

WORKING COPY<sup>1</sup> OF THE  
DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS FOR LOMA LINDA

THIS DECLARATION, made this 5th day of March, 1990, by CRP, INC., a Florida corporation, whose address is Post Office Box 945050, Maitland, Florida 32794-5050 ("Declarant"),

WITNESSETH:

WHEREAS, Declarant owns the real property located in Polk County, Florida described on Exhibit "A" attached hereto (the "Phase One Property"); and

WHEREAS, it is contemplated that the Phase One Property and potential additional properties will be developed as a residential community comprised of building lots, streets, street lights and a surface water management system, for the benefit of the residents of the community; and

WHEREAS, Declarant desires to preserve and enhance the values and quality of life in the community, the health, safety and welfare of the residents, and to provide for the maintenance of streets, street lights, the surface water management system, and any other common areas and improvements located in The Properties, and, to this end, desires to subject the Phase One Property and each Additional Property, when and if annexed, to the covenants, conditions, restrictions, easements, and liens hereinafter set forth, each of which shall be binding upon and run with the title to The Properties; and

WHEREAS, to provide a means for meeting these purposes, Declarant has created a non-profit corporation to which may be conveyed title and delegated and assigned the powers of maintaining and administering the community properties and facilities, administering and enforcing the covenants and restrictions, and collecting and disbursing the assessments and charges hereinafter created.

NOW, THEREFORE, Declarant declares that the Phase One Property and, upon annexation, each Additional Property are and shall be held, transferred, sold, conveyed and occupied subject to this Declaration.

ARTICLE I  
DEFINITIONS

Section 1. When used in this Declaration or in any supplemental Declaration the following words shall have the following meanings:

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<sup>1</sup> This document is a "working copy" of the association's Declaration, as amended and supplemented through the Second Supplemental Declaration of Covenants, Conditions and Restrictions recorded on April 23, 1991 in O.R. Book 2964, Page 528 et seq., public records of Polk County, Florida. It was prepared as an aid to officers, directors and members of the association. This document is not the "official" Declaration, the recorded versions of which should be reviewed before any decisions are made in reliance on this "working copy."

(a) "Additional Property" shall mean and refer to those lands, together with any improvements thereon, other than the Phase One Property, made subject to this Declaration under Article II hereof.

(b) "Area of Common Responsibility"<sup>2</sup> shall mean and refer to any land or improvement located in or near The Properties, not intended to be owned by the Association, but which is intended to be operated, maintained, insured or improved by the Association. Areas of Common Responsibility may be designated by this Declaration, by any Supplemental Declaration, by contract entered into by the Association, or by decision of the Board. Declarant hereby designates the following Areas of Common Responsibility: (i) maintenance, illumination and irrigation of the unpaved areas along the frontage of The Properties at and within the south one-half of the right-of-way of Loughman Road, the unpaved areas within the main entry to The Properties from Loughman Road at Loma Bonita Drive, and the unpaved shoulders and medians within and along the rights-of-way of Loma Bonita Drive, Alta Vista Court, September Court, Hilltop Street and Cartaya Circle, together with all signs, lighting fixtures, electrical equipment, irrigation lines and equipment, landscaping materials and features and drainage improvements located in and along said areas, (ii) the structural elements of the perimeter walls from time to time located along the right-of-way of Loughman Road, as well as the exterior finishes along the top of the said walls and on the face of said walls visible from Loughman Road, and (iii) all street lighting in The Properties until such time as a municipal service taxing unit or equivalent mechanism is created to assume responsibility to collect for and pay the cost of street lighting

(c) "Association" shall mean and refer to Loma Linda Homeowners Association, Inc., a Florida corporation not for profit, and its successors and assigns.

(d) "Board" or "Board of Directors" shall mean and refer to the Board of Directors of the Association.

(e) "Bylaws" shall mean and refer to the Bylaws of the Association, as amended.

(f) "Certificate of Incorporation" shall mean and refer to the Articles of Incorporation of the Association, as amended.

(g) "Common Expenses" shall mean and refer to the actual and estimated expenses of operating the Association and meeting the costs to be incurred by the Association in performing its duties and in exercising its prerogatives, including without limitation the costs incurred for operation, maintenance, insurance and improvement of Common Properties, if any, and Areas of Common Responsibility, and any reserves established by the Board.

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<sup>2</sup> Attorney Note 1: This section was supplemented by the Supplemental Declarations recorded in 1990 and 1991, which are included below.

(h) "Common Properties"<sup>3</sup> shall mean and refer to all real and personal property from time to time intended to be owned and maintained by the Association and to be devoted to the use and enjoyment of all Members of the Association, all at Common Expense. There are no Common Properties in the Phase One Property and no representation or commitment is made that any Additional Property will contain any Common Properties. Reference is made in this Declaration to Common Properties solely for the purpose of permitting the Declarant to designate Common Properties in Additional Properties at its sole discretion.

(i) "Declarant" shall mean and refer to CRP, Inc., a Florida corporation, and its successors and assigns. No successor or assignee of Declarant shall have any rights or obligations of Declarant hereunder unless such rights and obligations are specifically set forth in the instrument of succession or assignment, or unless such rights pass by operation of law.

(j) "Declaration" shall mean and refer to this Declaration, together with any supplements or amendments hereto.

(k) "Dwelling" shall mean and refer to a single family residence located on a Lot.

(l) "Lot" shall mean and refer to each residential building site created by any recorded plat of The Properties, whether or not said Lot has yet been improved with a Dwelling.

(m) "Member" shall mean and refer to each Member of the Association as provided in Article III, Section 2.

(n) "Owner" shall mean and refer to the record holder, whether one or more persons or entities, of fee simple title to each Residential Unit in The Properties, but, notwithstanding any applicable theory of the law of mortgages, Owner shall not mean or refer to any mortgagee unless and until such mortgagee has acquired title pursuant to foreclosure proceeding or a conveyance in lieu of foreclosure. All owners of a single Residential Unit shall be treated for all purposes as a single Owner, irrespective of whether such ownership is joint, in common or tenancy by the entirety.

(o) "Phase One Property" shall mean and refer to the real property described on Exhibit "A" to this Declaration.

(p) "The Properties" shall mean and refer to the Phase One Property, together with any Additional Properties which are hereafter annexed from time to time pursuant to Article II.

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<sup>3</sup> Attorney Note 2: This subsection was supplemented by the Supplemental Declarations recorded in 1990 and 1991, which are included below.

(q) "Residential Unit" shall mean and refer to each Lot in the Properties, together with any Dwelling located thereon.

(r) "Supplemental Declaration" shall mean and refer to any instrument which extends the scheme of this Declaration to Additional Property pursuant to Article II.

ARTICLE II  
PROPERTY SUBJECT TO THIS DECLARATION

Section 1. Property Subject to This Declaration. The Phase One Property is and shall be improved, held, transferred and occupied subject to this Declaration.

Section 2. Additional Property. Declarant shall have the right but not the obligation to bring within the scheme of this Declaration, as Additional Property, additional land lying in the vicinity of the Phase One Property at any time within twenty (20) years from the date this Declaration is recorded, which annexation may be accomplished without the consent of the Association, the Owners, any mortgage or other lien holder, or anyone else; provided, however, if the United States Department of Housing and Urban Development, Federal Housing Administration, or Veterans Administration require approval or consent to annexation of Additional Property by such agency or agencies as a condition to making or insuring loans in The Properties, and any such loans are in place at the time lands are proposed to be annexed, then Declarant shall obtain the required consent or approval incident to the proposed annexation.

Section 3. Method of Annexation. Additions authorized under this Article shall be made by recording a Supplemental Declaration extending the scheme of this Declaration to the Additional Property. The Supplemental Declaration shall describe the real property to be annexed and shall state that it is being made pursuant to the terms of this Declaration for the purpose of annexing property to the scheme of this Declaration and extending the jurisdiction of the Association to the Additional Property. The Supplemental Declaration may contain such terms and provisions not inconsistent with this Declaration as may be desirable to reflect the different character, if any, of the real property being annexed or the various housing or community style characteristics and development approaches being implemented. Upon the recordation of any Supplemental Declaration, the Owners shall also have a right and non-exclusive easement of use and enjoyment in and to the Common Properties, if any, within the Additional Property and an obligation to contribute to the cost of operating, maintaining and insuring the said additional Common Properties. Any Supplemental Declaration recorded in accordance with the terms hereof shall be conclusive in favor of all persons who rely thereon in good faith. From and after recordation of any Supplemental Declaration, the Additional Property described therein shall be subject to the provisions of this Declaration and to the jurisdiction of the Association.

Section 4. Declarant Consent to Amendment. This Article II may not be amended without the written consent of Declarant.

ARTICLE III  
THE ASSOCIATION

Section 1. The Association. The Association is a nonprofit corporation charged with the duties and vested with the powers prescribed by law and set forth in the Certificate of Incorporation, the Bylaws and this Declaration. Neither the certificate of Incorporation nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration. In the event of any such inconsistency, the provisions of this Declaration shall prevail. The officers and directors of the Association shall be required to be either (1) Members of the Association, or (2) officers, directors or agents of Declarant. The Board, and such officers as the Board may appoint, shall conduct the affairs of the Association.

