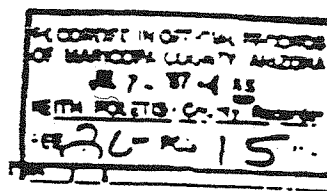


87-4320

WHEN RECORDED RETURN TO:  
Gillanders and Stark Development  
2402 S. Central Avenue  
Phoenix, Arizona 85004



THE WINDS OF TATUM  
RESTATED  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND  
GRANT OF EASEMENTS  
(FIRST AMENDED)

THIS DECLARATION, made on this 12<sup>th</sup> day of June, 1987, by GILLANDERS AND STARK DEVELOPMENT COMPANY, INC., an Arizona corporation (hereinafter referred to as "Declarant").

W I T N E S S E T H:

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

Lots 1 through 120, inclusive, THE WINDS OF TATUM, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 301 of Maps, Page 12.

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

ARTICLE I

DEFINITIONS

Section 1. "Association" shall mean and refer to

The Winds of Tatum Homeowners Association, its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation and excluding Declarant.

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

Section 4. "Common Area" shall mean all real property (including the improvements thereto) owned by the Association for the common use and enjoyment of the Owners. The Common Area to be owned by the Association at the time of the conveyance of the first lot is described as follows:

Tracts A, B and C of The Winds of Tatum subdivision according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, in Book 30 of Maps, Page 42.

Section 5. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area.

Section 6. "Declarant" shall mean and refer to Gillanders and Stark Development Company, Inc., an Arizona corporation, and its successors and assigns if such successors or assigns should acquire more than one (1) undeveloped Lot from the Declarant for the purposes of development.

Section 7. "Easement Property" shall mean and refer to a strip of land on each Lot, except with respect to Lots 1, 37, 56, 60, 67, 70, 82, 95, 105 and 111, approximately five (5) feet in width which is contiguous with the Right Side of such Lot, extending from the rear lot line to the front lot line.

Section 8. "Benefitting Property" shall mean and refer to each Lot respectively, which is located contiguous with and on the Right Side of Easement Property.

Section 9. "Right Side" shall mean and refer to the side of the Lot on the right, as determined by facing

such Lot from the dedicated right-of-way upon which it fronts.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment - Common Area. Every owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

A. The right of the Association to suspend the voting rights by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

B. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by two-thirds (2/3) of each class of members has been recorded.

C. The right of the Association to establish uniform rules and regulations pertaining to the use of the Common Area.

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

Section 3. Maintenance and Repair of Buildings. No building, residence, improvement or structure upon any Lot nor the landscaping on any Lot, shall be permitted to fall into disrepair, and, except for the front yards of residences (the yard areas in front of each residence and the front privacy wall) which will be maintained by the Association, it shall be the Owner's responsibility at the Owner's sole cost and expense to maintain the Lot in a neat and clean manner free of trash and other unsightly objects and to ensure that each building and structure on the Lot shall at all times be kept in good condition and adequately painted or otherwise finished and that the landscaping thereon is maintained in a neat and well kept

fashion, properly trimmed and watered. Should an Owner fail to maintain his property as herein required, the Association or any Owner or group of Owners, shall have the right, but not the obligation to enter upon such Owner's Lot to perform all such maintenance, repair and replacement the Association deems necessary in its sole discretion upon the Owner's failure to do so within thirty (30) days after receiving written notice from the Association requesting such repair, replacement and/or maintenance be performed. The cost of such repair, replacement and/or maintenance performed by the Association or any Owner or group of Owners shall be added to and become a part of the annual assessment to which the Lot is subject as hereinafter provided in ARTICLE IV.

Section 4. Owners' Use and Enjoyment - Lots.

A. All lots in The Winds of Tatum are residential and none of the lots nor any part thereof shall be used for business purposes.

B. No structure of a temporary nature may be used as a dwelling on any lot, nor shall any trailer, motor home, tent, shack, garage or other structure be used as a residence, either temporarily or permanently .

