the Owner or Owners thereof have failed to replace or rebuild pursuant to Article IV herein, 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 of Members who are voting in person or by proxy at a meeting duly called for this purpose.

Section 7. Notice and Quorum for any Action Under Sections 5 and 6. Written notice of any meeting called for the purpose of taking any action authorized under Section 5 or 6 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 sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, 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 8. Date of Commencement of Annual Assessments: Due Date. The Annual Assessments provided for herein shall commence as to each Lot on the first day of the month following the recordation of the Declaration of Covenants, Conditions, and Restrictions. 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.

Section 9. Rules Regarding Billing and Collection Procedures. The Board shall have the right to adopt rules and regulations setting forth procedures for the purpose of making the Assessments provided herein and for the billing and collection of the Annual and Special Assessment and the Maintenance Charges imposed pursuant to Article VII, Sections 5 and 6, provided that said procedures are not inconsistent with the provisions hereof. The failure of the Association to send a bill to a Member shall not relieve any Member of his liability for any Assessment or charge under this Declaration, but the Assessment Lien therefor shall not be foreclosed or otherwise enforced until the Member has been given not less than thirty (30) days written notice prior to such foreclosure or enforcement, at the address of the Member on the records of the Association, that the Assessment or any installment thereof is or will be due and of the amount owing. Such notice may be given at any time prior to or after delinquency of such payment. The Association shall be under no duty to refund any payments received by it even though the ownership of a Membership changes during an assessment period.

Successor Owners of Lots and successor Lessees shall be given credit for prepayments, on a prorated basis, made by prior Owners and Lessees. In case the Owner of a Membership becomes liable for payment of an increased sum pursuant to Section 5 of this Article during the assessment period, he shall notify the Association but his failure to notify the Association shall not relieve him of the liability for such amounts.

Section 10. Collection Costs and Interest on Delinquent Assessments. Any Assessment or installment thereof not paid when due shall be deemed delinquent and shall bear interest from thirty (30) days after the due date until paid at a rate equal to the greater of (a) twelve percent (12%) per annum, or (b) the then prevailing rate on loans guaranteed by the Veterans Administration, and the Member shall be liable for all costs, including attorney's fees, which may be incurred by the Association in collecting the same. The applicable interest rate on delinquent Assessments shall be determined on a daily basis. The Board may also record a Notice of Delinquent Assessment against any lot as to which an Assessment is delinquent and constitutes a lien and may establish a fixed fee to reimburse the Association for the Association's cost in recording such Notice, processing the delinquency and recording a notice of payment, which fixed fee shall be treated as a collection cost of the Association secured by the Assessment Lien.

Section 11. Evidence of Payment of Annual and Special Assessments and Maintenance Charges. Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter shall issue to such Member or other person a written certificate stating (a) that all Annual and Special Assessments and Maintenance Charges (including interest costs, attorney's fees, if any, as provided in Section 10 above) have been paid with respect to any specified Lot, as of the date of such certificate, or (b) if all Annual and Special Assessments and Maintenance Charges have not been paid, the amount of such Annual and Special Assessments, and Maintenance Charges (including interest, costs and attorney's fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot in question.

Section 12. Property Exempted from the Annual and Special Assessments and Assessment Lien. Exempt Property shall be exempted from the assessment of the Annual and Special Assessments; provided, however, that in the event any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall be subject to the assessment of the Annual and Special Assessments and, if exempt therefrom, Maintenance Charges (prorated as of the date it became Assessable Property) and the Assessment Lien.

#### ARTICLE VIII

##### ENFORCEMENT OF PAYMENT AND ANNUAL AND SPECIAL ASSESSMENTS

Section 1. Effect of Non-Payment 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 the rate of twelve percent (12%) 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. 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.

- a. Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner or Member to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon at the rate of twelve percent (12%) per annum from the date of delinquency, court costs, and reasonable attorneys fees in such amount as the Court may adjudge against the delinquent Owner or Member.
  