Section 2. Membership. Declarant and each Owner shall be Members of the Association.

The Association membership of each Owner shall be appurtenant to and inseparable from the Residential Unit giving rise to such membership, and any transfer of title to a Residential Unit shall operate automatically to transfer the membership in the Association appurtenant thereto to the new Owner.

Section 3. Voting Rights. The Association shall have two (2) classes of voting membership:

(a) Class "A". Class "A" Members shall be all Owners, with the exception of Declarant for so long as Declarant retains Class B voting rights. Each Class "A" Member shall have one (1) vote for each Residential Unit owned by that Member.

(b) Class "B". The Class "B" Member shall be Declarant. Upon the execution of this Declaration, the Class "B" Member shall be entitled to four (4) votes for each Lot owned, plus four (4) votes for each potential Lot, presuming maximum allowable density of all potential Additional Property from time to time owned or controlled by Declarant, calculated as of the time of any vote and regardless of whether the potential Additional Property has yet been annexed to The Properties. The number of Class "B" votes shall be reduced by one (1) vote for each Class "A" vote from time to time existing. The Class "B" membership shall terminate and become converted to Class "A" membership upon the the earlier of the following:

(i) When the total outstanding Class "A" votes in the Association equals or exceeds the total outstanding Class "B" votes.

(ii) Twenty (20) years from the date of recording this Declaration: or

(iii) December 31, 1991.

Upon the happening of any one of these events, Declarant shall call a special meeting of the Members to advise the Association membership of the termination of Class "B" status.

Section 4. Declarant Veto Power.

From and after the termination of the Class "B" membership, Declarant shall have a veto power over all actions of the Association and the Board. This power shall expire when the Class "A" vote, other than that held by the Declarant, equals ninety percent (90%) of the total membership vote of the Association, or December 31, 2010, whichever occurs first. The veto shall be exercised as follows:

No action authorized by the Association or the Board shall take effect, nor shall any action, policy or program be implemented, until and unless:

(i) Declarant shall have been given written notice of each meeting of the Members and of the Board by certified mail, return receipt requested or by personal delivery, at the address it has registered from time to time with the Secretary of the Association, which notice otherwise complies with the terms of the Bylaws as to regular and special meetings of the Members and Board, and which notice shall set forth with reasonable particularity the agenda to be followed at said meeting; and

(ii) Declarant shall have been given the opportunity at each such meeting to join in the discussion of any proposed action, policy, or program to be implemented by the Board or the Association and to make its concerns and suggestions known to the Members of the Association or the Board. At such meeting Declarant shall have a veto power over any such action, policy or program proposed or authorized by the Board or the Association, and to be taken by said Board or the Association. Except as set forth in subsection (iii) below, the Declarant veto must be exercised by Declarant, its representatives, or agents at or before the meeting to consider proposed action. The veto power shall not include the authority to require any affirmative action on behalf of the Board or the Association; and

(iii) If any action, policy or program is to be implemented by prior consent without the formality of a meeting, then Declarant shall be provided a written notice and description of the proposed action, policy or program at least five (5) days in advance of such implementation, and Declarant shall have five (5) days after receipt of such notice to exercise its veto; and

(iv) Declarant shall not exercise its veto power in an arbitrary or capricious manner.

Section 5. Multiple Owners. Each vote in the Association must be cast as a single vote, and fractional votes shall not be allowed. If joint or multiple Owners are unable to agree among themselves as to how their vote is to be cast, or if more than one (1) vote is cast for any Residential Unit, none of the votes for that Residential Unit shall be counted. If any Owner casts a vote on behalf of a Residential Unit, it shall be conclusively presumed that that Owner was acting with the authority and consent of all other Owners of that Residential Unit.

Section 6. Duties, Powers and Authority of the Association. The Association shall have all the powers of a non-profit corporation organized under the laws of Florida, subject only to such limitations as are set forth in the Certificate of Incorporation, the Bylaws, or this Declaration. The Association shall have the power to do all lawful things which may be authorized, assigned, required or permitted to be done by this Declaration, any Supplemental Declaration, the Certificate of Incorporation and the Bylaws, and to do and perform any and all acts which may be necessary or proper for, or incidental to, the exercise of any of the duties or powers of the Association for the benefit of the Owners and for the maintenance, administration and improvement of The Properties, the Common Properties and the Areas of Common Responsibility.

ARTICLE IV  
PROPERTY RIGHTS IN THE COMMON PROPERTIES

Section 1. Easements of Enjoyment. The Association, Declarant and each Owner shall have a non-exclusive right, privilege and easement of use and enjoyment in and to the Common Properties, if any, and such rights shall be appurtenant to and shall pass with the title to every Residential Unit in The Properties. Said rights shall include, but not be limited to, the following:

(a) Right-of-way for ingress and egress by vehicles and on foot in, through, over and across the streets, roads and walks in the Common Properties for all lawful purposes; and

(b) Rights and easements to drain across stormwater drainage, detention and retention structures and areas, and to connect with, maintain and make use of utilities lines and facilities, which may from time to time be in or along the streets or in the Common Properties; and

(c) Rights to use and enjoy the Common Properties for any purpose not inconsistent with this Declaration, any supplemental Declaration, the Bylaws, the rules and regulations of the Association, or applicable governmental regulations.

Section 2. Title to Common Properties. Declarant shall convey to the Association fee simple title in and to the Common Properties, if any Common Properties are created. Once conveyed to the Association, the Common Properties may not be mortgaged or further conveyed (excluding the grant or reservation of easements as permitted by this Declaration) without the affirmative vote or written consent of at least three-quarters (3/4) of the Owners, excluding Declarant. There are no Common Properties in the Phase One Property and no representation or commitment is made that there will be any Common Properties in the Properties.

Section 3. Extent of Easements. The rights and easements created hereby shall be governed by the following:

(a) Subject to the rights of Declarant and the Owners set forth in this Declaration, the Association shall be responsible for the exclusive management, control and maintenance of the Common Properties, if any.

(b) Declarant, until conveyance of title to the Association, and the Association thereafter, may reserve to itself or to grant or dedicate to Declarant, any Owner, any governmental agencies and/or to any utility companies, easements and rights-of-way, in, through, under, over and across the Common Properties for the installation, use, maintenance and inspection of lines and appurtenances for public or private utilities, stormwater drainage improvements and areas, and for completion of the development. No improvement or material may be placed upon any such an easement as may damage or interfere with the installation or maintenance of utilities or that may alter the direction or flow of drainage.

(c) The rights of Declarant reserved in this Declaration.

(d) Matters, easements and reservations shown on any plat of The Properties.

Section 4. Common Properties For Benefit of All Owners. All Common Properties, if any, shall be subject to general Association membership use and enjoyment without regard to the phase in which the Common Properties are located.

Section 5. Easement Reserved to Declarant over Common Properties. Declarant hereby reserves such licenses, rights, privileges and easements in, through, over, upon and under all Common Properties, if any, including but not limited to, (1) the right to use the said properties for rights-of-way and easements to erect, install, maintain, inspect and use electric, lighting and telephone poles, fixtures, wires, cables, conduits, sewers, water mains, pipes and equipment, telephone and telecommunications lines and equipment, and electrical equipment, gas, cable television, drainage facilities, ditches or lines, or other utilities or services and for any other materials, equipment and services necessary or convenient for the completion, marketing, and use and enjoyment of The Properties, (2) the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or take any other similar action reasonably necessary to provide economical and safe utility installation and to maintain reasonable standards of health, convenience, safety and appearance, (3) the right to locate thereon wells, pumping stations and irrigation systems and lines, (4) the right and easement of ingress and egress for purposes of development, construction and marketing, and (5) such other rights as may be reasonably necessary to complete in an orderly and economic manner the development of all present and future phases of Loma Linda; provided, however, that said reservation and right shall not be considered an obligation of Declarant to provide or maintain any such easement, utility, equipment or service. Declarant also reserves the right to connect with and make use of the utility lines and drainage improvements which may from time to time be in or along the streets and roads, or within the Common Properties or easement areas. The easements and rights-of-way herein reserved shall continue in existence in favor of Declarant after conveyance of Common Properties to the Association until such time as Declarant has sold all lands within or adjoining The Properties. This section may not be amended without the prior written consent of Declarant.

Section 6. Delegation of Rights. Any Owner or Declarant may also grant the benefit of any easement, license, right or privilege to tenants and guests for the duration of their tenancies or visits, but the same are not intended nor shall they be construed as creating any rights in or for the benefit of the general public.