C. No animals, livestock or poultry of any kind shall be raised, bred or kept on any lot, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

D. No sign of any kind shall be displayed to the public view on any lot except one sign of not more than five (5) square feet advertising the property for sale or rent or signs used by a Declarant to advertise the property during the construction and sales period.

E. No unsightly objects, including, but not limited to clotheslines, doghouses, dismantled or unusable cars, boats, trucks, motorcycles or unusable or dismantled campers or house trailers shall be erected, placed, maintained or permitted on any residential lot except behind the rear line of the dwelling located thereon. No noxious or offensive trade or activity shall be carried on upon any lot, nor shall anything be done or permitted to be done thereon which may be or become an annoyance or nuisance to any of the owners or occupants of any of said lots herein. No lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage or other wastes shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

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

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

Class A. Class A members shall be all Owners, and shall be entitled to one (1) vote for each Lot owned. When more than one (1) person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

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

- A. When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- B. On September 1, 1989.

### ARTICLE IV

#### COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. 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 agrees to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. To

evidence any such lien, the Association may prepare and cause to be recorded in the office of the County Recorder of Maricopa County, Arizona, a written notice of lien setting forth the amount of the assessment, the due date thereof, the amount remaining unpaid, the name of the Owner and a description of his Lot. No such notice of lien shall be so recorded until a delinquency occurs in payment of the assessment. Each such assessment, 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 successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents in the Properties, for the improvement and maintenance of the Common Area and, in addition, the annual assessments will be used for the creation of a reserve fund for the maintenance, repair and replacement of those elements of the Common Area that require maintenance, repair and/or replacement on a periodic basis. The Association's responsibility to maintain the common areas shall include the maintenance of Tracts A, B and C of The Winds of Tatum.

Section 3. Maximum Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall be Three Hundred Dollars (\$300.00) per Lot.

A. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased effective January 1 of each year without a vote of the membership in conformance with the rise, if any, of the Consumer Price Index (published by the Department of Labor, Washington, D.C.) for the preceding month of July.

B. From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment may be increased above that established by the Consumer Price Index formula by a vote of the members for the next succeeding one (1) year and at the end of each such period of one (1) year, for each succeeding period of one (1) year, provided that any such change 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, written notice of which shall be sent to all members not less than

thirty (30) nor more than sixty (60) days in advance of the meeting setting forth the purpose of the meeting. The limitations hereof shall not apply to any change in the maximum and basis of the assessments undertaken at and incident to a merger or consolidation in which the Association is authorized to participate under its Articles of Incorporation.

Section 4. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds ( $\frac{2}{3}$ ) 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 5. Notice and Quorum for Any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Section 3 and 4 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 membership 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 ( $\frac{1}{2}$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis.

Section 7. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the conveyance of the Common Area. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto.

The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 8. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at 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..

Section 9. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure, trustee's sale or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

## ARTICLE V

### RIGHTS OF MORTGAGEES

Section 1. In the event the Association becomes in default in the payment of taxes, assessments or other charges pertaining to the Common Area, one or more holders of first mortgages and/or first deeds of trust on Lots within the subdivision shall have the right, but not the obligation, acting jointly or singly, to cause said obligations to be paid. Upon such payment, the Association shall become indebted to such mortgagee or mortgagees in the amount so paid, and such indebtedness shall be immediately due and payable.

Section 2. Should the Association fail to timely pay the premiums on liability insurance on property owned by the Association which insurance will be maintained in such amounts as are required by the Federal Home Loan Mortgage



Corporation, one or more holders of first mortgages and/or first deeds of trust on Lots within the subdivision shall have the right, but not the obligation, acting jointly or singly, to cause said premiums to be paid. Upon such payment, the Association shall become indebted to such mortgagee or mortgagees in the amount so paid and such indebtedness shall be immediately due and payable. In addition, the Association shall procure and maintain fidelity insurance coverage insuring the Association against dishonest acts on the part of directors, managers, trustees, employees or volunteers responsible for handling funds collected and held for the benefit of the Owner; such coverage shall be in such amount as is required by the Federal Home Loan Mortgage Association.