- b. Enforcement by Lien. There is hereby created a claim of lien, with power of sale, on each and every Lot within the Property to secure payment to the Association of any and all assessments levied against any and all Owners of such Lots covered by the Declaration, together with interest thereon at the rate of twelve percent (12%) per annum from the date of delinquency, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorneys fees. At any time after the occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner on behalf of the Association. Said demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien or a lien, but any number of defaults may be included within a single demand or claim of lien. If such delinquency is not paid within ten (10) days after delivery of such demand, or even without such a written demand being made, the Association may elect to file such a claim of lien on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:
  1. The name of the delinquent Owner;
  2. The legal description and street address of the Lot against which claim of lien is made;
  3. The total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs, and reasonable attorneys fees (with any proper offset allowed);
  4. That the claim of lien is made by the Association pursuant to the Declaration; and
  5. That a lien is claimed against said Lot in an amount equal to the amount stated.

Upon recordation of a duly executed original or copy of such a claim of lien, and mailing a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such Assessment was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot in favor of any municipal or other governmental

assessing unit, and the liens which are specifically described in Section 2 hereinafter. Any such lien may be foreclosed by appropriate action in court in the manner provided by law for the foreclosure of a realty mortgage or by the exercise of a power of sale in the manner provided by law under a trust deed, as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Lot Owners. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage, and convey any Lot. In the event of such foreclosure, reasonable attorneys fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner, by becoming an Owner of a Lot, hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

Section 2. Subordination of the Lien to Mortgages. The lien of the Assessment provided for herein shall be subordinated to the lien of any first mortgage, and be subordinated to the lien of assessments imposed by the covenants, conditions and restrictions relating to any Lot or residential unit which is sold in a single family detached development. 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 become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability or any assessments thereafter becoming due or from the lien thereof.

#### ARTICLE IX USE OF FUNDS; BORROWING POWER

Section 1. Purposes for which Association's Funds may be Used. The Association shall apply all funds and property collected and received by it (including the Annual and Special Assessments, fees, loan proceeds, surplus funds and all funds and property received by it from any other source) for the common good and benefit of Talara and the Members and Residents by devoting said funds and property, among other things, to be the acquisition, construction, maintenance, provisions and operations, by any manner or method whatsoever, of any and all land, properties, improvements, facilities, services, projects, security, programs, studies, and systems, within Talara, which may be necessary, desirable or beneficial to the general common interest of Talara, the Members and the Residents. The following are some, but not all, of the areas in which the Association may seek to aid, promote and provide for such common benefit: social interaction among Member and Residents, maintenance of landscaping on Common Areas and public right-of-way and drainage areas within Talara (including liability insurance, communications, transportation, health, utilities, public services, safety and indemnification of officers and directors of the Association). The Association also may expend its funds for any purposes which any municipality may expend its funds under the laws of the State of Arizona or such municipality's charter.

Section 2. Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such period of time as is necessary or appropriate.

Section 3. Association's Rights in Spending Funds From Year to Year. The Association shall not be obligated to spend in any year all the sums received by it in such year (whether by way of Annual or Special Assessments, fees or otherwise), and may carry

forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year and the Association may carry forward from year to year such surplus as the Board in its discretion may determine to be desirable for the greater financial security of the Association and the accomplishment of its purposes.

Section 4. Administration of Special Use Fees. The Association is authorized to bill for, sue for, collect, and disburse all Special Use Fees and the payment thereof shall be secured by the Assessment Lien; provided, however, that all Special Use Fees collected shall, if imposed in connection with a particular improvement, be separately accounted for as to each separate improvement pertaining to which they are collected and shall be expended on a particular improvement to which they pertain.

Section 5. Insurance. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas.

#### ARTICLE X MAINTENANCE

Section 1. Maintenance by Association. The Association, or its duly designated representatives may, at any time, as to any Common Area conveyed, leased or transferred to it or otherwise placed under its jurisdiction, in the discretion of the Board, without any approval of the Owners being required:

1. Reconstruct, repair, replace or refinish any improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area) in accordance with (a) the last plans thereof approved by the Board; (b) the original plans for the improvement; or (c) if neither of the foregoing is applicable and if such improvement was previously in existence, then in accordance with the original design, finish or standard of construction of such improvement as same existed.
2. Construct, reconstruct, repair, replace or refinish any road improvement or surface upon any portion of such area used as a road, street, walk, and parking area.
3. Replace injured and diseased trees or other vegetation in any such area and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes.
4. Place and maintain upon any such area such signs, markers and lights as the Board may deem appropriate for the proper identification, use and regulation thereof, subject to the approval of the Architectural Control Committee.
5. Remove all papers, debris, filth and refuse from the Common Area and wash or sweep paved areas as required; clean and relamp lighting fixtures as needed.