ARTICLE V  
INSURANCE MID CASUALTY LOSSES

The Board may obtain fidelity bond coverage in its discretion. In addition, the Board may obtain insurance for insurable improvements on the Common Properties or Areas of Common Responsibility, public liability policies covering the Association and Members for damage or injury caused by the negligence of the Association or any of its Members, guests or agents, and directors' and officers' liability insurance, and any other types of insurance coverages as the Board may deem appropriate, with such insureds, deductibles provisions and coverage amounts as shall be determined by the Board. Premiums for any insurance so obtained shall be a Common Expense. The Association may elect to self-insure against any risk.

ARTICLE VI  
COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of Lien and Personal Obligation.

(a) Declarant for each Lot owned by it in The Properties, and each Owner, by acceptance of title to any Residential Unit, whether or not it shall be so expressed in any deed or other conveyance, shall be deemed to and hereby does covenant and agree to pay to the Association: (1) annual assessments or charges, (2) special assessments, and (3) individual assessments. Said assessments shall be fixed, established and assessed to the Owners as hereinafter provided. The assessments, together with interest thereon, late charges and costs of collection, including court costs and reasonable attorneys' and paralegals' fees (including fees and costs before trial, at trial and on appeal), shall be a charge and a continuing lien upon the Residential Unit against which such assessment is made from and after the date on which such assessment is due. Each such assessment, together with the aforementioned interest, late charges, costs and fees, shall also be the personal obligation of the person who was the Owner of the Residential Unit at the time the assessment fell due.

(b) Exempt Property. The following property now or hereafter subject to this Declaration shall be exempt from the assessments, charges and liens created herein:

1. All Common Properties;
2. All lands owned by Declarant which are not described on Exhibit "A" or which have not yet been annexed to the scheme of this Declaration by Supplemental Declaration;  
and

3. Lands and improvements fee title to which has been dedicated to Polk County or other governmental authority, to any utility company or to the public.

No other land or improvements in The Properties shall be exempt from these assessments, charges or liens. No Owner may avoid the assessment obligations by virtue of non-use or abandonment of the Common Properties.

Section 2. Purpose of Assessments. The assessments levied by the Association may be used for the purpose of promoting the recreation, health, safety, and welfare of the The Properties and Owners thereof, for the performance by the Association of its duties and the exercise of the powers conferred upon it, for the improvement and maintenance of the Common Properties, if any, and the Areas of Common Responsibility, and for any other purpose deemed desirable or appropriate by the Board, including without limitation, any one or more of the following:

- (a) Payment of Association operating expenses; and
- (b) Lighting, irrigation, improvement and beautification of access ways and easement areas, and the acquisition, maintenance, repair and replacement of project identification signs and traffic control devices, and the costs of controlling and regulating traffic on the access ways; and
- (c) To pay, contest or compromise all real and personal property taxes and assessments separately levied upon or assessed against the Association or the Common Properties; and
- (d) Management, maintenance, improvement and beautification of Common Properties and the Areas of Common Responsibility; and
- (e) Repayment of deficits previously incurred by the Association, if any, in making capital improvements to or upon the Common Property or the Areas of Common Responsibility, and in furnishing services to or for the Members of the Association; and
- (f) Funding of appropriate reserves for future repair and replacement; and
- (g) Procurement and maintenance of insurance and employment of accountants, attorneys and other professionals to represent the Association; and
- (h) Doing anything necessary or desirable in the judgment of the Board to keep The Properties, the Common Properties and the Areas of Common Responsibility neat and attractive, to preserve or enhance the value thereof, to eliminate fire, health or safety hazards, or otherwise to benefit the Owners.

### Section 3. Determination of Assessments.

(a) Operating Budget. At least thirty (30) days prior to the end of the Association's fiscal year, the Board shall prepare a budget of the estimated costs of operating the Association during the coming year, including but not limited to operational items such as overhead and indirect costs, insurance, utilities, taxes, professional fees, repairs, reserves, maintenance and other operating expenses, as well as charges to cover any deficits from prior years, and capital improvement budget items approved by the Board under to Subsection (b) below.

(b) Capital Budget. Each year, the Board shall prepare a capital budget taking into account the number, type, life expectancy and expected replacement cost of replaceable assets. The Board shall then set the required annual capital contribution in an amount sufficient to meet the projected capital needs of the Association on a timely basis. The annual capital contribution fixed by the Board shall then be included in the annual operating budget and assessments described in Subsection (a), above.

(c) Adoption of Operating Budget. The Board shall mail to each Member a copy of the operating budget and projected assessments to be levied for the following year at least fifteen (15) days prior to the end of the Association's fiscal year. The operating budget and assessments shall become effective unless and until disapproved at a special meeting of the Members held not later than sixty (60) days after the proposed budget and assessments are mailed to the Members. To be effective, the disapproval must be by a vote of three-quarters (3/4) of the membership of the Association. In the event that the membership so disapproves the operating budget for the succeeding year, or in the event the Board shall fail to propose a budget, then and until such time as a new budget shall have been determined, the budget for the preceding year shall continue in effect.

(d) Allocation of Assessments Among Residential Units. The operating budget of the Association shall be assessed against all Owners and Residential Units in The Properties in an equal amount per Residential Unit.

### Section 4. Special Assessments.

(a) Special Assessments. In addition to the annual assessments levied pursuant to Section 3, the Board may levy at any time a special assessment for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair or replacement of a capital improvement upon the Common Properties or any Area of Common Responsibility, for the purpose of covering any budget deficits of the Association, or for any other purpose deemed desirable or appropriate by the Board; provided, however, that any such special assessment shall have the approval of a majority of the votes of the Members of each class who are in attendance and voting in person or by proxy at a meeting duly called for said purpose.

(b) Individual Assessment. The Board may levy an individual assessment against any Owner and that Owner's Residential Unit in order to cover costs incurred by the Association

due to that Owner's failure to maintain its Residential Unit pursuant to the standards set forth in this Declaration, or to reimburse the Association for loss or damage to any Common Properties or any Area of Common Responsibility caused by that Owner or his lessee, guest or occupant, and not covered by insurance, or for any other purpose permitted by this Declaration.

Section 5. Commencement of Assessments; Initial Annual Assessment; Due Dates. Annual assessments on the Phase One Property shall commence on the first day of the first calendar month following the closing of the sale by Declarant of the first Lot to the first purchaser from Declarant. The annual assessment for each Additional Property shall commence upon the first day of the first calendar month after the Supplemental Declaration is recorded.

The annual assessment for the Phase One Property for the balance of the calendar year in which this Declaration is recorded shall be not greater than One Hundred Twenty Dollars (\$120.00) per Residential Unit. As to Residential Units in each Additional Property, the initial annual assessment shall be set forth in the pertinent Supplemental Declaration.

Annual assessments shall be due, in advance, on or before the commencement of the year for which imposed; but the Board may elect to collect assessments in monthly, quarterly or semi-annual installments. In the event of such deferred payments, the Board may charge a uniform, lawful rate of interest on the unpaid balance. The Board may accelerate the balance of any assessment upon default in the payment of any installment thereon.

Annual assessments which commence to accrue as to any Residential Unit other than on the first day of the year shall be prorated for the balance of that year.

Section 6. Certificate of Payment. Upon request, the Association shall furnish to any Owner liable for assessment a certificate setting forth whether said assessment has been paid. Such certificate shall be conclusive evidence in favor of third parties relying thereon of the payment of any assessment therein stated to have been paid.

Section 7. Effect of Non-payment of Assessment. If any assessment or installment thereon is not paid when due, then such assessment shall become delinquent and the delinquent assessment, together with interest thereon and such late charges as shall be imposed by the Board at its discretion, and the cost of collection thereof, shall be secured by a continuing lien on the Residential Unit as to which the assessment accrued. Such lien shall be prior to all other liens hereinafter created except taxes or assessments levied by governmental authority, and except as to the lien of any first mortgage. The lien shall be prior to and superior in dignity to homestead status. The said lien shall bind such Residential Unit in the hands of the then Owner and each subsequent owner. The personal obligation of the Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and personal liability shall not pass to his successors in title unless expressly assumed by them.

If the delinquent assessment or installment thereon is not paid within thirty (30) days after the due date, same shall bear interest from the date due at the highest lawful rate in Florida,

or at such lesser rate as may be determined by the Board and uniformly applied, and the Association may bring an action for collection against the Owner personally obligated to pay the same and/or to foreclose the lien against the Residential Unit by judicial foreclosure in the same manner as foreclosure of a mortgage, and there shall be added to the amount of such assessment the aforesaid interest, late charges, costs of collection and attorneys' and paralegals' fees, as aforesaid, and the said costs of collection shall be recoverable whether or not suit be brought. The Owner shall also be required to pay the Association any assessments against the Lot which become due during the period of foreclosure. The Association shall have the right and power to bid at the foreclosure sale and to own sell, lease, encumber, use and otherwise deal with the Residential Unit as owner thereof.