Section 3. The holder of a first mortgage or first deed of trust on any Lot within the subdivision shall have the right, upon submitting a written request to the Association, to receive written notification from the Association of any default by the owner of the subject Lot under the provisions of the The Winds of Tatum Covenants, Conditions and Restrictions which has continued for a period of not less than sixty (60) days.

## ARTICLE VI

### PROFESSIONAL MANAGEMENT

The Association shall have the right to retain the services of a professional manager or management company for The Winds of Tatum subdivision. In the event the Association does enter into an agreement with a third party for the professional management of the subdivision, or with the Declarant for any services to be rendered by the Declarant, such agreement shall be for a term of not more than three (3) years and shall be terminable by either party without cause and without payment of a termination fee or penalty upon ninety (90) days written notice from the terminating party to the other.

## ARTICLE VII

### CONSENT REQUIRED

The following action by the Association may be taken only upon the prior written consent of not less than two-thirds (2/3) of the first mortgagees of the Lots and two-thirds (2/3) of the Lot Owners, exclusive of the Declarant:

- A. Abandonment, partition, subdivision, encumbrance, sale or transfer of all or a portion of the Common Area;
- B. Alteration of the method of levying assessments against the Owner as permitted hereunder;
- C. Maintenance of fire and extended coverage insurance on the Common Area on a current replacement cost basis in an amount less than 100% of the insurable value;
- D. Utilization of fire and extended coverage insurance proceeds received for loss incurred with respect to the Common Area for purposes other than repair, replacement or reconstruction of the Common Area.
- E. Amendment or deletion of ARTICLE II, Section 3, ARTICLE VIII or ARTICLE IX of these Covenants, Conditions and Restrictions.

#### ARTICLE VIII

##### TRAILERS, BOATS AND MOTOR VEHICLES

No trailer of any kind, truck, commercial vehicle, truck camper, motorhome, boat, boat trailer, automobile or other vehicle shall be parked overnight in the street. In addition, no trailer of any kind, tent or similar structure, and no truck, commercial vehicle, truck camper, motorhome, boat or boat trailer shall be kept, placed, maintained, constructed, reconstructed or repaired, nor shall any type of motor vehicle be stored, constructed, reconstructed or repaired upon any Lot or street within the The Winds of Tatum subdivision in such a manner as to be visible from neighboring property; provided, however, 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 work or improvement approved by the Association. The Association shall have the right, but not the obligation, to tow away or cause to be towed away any vehicle in The Winds of Tatum Subdivision which is in violation of the provisions of this ARTICLE VIII. All towing and storage charges incurred by the Association shall

become a part of the annual assessment to which the Lot is subject as heretofore provided in ARTICLE IV.

## ARTICLE IX

### ARCHITECTURAL CONTROL

No building, fence, wall or other structure shall be commenced, erected or maintained upon any Lot, nor shall any exterior addition to or change or alteration thereto be made until the plans and specifications showing the nature, color, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external color, design and location in relation to surrounding structures and topography nor shall any building, fence, wall or other structure be repainted until the color and materials shall be submitted to and approved in writing by the Board of Directors of the Association, or by an architectural committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## ARTICLE X

### DWELLING SIZE, SET BACK REQUIREMENTS

No dwelling shall be erected, permitted or maintained on any Lot that shall have a ground floor area of less than six hundred fifty (650) square feet, exclusive of open porches, pergolas or attached garages.

No wall of any building erected on a Lot shall be built closer than fifteen feet (15') to the front property line, nor nearer than ten feet (10') to any side street line of the Lot on which it is built, nor shall the walls of any dwelling be placed closer than five feet (5') feet to the side lines of the Lot on which it is built; provided, however, these side yard set back requirements shall not prevent any Owner who owns an adjoining Lot or an adjacent portion of an adjoining Lot from constructing a dwelling closer than five (5) feet to the Lot line common to the lots or portions thereof under such common ownership, but in such case, such Lots or portions thereof under common ownership shall be treated as a whole Lot and the restrictions set forth herein shall apply thereto.