6. Repaint striping, markers, directional signs, etc. as necessary.
7. Pay all real estate taxes and assessments on the Common Area.
8. Pay all electrical, water, gas and other utility charges or fees for services furnished to the Common Area.
9. Pay for and keep in force at the Association's expense public liability insurance in companies acceptable to the Association in amounts and with limits of liability desired by the Owners or required of the Owners pursuant to any other recorded document affecting the Property, such insurance to name the Association or the Owners or both as named insureds.
10. Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.
11. The Board shall be the sole judge as to the appropriate maintenance of all grounds within the Common Area.
12. Nothing herein shall be construed so as to preclude the Association from delegating its powers set forth above to a manager or agent or to other persons, firms or corporations.

Section 2. Damage or Destruction of Common Area by Owners. In the event any Common Area is damaged or destroyed by an Owner or any of his guests, tenants, licensees or agents, such Owner does hereby authorize the Association to repair said damaged area, and the Association shall so repair said damaged area in a good workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, in the discretion of the Association. The amount necessary for such repairs shall be paid by said Owner, upon demand, to the Association and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration for collection and enforcement of assessments.

#### ARTICLE XI ARCHITECTURAL CONTROL COMMITTEE

Section 1. Organization, Power of Appointment and Removal of Members. The Declarant shall establish an Architectural Control Committee to perform the functions set forth in this Declaration and shall adopt the procedural rules and regulations for the performance of such duties by the Architectural Control Committee as follows:

- a. Committee Composition. The Architectural Control Committee shall consist of three (3) regular Members and two (2) alternate Members. None of such Members shall be required to be an architect or to meet any other particular qualifications for membership. A Member need not be, but may be, a Member of the Board or an officer of the Association.
- b. Alternate Members. In the event of the absence or disability of one or two regular Members of said Committee, the

remaining regular Member or Members, even though less than a quorum, may designate either or both of the alternate Members to act as substitutes for the absent or disabled regular Member or Members for the duration of such absence or disability.

- c. Initial Members. The Members of the Board shall act as the initial Members of the Architectural Control Committee.
- d. Terms of Office. Unless the initial Members of the Architectural Control Committee have resigned or been removed, their terms of office shall be for a period of one year, or until the appointment of their respective successors. Thereafter, the term of each Architectural Control Committee Member appointed shall be for a period of one (1) year and until the appointment of his successor. Any new Member appointed to replace a Member who has resigned or been removed shall serve such Member's unexpired term. Members who have resigned, been removed or whose terms have expired, may be reappointed.
- e. Appointment and Removal. The right to appoint and remove all regular and alternate members of the Architectural Committee, at any time, shall be and is hereby vested solely in the Board, provided however, that no regular or alternate member may be removed from the Architectural Control Committee by the Board except by the vote or written consent of fifty-one percent (51%) of all of the members of the Board. Exercise of the right of appointment and removal, as set forth herein, shall be evidenced by the recordation of a Declaration identifying each new regular or alternate member appointed to the Committee and each regular or alternate member replaced or removed therefrom.
- f. Resignations. Any regular or alternate Member of the Architectural Control Committee may at any time resign from the Committee by giving written notice thereof to the Board.
- g. Vacancies. Vacancies on the Architectural Control Committee, however caused, shall be filled by the Board. A vacancy or vacancies on the Architectural Control Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate Member.

Section 2. Duties. It shall be the duty of the Architectural Control Committee to consider and act upon any and all proposals or plans submitted to it pursuant to the terms hereof, to adopt Architectural Control Committee Rules, to perform other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration.

Section 3. Meetings and Compensation. The Architectural Control Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to the provisions of Paragraph B of Section 1 above, the vote or written consent of any two regular Members, at a meeting or otherwise, shall constitute the act of the Committee unless the unanimous decision of the Committee is required by any other provision of this Declaration. The Committee shall keep and maintain a written



record of all actions taken by it at such meetings or otherwise. Members of the Architectural Control Committee shall not be entitled to compensation for their services.