Section 8. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any mortgage. Any mortgagee which obtains title to a Residential Unit by foreclosure of a mortgage, or by voluntary conveyance in lieu of such foreclosure, shall not be liable for the assessments pertaining to such Residential Unit or chargeable to the former Owner thereof which became due prior to the acquisition of title by said mortgagee. Such uncollected assessments, interest, late charges and collection costs incurred shall be deemed a Common Expense collectible from all Owners, including the acquiring mortgagee, on a pro-rata basis. Any such transfer to or by a mortgagee shall not relieve the transferee of responsibility nor the Residential Unit from the lien for assessments thereafter falling due. No sale or transfer shall release such Residential Unit from liability for any assessment thereafter becoming due.

Section 9. Proviso. Notwithstanding anything contained herein to the contrary, Declarant, as a Class B Member, shall not be obligated to pay any assessments as to any Lots owned by it during any period of time that Declarant pays the Common Expenses actually incurred over and above the income derived from assessments collectible from Class A Members. For purposes of this subsidy arrangement, Declarant need not subsidize or pay replacement reserves or capital expenditures. Declarant, at its option, may elect at any time to abandon the subsidy approach and commence payment of assessments for Lots owned by it.

## ARTICLE VIII ARCHITECTURAL CONTROL

Section 1. Architectural Control; ARB. All Residential Units in The Properties are subject to architectural review. This review shall be in accordance with this Article and the Loma Linda Planning, Construction and Development Criteria ("the Planning Criteria"). No sitework, landscaping, utility extensions, drainage improvement, paving, parking area, swimming pool, pool enclosure, building, fence, wall or any other physical or structural improvement, or change or alteration to the exterior of any existing structures or improvements, or to any existing landscaping, shall be commenced, erected or maintained until the plans showing such details as the nature, size, workmanship, design, shape, finished grade elevation, height, materials and color of the same, together with a detailed landscape plan and a plot plan showing the location relative to boundaries and adjacent improvements of such proposed improvements or changes,

shall have been approved in writing by the Architectural Review Board (the "ARB") as to consistency with Declarant's development plan and the Planning Criteria, harmony of exterior design and materials, location in relation to surrounding structures, and drainage features and topography.

The ARB shall promulgate and revise from time to time the Planning Criteria. The Planning Criteria shall be written and made available to all builders in The Properties and to all Owners or prospective Owners. The Planning Criteria may include any matters considered appropriate by the ARB not inconsistent with the provisions of this Declaration.

So long as Declarant owns any lands subject to this Declaration, Declarant shall be entitled to appoint all members of the ARB. Thereafter, the membership of the ARB shall be determined by the Board. The ARB shall consist of no less than three (3) members, none of whom shall be required to be Owners or occupants of The Properties. Nothing herein shall limit the right of an Owner to finish or alter the interior of that Owner's Dwelling as that Owner desires. Decisions of the ARB shall be by majority action. No member of the ARB shall be entitled to compensation for services performed, but the ARB may employ professional advisors and pay reasonable compensation to such advisors from Association funds.

Section 2. Approval or Disapproval. Unless waived by the ARB, all plans shall be prepared by an architect or engineer, said person to be employed by and at the expense of the Owner. Determinations by the ARB shall be binding on each Owner. If in its opinion, for any reason, including purely aesthetic reasons, the ARB should determine that a proposed improvement, alteration, etc. is not consistent with the Planning Criteria or the Declarant's development plan, or in the best interest of the community, such alteration or improvement shall not be made. Approval of the plans may be withheld not only because of non-compliance with any of the specific conditions, covenants and restrictions contained in this Declaration, but also by virtue of the dissatisfaction of the ARB with the location of the structure on the Lot, the elevation, color scheme, finish, design, proportions, architecture, drainage plan, shape, height, style and appropriateness of the proposed structures or altered structures, the materials used therein, the planting, landscaping, size, height or location of vegetation on the Lot, or because of its reasonable dissatisfaction with any or all other matters or things which, in the judgment of the ARB, will render the proposed item of improvement inharmonious or out of keeping with the general development plan or the Planning Criteria. Two (2) sets of plans, specifications and plot plans shall be submitted to the ARB by the Owner prior to applying for a building permit. The Owner shall obtain a written receipt for the plans and specifications from the ARB. Plans and re-submittals thereof shall be approved or disapproved within thirty (30) days after receipt by the ARB. Failure of the ARB to respond in writing to a submittal or re-submittal of plans within such period shall be deemed to be approval of the plans as submitted or resubmitted. The ARB approval or disapproval shall be written and shall be accompanied by one (1) copy of the plans, etc., to be returned to the Owner. Whenever the ARB disapproves plans, the ARB shall specify the reason or reasons for such disapproval.

Section 3. Violations; Waiver. The work must be performed strictly in accordance with the plans as approved. If after plans have been approved, the improvements are altered, erected, or maintained upon the Residential Unit other than as approved, same shall be deemed to have been undertaken Without ARB approval. After one (1) year from completion of any improvement, addition or alteration, said improvement shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to comply with the provisions hereof unless a notice of such noncompliance executed by any member of the ARB shall appear in the Polk County public records, or legal proceedings shall have been instituted to enjoin the noncompliance or to enforce compliance with these provisions.

Section 4. Variances. The ARB may grant variances from compliance with any of the architectural provisions of this Declaration or the Planning Criteria, including without limitation restrictions upon height, size or placement of structures, or similar restrictions, when circumstances such as topography, natural obstructions, hardship, aesthetic or environmental considerations may reasonably require. Such variances must be written and must be signed by at least two (2) members of the ARB. If variances are so granted, no violation of this Declaration shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall not operate to waive any of the terms and provisions of this Declaration or the Planning Criteria for any purpose except as to the particular Residential Unit and the particular provision covered by the variance, nor shall it affect the Owner's obligation to comply with all applicable governmental laws and regulations.

Section 5. Waiver of Liability. Neither Declarant, the ARB or the Association shall be liable to anyone submitting plans for approval or to any Owner or occupant of The Properties by reason of or in connection with approval or disapproval of any plans, or for any defect in any plans submitted, revised or approved in accordance with the requirements of the ARB, or for any structural or other defect in any work done according to such plans. Approval of plans, or any other approvals, variances or consents, are given solely to protect the aesthetics of The Properties in the judgment of the ARB and shall not be deemed a warranty, representation or covenant that any action taken in reliance thereon complies with applicable laws, codes, rules or regulations, nor shall ARB approval be deemed approval of any plan or design from the standpoint of structural safety or conformity with building or other codes. Every person who submits plans for approval agrees, by submission of such plans, and every Owner or occupant of any Residential Unit agrees, by acquiring title thereto or an interest therein, that it will not bring any action, proceeding or suit to recover any such damages.

This Article may not be amended without Declarant's written approval so long as Declarant owns any Lot.

Section 6. Enforcement of Planning Criteria. Declarant and the Board shall have the standing and authority on behalf of the Association to enforce in courts of competent jurisdiction the Planning Criteria and the decisions of the ARB. Should Declarant or the Association be required to enforce the provisions hereof by legal action, the reasonable attorneys' fees and costs incurred, whether or not judicial proceedings are involved, including the attorneys' fees and costs

incurred on appeal from judicial proceedings, shall be collectible from the violating Owner. Should any Owner fail to comply with the requirements hereof after thirty (30) days' written notice, Declarant and the Association shall have the right but not the obligation to enter upon the Owner's property, make such corrections or modifications as are necessary, or remove anything in violation of the provisions hereof or the Planning Criteria, and charge the cost thereof to the Owner. Declarant and the Association, or their agents or employees, shall not be liable to the Owner or to any occupant or invitee of any Residential Unit for any trespass or damages or injury to the property or person unless caused by negligence or intentional wrongdoing.

ARTICLE IX  
EXTERIOR MAINTENANCE

Section 1. Owner's Responsibility; Default. Each Owner shall keep and maintain the building improvements, landscaping, and, except as set forth in Section 2 below, surface water drainage structures located on his Residential Unit, in good and presentable condition and repair consistent with the approved plans therefor, and shall otherwise keep such Residential unit in neat and attractive condition at all times. The Association shall have the right but not the obligation to provide exterior repair and maintenance on any Residential Unit in the event of default by any Owner in the duties hereby imposed. Prior to performing repair or maintenance on any Residential Unit, the Board shall determine that same is in need of repair or maintenance and is detracting from the overall appearance of The Properties. Except in the event of an emergency, prior to commencement of any work, the Board must furnish written notice to the Owner to the effect that, unless specified repairs or maintenance are commenced within fifteen (15) days after the mailing of the notice, and thereafter diligently pursued to completion, the Association may procure said repairs. Upon the Owner's failure to commence timely and to diligently pursue the repairs or maintenance, the Association and its agents or employees shall have the right to enter in or upon the Lot and the exterior of any Dwelling to perform the repairs or maintenance specified in the notice. In this regard, the Association shall have the right to do such things as, but limited to, paint, repair, replace and care for pools, pool enclosures, roofs, gutters, downspouts and exterior building surfaces, clean or resurface paved access ways and parking areas, trim and care for trees, shrubs, grass, walks, swales, berms and other landscaping and drainage improvements, as well as to provide general cleanup, shoreline maintenance, and removal of debris which in the opinion of the Board detracts from the overall beauty and setting of The Properties. Neither Declarant, the Association, nor their agents or employees, shall be liable to the Owner or any occupant or guest for trespass, or damage or injury to the property or person unless caused by gross negligence or intentional wrongdoing.