## ARTICLE XI

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

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

Section 3. Amendment. The covenants and restrictions of this declaration shall run with and bind the land for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years. This Declaration may be amended during the first twenty (20) year period by an instrument signed by not less than ninety percent (90%) of the members, and thereafter by an instrument signed by not less than seventy-five percent (75%) of the members.

Section 4. FHA/VA Approval. As long as there is a Class B membership and provided the FHA and/or VA have approved the subdivision for FHA and/or VA loan, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: Dedication of Common Area and amendment of these Covenants, Conditions and Restrictions.

## ARTICLE XII

### COMMON AREA EASEMENTS

There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewers, storm drains, gas, telephones and electricity. By virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary poles and other necessary equipment on the common area. This easement shall in no way affect

any other recorded easements on the premises.

## ARTICLE XIII

### PRIVATE EASEMENTS

Section 1. Grant of Easement. Declarant hereby grants and conveys, for the benefit of the owners of each Benefitting Property, their heirs, devisees, personal representatives, successors and assigns, a permanent exclusive easement over, under, upon and across each Easement Property, respectively, for the purpose of exclusively using and enjoying such Easement Property in conjunction with the use and enjoyment of their Benefitting Property, except as specifically provided herein. Such Easements are intended to encumber those portions of each Lot extending from the Right Side Lot line to the first exterior surface of buildings or other improvements originally constructed upon such Lots, excluding the portions of the Lot which constitute front yards, as that term is defined in Article II, Section 3, hereof.

Section 2. Landscaping and Maintenance. The owners of each Lot which is subject to an easement provided for herein shall have the obligation, at their expense, to maintain the structural integrity, exterior coating, and painting of all buildings, overhanging roofs, and other improvements constructed upon their Lot, notwithstanding whether such encroach upon or over the Easement Property. Such owners shall have the right, upon reasonable request, to enter upon the Benefitting Property and/or the Easement Property for the purpose of maintaining and repairing all such buildings, overhanging roofs, and other improvements. The owners of each Benefitting Property shall have the obligation, at their expense, to landscape and maintain the Easement Property, except for those portions constituting front yards which are subject to maintenance by the Association as provided in Article II, Section 3, hereof. The obligation of maintenance and repair by the owners of Easement Property and Benefitting Property shall be as more fully provided in these Covenants, Conditions and Restrictions. Notwithstanding anything to the contrary contained herein, if any portion of any building, overhanging roof or other improvement constructed upon a Lot which is subject to an easement provided for herein, is destroyed or damaged through the willful or negligent act or omission of the owner of the Benefitting Property, or his employees, invitees, tenants or contract purchasers, such owner shall, at his expense, have the obligation to rebuild, repair and restore the same.

Section 3. Appurtenance of Easement. Each Easement granted herein over Easement Property, together with all rights incidental thereto, shall be appurtenant to and non-separable from the Benefitting Property for which it was granted.

Section 4. Interpretation. The rule of strict construction shall not apply to the Easements granted herein and the terms hereof shall be given a reasonable construction so that the intention of the Declarant herein to confer an exclusive right of use and enjoyment over Easement Property for the benefit of the Benefitting Property is fully implemented.

IN WITNESS WHEREOF, the undersigned, being the Declarant herein, has hereunto executed this Declaration this 12TH day of June, 1987.

GILLANDERS AND STARK  
DEVELOPMENT COMPANY, INC.

By   
James I. Sorensen-President

STATE OF ARIZONA       )  
                              ) ss.  
County of Maricopa     )

On this 12<sup>th</sup> day of June, 1987,  
before me, the undersigned Notary Public, personally  
appeared JAMES I. SORENSEN, who acknowledged himself to be  
the President of GILLANDERS AND STARK DEVELOPMENT COMPANY,  
INC., an Arizona corporation, and that he, as such officer,  
being authorized so to do, executed the foregoing instrument  
for the purposes therein contained.

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

*Susan A. Allen*  
Notary Public

My Commission Expires:

*January 14, 1990*