Section 4. Architectural Control Committee Rules. The Architectural Control Committee may, from time to time and in its sole and absolute discretion, adopt, amend and repeal, by unanimous vote or written consent, rules and regulations, to be known as "Architectural Control Committee Rules". Said Rules shall interpret and implement this Declaration by setting forth the standards and procedures for Architectural Control Committee review and the guidelines for architectural design, placement of buildings, landscaping, color schemes, exterior finishes, and materials and similar features which are recommended for use within the Property.

Section 5. Waiver. The approval by the Architectural Control Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Architectural Control Committee under this Declaration, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing specification or matter subsequently submitted for approval.

Section 6. Liability. Neither the Architectural Control Committee nor any Member thereof shall be liable to the Association, any Owner, or to any other party, for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings, or specifications, whether or not defective; (b) the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications; (c) the development of any Property; or (d) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; provided, however, that with respect to the liability of a Member, such Member has acted in good faith on the basis of such information as may be possessed by him. Without in any way limiting the generality of any of the foregoing provisions of this Section, the Architectural Control Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner with respect to any plans, drawings, specifications, or any other proposal submitted to the Architectural Control Committee.

Section 7. Time for Approval. 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 complied with.

## ARTICLE XII RIGHTS AND POWERS OF ASSOCIATION

Section 1. Association's Rights and Powers as Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of

the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

Section 2. Association's Rights of Enforcement of Provisions of this and Other Instruments. The Association, as the agent and representative of the Owners and Lessees, shall have the right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens, or easements provided for in any contract, deed, declaration, or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.

Section 3. Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others. Any such director, officer, or Committee Member may be counted in determining the committee of which he is a Member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

Section 4. Change of Use of Association Land and Procedure Therefor. Upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Association Land or of the Association's interest in other Common Areas is no longer in the best interest of the Owners and Residents and (b) the approval of such resolution by a majority of the votes by Members who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions (or zoning regulations) restricting or limiting the use of the Association Land.

#### ARTICLE XIII TERM; AMENDMENTS; TERMINATION

Section 1. Term; Method of Termination. This Declaration shall be effective upon the date of recordation hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is recorded. From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting seventy-five percent (75%) of the total votes cast at an election held for such purposes within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be terminated at any time if ninety percent (90%) of the votes cast by each class of Members shall be cast in favor of termination at an election held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6)

months prior to such vote to six (6) months after such vote, from the holders of recorded first mortgages or deeds of trust to which the Assessment Lien is subordinate pursuant to Article VIII, Section 2 above, or seventy-five percent (75%) of the Lots upon which there are such recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be recorded with the County Recorder of Maricopa County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. Thereupon, these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 2. Amendments. (a) As long as there is a Class B vote, this Declaration may be amended by obtaining approval by Owners of fifty-one percent (51%) or more of the total property within Talara and recording such amendment. No amendment may be made under this provision which substantially modifies the described purposes and intent of this Declaration. (b) When there no longer is a Class B vote, this Declaration may be amended by recording with the County Recorder of Maricopa County, Arizona, a Certificate of Amendment, duly signed and acknowledged as required for a Certificate of Termination in Section 1 of this Article. The Certificate of Amendment shall set forth in full the Amendment adopted, and, except as provided in Section 3 of this Article, shall certify that at an election duly called and held pursuant to the provisions of the Articles and Bylaws the Members casting ninety percent (90%) of the votes at the election voted affirmatively for the adoption of the Amendment; provided, however, after twenty (20) years from the date of recordation of this Declaration, the affirmative vote of Members casting only sixty-five percent (65%) of the votes at a duly called election shall be necessary to amend this Declaration.

Section 3. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration (FHA), or the Veterans Administration (VA) and to further amend to the extent requested by any other federal, state, or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be affected by the recordation, by Declarant, of a Certificate of Amendment duly signed by or on behalf of the partners, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state, or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the mandatory language requested by such agency or institution. Recordation of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when recorded, shall be binding upon all of Talara and all persons having an interest therein.

It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for

and adopt as an amendment hereto, other and different control provisions. Except as provided in this Section 3, Declarant will not have any right to amend this Declaration otherwise than in accordance with and pursuant to the provisions of Section 2 of this Article.