Section 2. Assessment of Cost. The cost of the work described in Section 1 shall be assessed as an individual assessment against the Owner of the Residential Unit upon which such work is done. The individual assessment shall be secured by a lien upon the affected Residential Unit and shall also constitute a personal obligation of the Owner. The individual assessment shall be collectible, along with interest at the highest rate allowed by law from date of expenditure to date of repayment, and costs of collection and attorneys' and paralegals' fees, whether or not suit be brought, in the same manner as delinquent annual assessments.

Section 3. Access at Reasonable Hours. In order to perform the repairs or maintenance authorized by this Article, the agents or employees of the Association may enter upon any Lot and the exterior of any Dwelling during reasonable hours on any day except Sundays and holidays, except that in an emergency situation, as determined by the Board, entry may be made at any time.

Section 4. Association Maintenance Responsibility.<sup>4</sup> The Association shall maintain and keep in good repair the Common Properties and Areas of Common Responsibility and the landscaping and other improvements Located thereon. Such duties include without limitation sign and wall repairs, irrigation, fertilizing, weeding, mowing, trimming, spraying and periodic replacement of damaged or diseased plantings with comparable plantings. Landscaping is to be maintained in substantial accordance with the quality and quantity of plantings originally installed by Declarant. Nothing in these requirements shall restrict the Association from upgrading landscaping materials. It shall also be the affirmative duty of the Association to maintain at Common Expense all surface water drainage facilities, structures and features located in The Properties or Areas of Common Responsibility and comprising part of the approved and permitted master surface water management plan for Loma Linda. It is intended that each Owner will, at his expense, keep and maintain those portions of the surface water management system located on that Owner's Lot free of debris and other obstructions on a routine basis, but that, when required, major repairs to, and major maintenance and reconstruction of, the overall surface water management system not necessitated by abuse, alteration or negligence of an Owner, will be performed by the Association, at Common Expense.

ARTICLE X  
RESTRICTIVE COVENANTS

The Properties shall be subject to the following covenants and restrictions which shall be binding upon each and every Owner and his Residential Unit:

Section 1. Wells. Except for a water well for use only for air conditioning, heating or irrigation purposes, no individual water supply system shall be permitted on any Lot without the approval of the ARB.

Section 2. Landscaping.<sup>5</sup> Landscaping on each Lot and stormwater drainage features located thereon shall be maintained in good, aesthetically pleasing condition by the Owner thereof. The Owner of each Lot abutting a body of water or canal shall maintain the shoreline thereof free of debris and weeds consistent with applicable environmental regulations.

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<sup>4</sup> Attorney Note 3: This section was supplemented by the Supplemental Declarations recorded in 1990 and 1991, which are included below.

<sup>5</sup> Attorney Note 4: This section was supplemented by the Supplemental Declarations recorded in 1990 and 1991, which are included below.

Section 3. Obnoxious or Offensive Activity. No activity or use shall be allowed upon The Properties which is a source of annoyance, embarrassment or discomfort to Owners or their tenants or invitees, or which interferes with the peaceful possession and proper use and enjoyment of The Properties, nor shall any improper, unsightly, offensive or unlawful use be made of any Residential Unit or of the Common Properties, and all laws and regulations of applicable governmental bodies shall be observed. The use, enjoyment and occupancy of The Properties shall be in such a manner so as not to cause or produce any of the following effects discernible outside Dwellings: noise or sound that is objectionable because of its volume, duration, beat, frequency or shrillness; smoke; noxious, toxic or corrosive fumes or gases; obnoxious odors; dust, dirt or fly ash; unusual fire or explosive hazards; vibration; or interference with normal television, radio or other telecommunication reception by other Owners.

Section 4. Rules and Regulations. Reasonable rules and regulations may be promulgated by the Board as to the use and enjoyment of The Properties and shall be observed by the Owners and occupants thereof. Such rules and regulations may involve such matters as air conditioning units, signs, mailboxes, temporary structures, noisy mufflers or other nuisances, garbage and trash disposal, clotheslines, parking, vehicle traffic and the state of repair of vehicles, tree removal, gutters, pets, game and play structures, swimming pools, television antennae, driveways, walkways, sight distances at intersections, garages, and fences. These matters are set out by way of illustration only and shall not be construed to limit the authority of the Board to promulgate and enforce rules and regulations. Such rules and regulations may augment or clarify the terms of this Declaration or any provision, covenant or restriction herein contained. Copies of such rules and regulations shall be made available to each Owner prior to the time same become effective.

Section 5. Animals. Birds, fish, dogs and cats may be kept as pets only, and shall not be held or offered for sale or maintained or bred for any commercial use. Birds, fish, dogs and cats which are kept as pets shall be sheltered inside structures; no animal shelter shall be permitted outside. All dogs and cats must be leashed when outside and shall not be permitted to run loose. No other animals, fowl, insects, reptiles or livestock shall be kept or maintained in The Properties unless approved in advance by the Board. No animal, etc., shall be permitted to remain if it disturbs the tranquility of The Properties or the Owners or tenants thereof, or is dangerous, annoying, a nuisance or destructive of wildlife, as determined by the Board after notice and hearing,

Section 6. Garbage and Trash. No trash, garbage or other waste material or refuse shall be placed or stored on any part of The Properties except in covered or sealed sanitary containers. All such sanitary containers must be stored within each Dwelling, buried underground, or placed within an enclosure or concealed by means of a screening wall of material similar to and compatible with that of the Dwelling.

Section 7. Storage Receptacles. No fuel tanks or similar storage receptacles may be exposed to view, and same may be installed only within an approved accessory building, within a

screened area, or buried underground, and shall otherwise comply with standards established from time to time by the ARB.

Section 8. Vehicles. No vehicle shall be parked on any part of The Properties or any Lot, except on paved streets and paved driveways. No inoperative vehicles shall be allowed to remain on The Properties in excess of forty-eight (48) hours unless kept in an enclosure and not visible from the street or any other Lot. No commercial vehicles, except those present on business, shall be parked on any part of The Properties. No trailers, boats, campers, trucks, mobile homes, motorized recreational vehicles or motorcycles may be parked in The Properties unless parked inside a garage or on the side of (opposite any side street) or behind the Dwelling.

Section 9. Temporary Structures. No building or structure of a temporary or portable character such as trailers, tents or shacks shall be permitted in The Properties, except as approved by the ARB, and except for temporary improvements used solely in connection with the construction of approved permanent improvements and removed immediately upon completion of such construction. Declarant shall not be prohibited from erecting or maintaining such temporary dwellings, model homes and other structures as Declarant may desire for development and marketing purposes, provided such are in compliance with the appropriate governmental requirements or regulations.

Section 10. Signs. No signs, advertisements, billboards, solicitation or advertising structures or materials of any kind shall be displayed or placed upon any Residential Unit without the prior written approval of the ARB; provided, however, street numbers and name signs on individual Residential Units and one sign containing not more than eight (8) square feet of surface area per side (2 sides maximum) and used solely in connection with the marketing of the affected Residential Unit for sale or lease shall be permitted without prior approval. Declarant or the Association may enter upon any Lot and remove and destroy any signs which do not meet the provisions of this section. This section shall not apply to Declarant.

Section 11. Air-Conditioning Equipment. No air conditioning equipment other than compressor units may be Visible on the exterior of any Dwelling unless approved by the ARB, which approval may be based on the adequacy of screening of such equipment. The ARB may prohibit window or wall air conditioning units altogether.

Section 12. Drainage Structures. Unless first approved by the ARB, no Owner other than the Declarant may obstruct, alter or in any way modify the method and/or structures of drainage utilized or installed by Declarant or the Association from, on or across any Lot, Common Property or Area of Common Responsibility; nor shall any structure or material be erected, placed or maintained which shall in any way obstruct such drainage devices or facilities or impede their efficient operation.

Section 13. Aerials. No exterior telecommunications, radio, microwave or television mast, tower, pole, wire, aerial, satellite receiving stations or dish, antenna or appurtenances thereto,

nor any other exterior electronic or electric equipment, structures or devices of any kind may be installed or maintained in The Properties without the prior written approval of the ARB.

Section 14. Subdivision. No part of The Properties shall be further subdivided without the prior written consent of Declarant for so long as Declarant owns any Lot, and thereafter by the Board.

Section 15. Completion of Construction. Upon commencement of construction of any improvements on any Lot, the Owner shall diligently prosecute the work to the end that the improvements shall be completed as expeditiously as is reasonable. The Owner of the Lot on which improvements are being built must keep the streets and areas adjacent to the Lot free from any dirt, mud, garbage, trash or other debris occasioned by the construction.

Section 16. Excavation. No clearing or excavation shall be made except incident to construction, maintenance or repair of an improvement; and upon completion thereof exposed openings shall be backfilled, and disturbed ground shall be leveled, graded and seeded in accordance with the approved landscape plan.

Section 17. Fences, Walls and Hedges. There shall be no fence permitted on any Lot unless it meets the requirements below and has been approved by the ARB as to size, material, color, location, etc. Landscape buffers may be required on the outside of any privacy fences and walls by the ARB. All wood fences must be installed with the posts and supports on the inside. No fence may be constructed in the following areas:

(1) Between the street along the front of the Dwelling (the "Front Street") and a straight line being the extension of the surface of the furthest set back portion of the front side of the Dwelling to the side lot lines; or

(2) Between the street facing a side of the Dwelling (the "Side Street") and a straight line being the extension of the surface of furthest set back portion of the side of the Dwelling to the rear lot line.

(3) Any and all easement areas as set forth on any plat of The Properties.

Notwithstanding anything herein to the contrary, so long as Declarant or builders designated by Declarant maintain any model homes within The Properties, shall have the right to fence all or any part of any Lots being used for models or parking.

(f) Extensions of Wall Along Loughman Road. In the event the Owner of any Lot abutting the right-of-way of Loughman Road, other than Declarant, desires to construct a wall along any portion of the Lot boundary that abuts Loughman Road, the Owner shall design and construct

the wall in accordance the conceptual rendering attached as Exhibit "B"<sup>6</sup> to this Declaration, and shall have the plans therefor approved by the ARB. With the exception of vegetative screening approved by the ARB, no other walls, screening or fencing shall be permitted along the frontage of The Properties on Loughman Road.

Section 18. Clotheslines. Clotheslines are not permitted unless they are completely hidden from view from any street or Common Properties. No clothing, bedding or other similar items shall be hung over or on any windows, doors, walls or fences if the same be visible from any street or Common Properties.

Section 19. Play Structures and Yard Accessories. All yard accessories and play structures, including basketball hoops or backboards and any other fixed games, shall be located at the side or rear of the residential structure, or to the rear of the residences on corner Parcels, within the set back lines.

Section 20. Trees. Trees measuring six inches (6") or more in diameter at three feet (3') or more above ground level shall not be cut or removed from The Properties without the prior written consent of the ARB unless the trees are located within six feet (6') of the Dwelling or its proposed location as approved by the ARB.

Section 21. Use. Residential Units shall be used for single family residential purposes only. No Dwelling or other building on any Lot shall be rented or leased separately from the rental or lease of the entire Residential Unit.

Section 22. Pools. Swimming pools may not be located in the front yard of any Lot, nor nearer than the Dwelling to any side street lot line.

Section 23. Dwellings and Garages.

(a) No Dwelling shall have a heated square foot area of less than one thousand (1,000) square feet, exclusive of screened area, open porches, terraces, patios and garages. In the case of two story or split level Dwellings, the ground floor must be no less than seven hundred fifty (750) heated square feet, exclusive of screened areas, open porches, terraces, patios and garages.

(b) No Dwelling shall exceed two (2) stories in height.

(c) No projections of any type shall be placed or permitted to remain above any roof of the Dwelling with the exception of one or more chimneys or vent stacks. No solar collectors shall be visible from any front street.

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<sup>6</sup> Attorney Note 5: Exhibit "B", which graphically depicts some sections of the wall, is not included in this Working Copy.

(d) No Dwelling shall have exposed structural block on its front elevation.

(e) All driveways shall be constructed of solid concrete or decorative pavers approved by the ARB.

(f) All oil tanks, soft water tanks, wood piles, water softeners, well pumps, sprinkler pumps, pool and spa equipment and heaters, and other or similar mechanical fixtures and equipment, shall be screened or located so as not to be visible from a street or other Residential Unit. This provision shall not apply to central air conditioning compressor units.

(g) No elevation changes shall be permitted which materially adversely affect the surface grade or drainage of or to surrounding Lots.

Section 24. Tree Removal and Landscaping. There shall be no removal of trees or clearing of a Lot, other than clearing of underbrush, until such time as the ARB has approved in writing a general, conceptual landscape plan that designates those existing trees to be retained and preserved on the Lot. Thereafter, each Residential Unit shall comply with the following landscaping requirements:

All Lots shall have fully sodded front and side lawns except in approved landscape or retained natural areas. Natural vegetation shall be "finished" by removal of underbrush and mulch.

Section 25. Refuse Collection. All trash, garbage or other refuse shall be placed for pickup not earlier than the evening preceding pickup, and any and all containers for such trash, garbage or refuse shall be returned no later than the evening of pickup to their normal, hidden location. Except for normal construction debris on any Lot during the course of construction of the Dwelling, no weeds, rubbish, debris, objects or materials of any kind shall be placed or permitted to accumulate upon any portion of The Properties.

Section 26. Pumping. The Owner of any Lot which includes or is adjacent to a pond, creek, bayhead or other body of water shall not reduce the depth or size of said body of water by pumping or draining therefrom.

Section 27. Ramps. No skateboard or bicycle ramp or similar structure shall be installed or maintained on any portion of any Lot located forward of the rear wall of the Dwelling.

Section 28. Declarant Proviso. Any of the restrictive covenants herein contained or any other provision of this Declaration to the contrary notwithstanding, until Declarant has completed all of the contemplated improvements and closed the sales of all of the Lots, neither the Owners nor the Association shall interfere with the completion of the contemplated improvements and the sale of the Lots. Declarant may make such lawful use of the unsold Lots, Common Properties and Areas of Common Responsibility, without charge, as may facilitate such completion and sale,

including, but not limited to, maintenance of sales and construction trailers and offices, the showing of the Lots and the display of signs and the use of Lots as parking lots.

ARTICLE XII<sup>7</sup>  
ADDITIONAL COVENANTS AND RESTRICTIONS

No Owner may, without the prior written approval of Declarant for so long as Declarant owns any lands which are eligible to be annexed to the scheme of this Declaration, and thereafter without the prior written approval of the Board, impose any additional covenants or restrictions on any part of The Properties.

ARTICLE XIII  
AMENDMENT

Except as otherwise expressly provided herein, any provision, covenant, or restriction set forth in this Declaration may be amended in accordance with this provision. The holders of at least three-quarters (3/4) of the votes in each class in the Association, may change or amend any provision hereof (1) by executing a written instrument in recordable form setting forth such amendment, or (2) by causing a certified copy of a duly adopted resolution of the Owners to be prepared, and having the same duly recorded in the Public Records of Polk County. A proposed amendment may be initiated by Declarant, the Association, or by petition signed by ten percent (10%) of the Owners. If a proposed amendment is to be adopted by vote, a written copy of the proposed amendment shall be furnished to each Owner at least thirty (30) days but not more than ninety (90) days prior to the meeting to discuss the proposed amendment. If adopted by vote, the affirmative vote required for adoption shall be three-quarters (3/4) of the votes of the Members of each class in person or by proxy at a meeting duly called, and the recorded certificate shall contain a recitation that notice was given as above set forth and said recitation shall be conclusive as to all parties, and all parties of any nature whatsoever shall have full right to rely upon said recitation in such recorded certificate. The amendment shall be effective upon recordation of the executed amendment or the certified copy of the duly adopted resolution among the Public Records of Polk County.

Notwithstanding anything herein contained to the contrary, no amendment of this Declaration which in any way limits, diminishes or otherwise adversely affects any institutional mortgagee's position, right or equity as mortgagee of a Residential Unit shall be effective against that mortgagee without the joinder of the institutional mortgagee. For purposes of this statement, an institutional mortgagee shall be defined as a bank (including, without limitation, a mutual savings bank), life insurance company, savings and loan association, real estate investment trust, pension fund, trust, government agency, mortgage company, FNMA, or other lender active in the area, including the successors and assigns of any such entity.

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<sup>7</sup> Attorney Note 6: Article XI was deleted by First Amendment recorded on May 29, 1990 but the subsequent numerical designations were not changed.

So long as the Declarant shall own any Lot or any lands which are eligible for annexation, no Declarant-related amendment shall be made to this Declaration, any Supplemental Declaration, the Certificate of Incorporation, or the Bylaws unless such amendment is first approved in writing by Declarant. Any amendment shall be deemed to be Declarant-related if it does any of the following:

(i) directly or indirectly by its provisions or in practical application relates to Declarant in a manner different from the manner in which it relates to other Owners,

(ii) modifies the definitions provided for by Article I of this Declaration in a manner which adversely alters Declarant's rights or status,

(iii) modifies or repeals any provision of Article II of this Declaration,

(iv) alters the character and rights of membership as provided for by Article III of this Declaration or affects or modifies in any manner whatsoever the rights of Declarant as a Member of the Association,

(v) alters any previously recorded or written agreement with any public or quasi-public agencies, utility company, political subdivisions, public authorities or other similar agencies or bodies, respecting zoning, streets, roads, drives, easements or facilities,

(vi) denies the right of Declarant to convey Common Properties to the Association,

(vii) modifies the basis or manner of assessment as applicable to Declarant or any lands owned by Declarant, or

(viii) alters or repeals any of Declarant's rights or any provision applicable to Declarant's rights as provided for by any provision of this Declaration or any Supplemental Declaration.