**ARTICLE XIV  
MISCELLANEOUS**

Section 1. Interpretation of the Covenants. Except for judicial construction, the Association, by its Board shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding to all persons and property benefited or bound by the Covenants and provisions hereof.

Section 2. Severability. Any determination by any part of competent jurisdiction that any provision of this Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

Section 3. Rule Against Perpetuities. If any interest purported to be created by this Declaration challenged under the Rule against Perpetuities or any related rule, the interest shall be construed as becoming void and of no effect as of the end of the applicable period of perpetuities computed from the date when the period of perpetuities starts to run on the challenged interest; the "lives in being" for computing the period of perpetuities shall be (a) those which would be used in determining the validity of the challenged interest, plus (b) those of the issue of the Board who are living at the time the period of perpetuities starts to run on the challenged interest.

Section 4. Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

Section 5. Rules and Regulations. In addition to the right to adopt rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association shall have the right to adopt rules and regulations with respect to all other aspects of the Association's rights, activities, and duties, provided said rules and regulations are not inconsistent with the provisions of this Declaration.

Section 6. Declarant's Disclaimer of Representations. Anything to the contrary in this Declaration notwithstanding, and except as otherwise may be expressly set forth on a recorded plat or other instrument recorded in the office of the County Recorder of Maricopa County, Arizona, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Talara can or will be carried out, or that any land now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such land (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such land is once used for a particular use, such use will continue in effect.

Section 7. References to the Covenants in Deed. Deeds to and instruments affecting any lot or any part of Talara may contain the Covenants herein set forth by reference to this Declaration;

but regardless of whether any such reference is made in any Deed or instrument, each and all of the Covenants shall be binding upon the grantee-Owner or other person claiming through any instrument and his heirs, executors, administrators, successors, and assigns.

Section 8. Successors and Assigns of Declarant. Any reference in this Declaration to Declarant shall include any successors and assignees or Declarant's rights and powers hereunder.

Section 9. Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

Section 10. Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify, or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

Section 11. Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration of resolution of the Board to be given to any Owner, Lessee or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the County of Maricopa or Talara. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

Section 12. FHA/VA Approval. If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA, and any loans have been made which are insured or guaranteed by FHA or the VA, then as long as there is a Class B Membership, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by FHA or VA: (a) Dedications of Common Areas (except where such dedication is required as of the date hereof by any municipality), and (b) an amendment of this Declaration.

IN WITNESS WHEREOF, Del Webb's Coventry Homes Construction Co., an Arizona corporation, has hereunto caused its name to be signed by the signature of its duly authorized official as of the day and year first above written.

DECLARANT:

DEL WEBB'S COVENTRY HOMES  
CONSTRUCTION CO.,  
an Arizona corporation

By: Joseph Contadino  
Joseph Contadino, President

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa     )

On this 22nd day of January, 1992, before me, the undersigned Notary Public, personally appeared Joseph Contadino, who acknowledged himself to be the President of Del Webb's Coventry Homes Construction Co., an Arizona corporation, and that he as such officer, being authorized so to do, executed the foregoing instrument for the purposes therein contained by signing the name of the corporation, by himself as President.

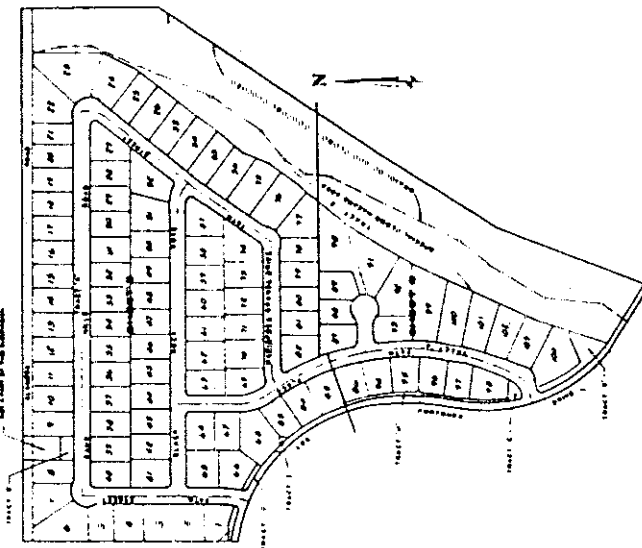
Margaret C Pierce  
Notary Public

My Commission Expires:



# DEL WEBB'S COVENTRY HOMES FINAL PLAT OF TALARA

A SUBDIVISION OF A PORTION OF THE SW 1/4 OF SECTION 11,  
T. 4 N., R. 4 E., G. & S. R. E. & M.,  
MARICOPA COUNTY, ARIZONA



KEY MAP

**DEDICATION**

THE STATE OF ARIZONA,  
County of Maricopa,  
do hereby certify that the following property, being a portion of the SW 1/4 of Section 11, T. 4 N., R. 4 E., G. & S. R. E. & M., Maricopa County, Arizona, is being dedicated to the public use of the City of Talara, Arizona, for the purposes of a residential subdivision, and that the City of Talara, Arizona, is the beneficiary of this dedication, and that the City of Talara, Arizona, is authorized to accept this dedication on behalf of the City of Talara, Arizona, and that the City of Talara, Arizona, is authorized to accept this dedication on behalf of the City of Talara, Arizona, and that the City of Talara, Arizona, is authorized to accept this dedication on behalf of the City of Talara, Arizona.

**ACKNOWLEDGEMENT**

I, the undersigned, being duly qualified to act as a notary public in and for the State of Arizona, do hereby certify that the foregoing is a true and correct copy of the original of the above and referred to instrument, and that the same has been acknowledged before me by the parties thereto, in accordance with the provisions of the laws of the State of Arizona, on this 1st day of August, 1988, at the City and County of Maricopa, Arizona.

**LEGEND**

- 1. CONCEPT OF THIS SUBDIVISION, FOUND ON SET NUMBER AT 43 N-283
- 2. CROSS CAP
- 3. PUBLIC UTILITY EASEMENT
- 4. 20-FOOT RIGHT-OF-WAY ACCESS EASEMENT

**NOTE**

The undersigned hereby certifies that the City of Talara, Arizona, is the beneficiary of this dedication, and that the City of Talara, Arizona, is authorized to accept this dedication on behalf of the City of Talara, Arizona, and that the City of Talara, Arizona, is authorized to accept this dedication on behalf of the City of Talara, Arizona.

**LIMITS OF EASEMENTS**

The boundaries of the easements are as shown on this plat, and are subject to the provisions of the laws of the State of Arizona, and that the City of Talara, Arizona, is authorized to accept this dedication on behalf of the City of Talara, Arizona.

**APPROVALS**

THE SUBDIVISION IS IN ACCORDANCE WITH THE PROVISIONS OF THE PLAT ACT, CHAPTER 27, ARTICLES 13 AND 14, OF THE CONSTITUTION OF THE STATE OF ARIZONA, AND THE PROVISIONS OF THE PLAT ACT, CHAPTER 27, ARTICLE 15, OF THE CONSTITUTION OF THE STATE OF ARIZONA, AND THAT THE CITY OF TALAR, ARIZONA, IS AUTHORIZED TO ACCEPT THIS DEDICATION ON BEHALF OF THE CITY OF TALAR, ARIZONA.

*[Signature]*  
City Clerk

I hereby certify that this plat substantially conforms to the approved preliminary plat.

*[Signature]*  
Notary Public

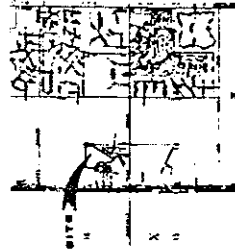
I hereby certify that all recording conditions and requirements of the Arizona Uniform Recording Act, Chapter 12, Article 1, of the Arizona Constitution, and the Arizona Uniform Recording Act, Chapter 12, Article 2, of the Arizona Constitution, have been complied with.

*[Signature]*  
Notary Public

**CERTIFICATION**

This plat is valid only if the City of Talara, Arizona, is the beneficiary of this dedication, and that the City of Talara, Arizona, is authorized to accept this dedication on behalf of the City of Talara, Arizona, and that the City of Talara, Arizona, is authorized to accept this dedication on behalf of the City of Talara, Arizona.