Also notwithstanding anything herein contained to the contrary, as long as there exists a Class "B" membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation by the Association of Additional Property, any merger or consolidation involving the Association, the placing of any mortgage lien on the Common Properties, dedication to the public of any Common Properties or any amendment of this Declaration.

#### ARTICLE XVI DURATION AND TERMINATION

This Declaration and each Supplemental Declaration incorporating Additional Properties shall run with and bind the land, and shall inure to the benefit of and be enforceable by Declarant, the Association and any Owner of any Residential Unit, and their respective legal representatives,

heirs, successors and assigns, for a term of thirty (30) years from the date this Declaration is recorded in the public records, after which time this Declaration and each Supplemental Declaration shall be automatically extended for successive periods of ten (10) years unless within six (6) months prior to the commencement of any 10-year extension period an instrument signed by the Owners of eighty percent (80%) of the Residential Units and agreeing to terminate this Declaration is recorded in the Public Records of Polk County. This Declaration may be terminated at any time by recordation of an instrument signed by the then Owners of eighty percent (80%) of the Residential Units agreeing to terminate this Declaration.

ARTICLE XVII  
SPECIAL PROVISION BENEFITTING MORTGAGEES

Section 1. The Association shall allow all Unit Owners, their lenders, insurers and guarantors of first mortgages to inspect, during normal business hours, all of the records of the Association.

Section 2. Upon written request, the Association shall furnish its most recent annual statement to any holder of a first mortgage of a Lot in the Development.

Section 3. The Association may cancel, without penalty or cause, any contract or lease made by it before Owners other than the Developer assume control of the Association, upon ninety (90) days' written notice to the other party.

Section 4. Upon written request, the Association shall furnish the following notices to the holder, insurer or guarantor of any mortgage on any Lot in the Development:

(a) Notice of any condemnation or casualty loss that affects a material portion of the Development or the applicable Lot.

(b) Notice of any delinquency in the payment of assessments more than sixty (60) days past due as to the applicable Lot.

(c) Notice of any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Notice of any proposed action which would require the consent of a percentage of mortgage holders.

ARTICLE XVIII  
ENFORCEMENT

Section 1. Remedies. If any person or entity shall violate or attempt to violate any of these covenants or restrictions, it shall be lawful for Declarant, any Owner or the Association (a) to prosecute proceedings for the recovery of damages against those so violating or attempting to

violate any such covenant or restriction, (b) to maintain a proceeding in any court of competent jurisdiction against those so violating or attempting to violate any such covenant or restriction, for the purpose of preventing or enjoining all or any such violations or attempted violations, or (c) to maintain a proceeding for any other equitable or legal recourse or remedy available at law or in equity. In addition, whenever there shall have been built, or there shall exist on any Lot, any structure, building, thing or condition which is in Violation of this Declaration, Declarant or the Association shall have the right, but not the obligation, to enter upon the property where such violation exists and summarily to abate and remove the same, all at the expense of the Owner of such property, which expense shall be payable by such Owner on demand, and such entry and abatement or removal shall not be deemed a trespass or make Declarant or Association liable in any way to anyone for any damages on account thereof. The remedies contained in this provision shall be construed as cumulative of all other remedies now or hereafter provided by law or elsewhere in this Declaration. The failure of Declarant, the Association, or an Owner to enforce any covenant or restriction or any obligation, right, power, privilege, authority or reservation herein contained, however long continued, shall in no event be deemed a waiver of the right to enforce the same thereafter as to the same breach or violation, or as to any other breach or violation thereof occurring prior or subsequent thereto.

Section 2. Severability. The invalidation of any provision or provisions of the covenants and restrictions set forth herein by judgment or court order shall not affect or modify any of the other provisions of said covenants and restrictions, which other provisions shall remain in full force and effect.

Section 3. Notices. Any notice required to be sent to any Owner shall be deemed to have been properly sent when hand delivered or when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing. Notices may be sent by like method to Declarant at the address set forth in the preamble to this Declaration, and to the office of the Association as registered from time to time with the Office of the Secretary of the State of the State of Florida.

Section 4. Lessees, etc. to Comply. All tenants, guests and occupants of each Residential Unit shall be subject to the terms and conditions of this Declaration, the Bylaws, the Certificate of Incorporation, and the rules and regulations promulgated by the Board to the same extent as each Owner. In the event that a tenant, guest or occupant violates a provision of this Declaration, the Bylaws, the Certificate of Incorporation or the rules and regulations, the Board shall have the power to bring an action or suit against the said tenant, guest or occupant to recover sums due for damages or injunctive relief, or for any other remedy available at law or equity.

Section 5. Attorneys' Fees and Costs. In any proceeding arising because of alleged failure of an Owner to comply with the terms of this Declaration, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be awarded by the court.

FIRST SUPPLEMENTAL DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR LOMA LINDA PHASE II<sup>8</sup>

THIS FIRST SUPPLEMENTAL DECLARATION is made and entered into by CRP, INC., a Florida corporation, (the "Declarant").

RECITALS

A. The Declarant executed and recorded that certain Declaration of Covenants, Conditions and Restrictions for Loma Linda dated March 5, 1990 and recorded in Official Records Book 2837, Page 1207, as well as that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Loma Linda dated April 19, 1990, and recorded in Official Records Book 2859, Page 565, of the Public Records of Polk County, Florida (hereafter collectively referred to as the "Declaration").

B. The Declaration provides that the Declarant may annex additional properties into the scheme of the Declaration.

C. The Declarant desires to extend the Declaration to include certain Additional Property.

DECLARATIONS

NOW, THEREFORE, the Declarant hereby supplements the Declaration as follows:

1. Recitals; Definitions. The recitals stated above are incorporated herein by this reference. Capitalized terms used in this instrument shall have the same meanings as set forth in the Declaration, as supplemented by this instrument.

2. Additional Property. Effective as of the 12th day of November, 1990 (the "Effective Date"), the Declaration is hereby supplemented to extend the scheme of the Declaration to that certain real property described on Exhibit "A" attached hereto and incorporated herein by this reference, together with any improvements thereon. (collectively, the "Additional Property"). Commencing as of the Effective Date, the Additional Property shall be held transferred, sold, conveyed, improved, and occupied subject to the covenants, conditions, restrictions, easements and liens set forth in the Declaration and in this instrument. This annexation is made pursuant to Article II of the Declaration and also extends the jurisdiction of the Association to the Additional Property.

3. Assessments. The initial annual assessment described in Section S of Article VI of the Declaration shall be One hundred, twenty and 00/100Dollars (\$120.00) per Residential Unit.

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<sup>8</sup> Attorney Note 7: This supplement was signed and recorded in November of 1990.

4. Areas of Common Responsibility. In order to reflect the designation of additional Areas of Common Responsibility incidental to the annexation of the Additional Property, the Areas of Common Responsibility which were designated in the third sentence of Subsection 1(b)(i) of Article I or the Declaration are hereby supplemented and restated to read as follows:

(i) maintenance, repair and irrigation of the unpaved portions of the south one-half or the right of way of Loughman Road (a/k/a Dean Still Road and CR 54) along the frontage of the Properties at Loughman Road, including without limitation the drainage improvements, signs, lighting fixtures, electrical equipment, irrigation lines and equipment, and landscape materials and features from time to time located therein, (ii) maintenance, repair and irrigation of those portions of Lots 70 through 74, inclusive, of the Phase One Property and of those portions of Lots 1 through 6, inclusive, of the Additional Property, which lie between the south right of way line of Loughman Road and the north face of the walls from time to time located within the wall easements created within those Lots either by the plat of the Phase One Property or by this instrument, including without limitation the drainage improvements, signs, lighting fixtures, electrical equipment, irrigation lines and equipment, and landscape materials and features from time to time located therein, (iii) maintenance, repair and irrigation of the unpaved portions of the right of way of Tortuga Drive comprising the main entrance to the Properties from Loughman Road, including without limitation the drainage improvements, signs, lighting fixtures, electrical equipment, irrigation lines and equipment, and landscape materials and features from time to time located therein, (iv) maintenance and repair of the structural elements of the walls from time to time located in the Properties along the right of way of Loughman Road, as well as the exterior finishes along the tops of the walls and on the faces of the walls to the extent visible from Loughman Road, (v) all street lighting from time to time located in the Properties and in the Areas of Common Responsibility (including but not limited to fixture rental and electrical useage) until such time as a municipal service taxing unit or equivalent mechanism is created to assume responsibility to collect for and pay the cost of street lighting, (vi) maintenance and repair (excluding routine mowing and removal of trash and debris which shall be the responsibility of the adjoining Lot Owner) of drainage swales and other drainage improvements located within the unpaved portions of the dedicated streets in the Properties, and (vii) maintenance and repair of all drainage retention areas depicted on any plat of the Properties, including without limitation periodic mowing and trash removal within such retention areas.