*[Signature]*  
Notary Public



92 044254

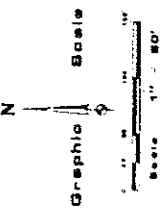
TALARA

9889  
MAY 1988

92 044254

TALARA

NO. 3  
1:2500  
1:12500  
1:62500



Handwritten notes and signatures in the top left corner.

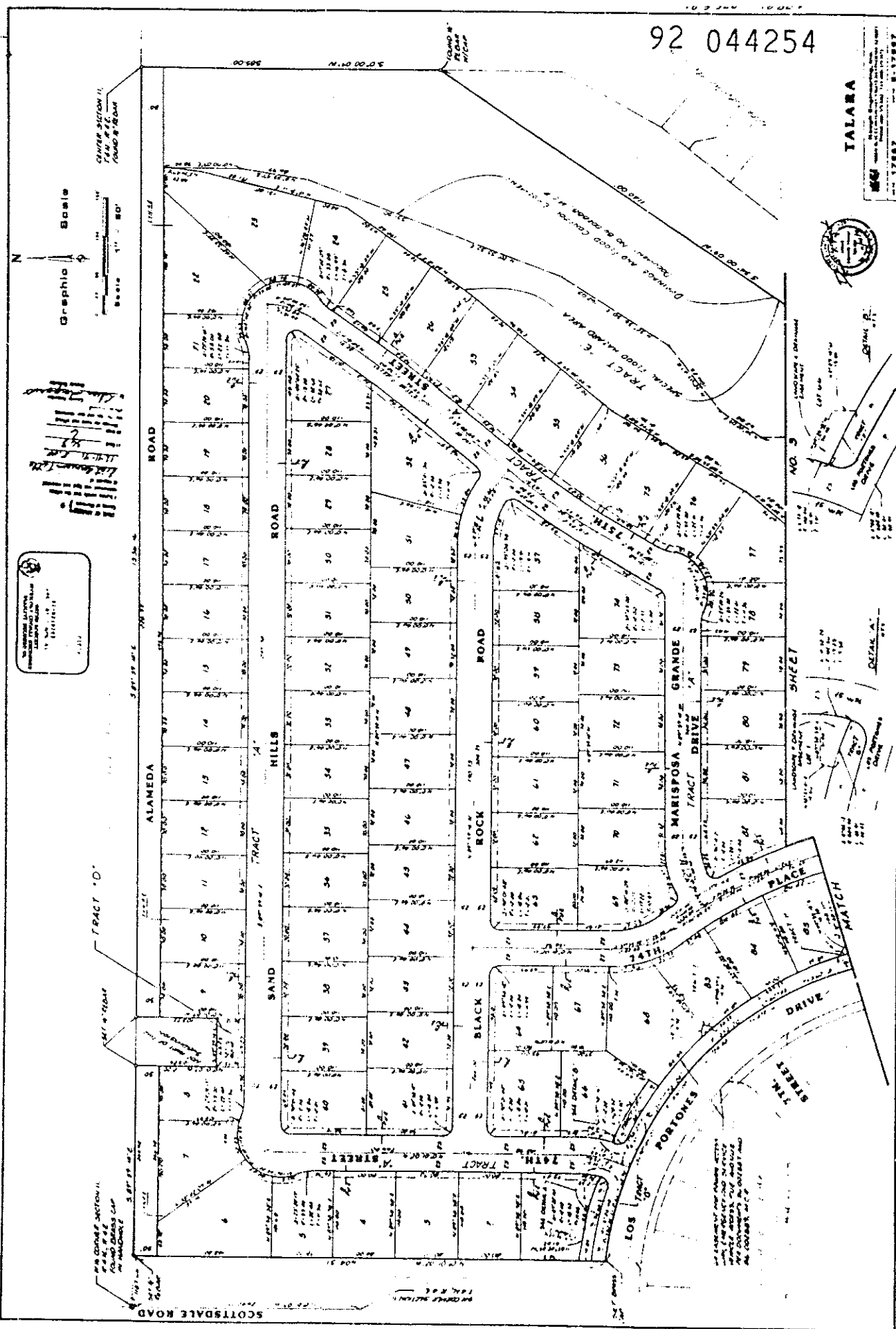
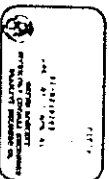


EXHIBIT "A"