5. Surface Water Management. The intent of the last sentence of Article IX and of Section 2 of Article X of the Declaration is that the maintenance obligations of the individual Owners relative to the surface after management system and the drainage easements and improvements comprising that system are limited to regular mowing of, and removal of trash and debris from, those portions of the said system that lie either within their Lots (but outside the drainage retention areas shown on the plats of the Properties) or within the unpaved portions of the dedicated streets adjacent to their Lots. Responsibility for maintenance of the balance of the said system is to be borne by the Association, at Common Expense.

There is no “body of water or canal” in the Properties to which the last sentence of Section 2 of Article X could apply.

The cross reference to "Section 2" contained in the third line of Section 1 of Article IX of the Declaration was intended to read "Section 4".

The drainage easements and drainage retention easements depicted on the various plats of the Properties comprise portions of the master surface water management system for the Properties approved and permitted by Southwest Florida Water Management District (the "District"). It is the responsibility of the Association, at Common Expense, to operate, maintain and repair the overall system as set forth in the Declaration and this instrument and to enforce, or to take such appropriate action as may be necessary to cure violations of, the maintenance obligations of the Owners under Article IX and of the non-interference covenants of the Owners under Section 12 of Article X of the Declaration, and, when appropriate, to levy Special Assessments or Individual Assessments therefor. The Declarant, each Owner and the District or its successor shall have the right to enforce the obligations of the Association described in this Paragraph 5.

6. District Approval of Certain Amendments. Neither the Declaration nor this instrument may be amended without the prior written consent of the District if such amendment would change any of the provisions of the Declaration or of this instrument governing the operation, maintenance or repair of the surface water management system for the Properties.

7. Wall Easement. There is hereby created in favor of the Association a perpetual easement for maintenance, repair and replacement of a wall. The easement area is confined to those portions of Lots 1 through 6, inclusive, of the Additional Property which are affected by the drainage easement or retention area inside the north boundaries of said Lots, or by the ten feet (10') utility easement inside the west boundary of Lot 1, as shown on the plat of the Additional Property. The wall easement is five feet (5') in width and measures two and one-half feet (21/2') on either side of, and measured at right angles to, the centerline of the wall as constructed by the Declarant.

SECOND SUPPLEMENTAL DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR LOMA LINDA PHASE III<sup>9</sup>

THIS SECOND SUPPLEMENTAL DECLARATION is made and entered into by CRP, INC., a Florida corporation, (the "Declarant").

RECITALS

A. The Declarant executed and recorded that certain Declaration of Covenants, Conditions and Restrictions for Loma Linda dated March 5, 1990 and recorded in Official Records Book 2837, Page 1207, as well as that certain First Amendment to Declaration of Covenants, Conditions and Restrictions for Loma Linda dated April 19, 1990, and recorded in Official Records Book 2859, Page 565, and that certain First Supplemental Declaration of Covenants, Conditions and Restrictions for Loma Linda Phase II recorded November 19, 1990 in Official Records Book 2915, Page 496, of the Public Records of Polk County, Florida (hereafter collectively referred to as the "Declaration").

B. The Declaration provides that the Declarant may annex additional properties into the scheme of the Declaration.

C. The Declarant desires to extend the Declaration to include certain Additional Property.

DECLARATIONS

NOW, THEREFORE, the Declarant hereby supplements the Declaration as follows:

1. Recitals; Definitions. The recitals stated above are incorporated herein by this reference. Capitalized terms used in this Second Supplemental Declaration shall have the same meanings as set forth in the Declaration, as supplemented by this Second Supplemental Declaration.

2. Additional Property. Effective as of the 18<sup>th</sup> day of April, 1991 (the "Effective Date"), the Declaration is hereby supplemented to extend the scheme of the Declaration to that certain real property described on Exhibit "A" attached hereto and incorporated herein by this reference, together with any improvements thereon, (collectively, the "Additional Property"). Commencing as of the Effective Date, the Additional Property shall be held, transferred, sold, conveyed, improved and occupied subject to the covenants, conditions, restrictions, easements and liens set forth in the Declaration and in this Second Supplemental Declaration. This annexation is made pursuant to Article II of the Declaration and also extends the jurisdiction of the Association to the Additional Property.

3. Assessments. The initial annual assessment described in Section 5 of Article VI of the Declaration shall be ONE HUNDRED TWENTY Dollars (\$120.00) per Residential Unit.

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<sup>9</sup> Attorney Note 8: This supplement was signed and recorded in April of 1991.

4. Common Property. Tract A shown on the plat of the Additional Property is hereby designated as Common Property within the meaning of Subsection 1(h) of Article I of the Declaration. Tract A shall be used solely for wetland preservation, and for drainage purposes as part of the master surface water management system for the Properties as permitted and approved by Southwest Florida Water Management District or its successor (the "District"). No alteration or improvement of Tract A shall be permitted unless and until such alteration has first been approved in writing by the District or its successor.

5. Areas of Common Responsibility. In order to reflect the designation of additional Areas of Common Responsibility incidental to the annexation of the Additional Property, the Areas of Common Responsibility which were designated in the third sentence of Subsection 1(b)(i) of Article I of the Declaration are hereby supplemented and restated to read as follows:

(i) maintenance, repair and irrigation of the unpaved portions of the south one-half of the right of way of Loughman Road ( a/k/a Dean Still Road and CR 54) along the frontage of the Properties at Loughman Road, including without limitation the drainage improvements, signs, lighting fixtures, electrical equipment, irrigation lines and equipment, and landscape materials and features from time to time located therein, (ii) maintenance, repair and irrigation of those portions of Lots 70 through 74, inclusive, of the Phase One Property and of those portions of Lots 1 through 6, inclusive, of the Additional Property, which lie between the south right of way line of Loughman Road and the north face of the walls from time to time located within the wall easements created within those Lots either by the plat of the Phase One Property or by this instrument, including without limitation the drainage improvements, signs, lighting fixtures, electrical equipment, irrigation lines and equipment, and landscape materials and features from time to time located therein, (iii) maintenance, repair and irrigation of the unpaved portions of the right of way of Tortuga Drive comprising the main entrance to the Properties from Loughman Road, including without limitation the drainage improvements, signs, lighting fixtures, electrical equipment, irrigation lines and equipment, and landscape materials and features from time to time located therein, (iv) maintenance and repair of the structural elements of the walls from time to time located in the Properties along the right of way of Loughman Road, as well as the exterior finishes along the tops of the walls and on the faces of the walls to the extent visible from Loughman Road, (v) all street lighting from time to time located in the Properties and in the Areas of Common Responsibility (including but not limited to fixture rental and electrical useage) until such time as a municipal service taxing unit or equivalent mechanism is created to assume responsibility to collect for and pay the cost of street lighting, (vi) maintenance and repair (excluding routine mowing and removal of trash and debris which shall be the responsibility of the adjoining Lot Owner) of drainage swales and other drainage improvements located within the unpaved portions of the dedicated streets in the Properties, and (vii) maintenance and repair of all drainage retention areas depicted on any plat of the Properties, including without limitation periodic mowing and trash removal within such retention areas.

6. Surface Water Management. The intent of the last sentence of Article IX and of Section 2 of Article X of the Declaration is that the maintenance obligations of the individual Owners

relative to the surface water management system and the drainage easements and improvements comprising that system are limited to regular mowing of, and removal of trash and debris from, those portions of the said system that lie either within their Lots (but outside the drainage retention areas shown on the plats of the Properties) or within the unpaved portions of the dedicated streets adjacent to their Lots. Responsibility for maintenance of the balance of the said system is to be borne by the Association, at Common Expense.

No Owner shall remove native vegetation (including cattails) that become established within any wet detention ponds abutting that Owner's Lot. For the purposes hereof, removal includes dredging, application of herbicide, and cutting. Owners should address questions regarding authorized activities within any wet detention pond to the District at its Bartow, Florida Permitting Department.

There is no "body of water or canal" in the Properties to which the last sentence of Section 2 of Article X could apply.

The cross reference to "Section 2" contained in the third line of Section 1 of Article IX of the Declaration was intended to read "Section 4".

No Owner may construct or maintain any building, Dwelling, or structure, or undertake or perform any activity, in any wetlands, any buffer areas, or any upland conservation areas described in the approved permit issued by the District or in any recorded plat of the Properties, unless prior approval is received from the District pursuant to Chapter 40D-4, F.A.C.

Tract A and the drainage easements and drainage retention easements depicted on the various plats of the Properties comprise the master surface water management system for the Properties approved and permitted by the District. It is the responsibility of the Association, at Common Expense, to operate, maintain and repair the overall system to the extent set forth in the Declaration and to enforce, or to take such appropriate action as may be necessary to cure violations of, the maintenance obligations of the Owners under Article IX and of the noninterference covenants of the Owners under Section 12 of Article X of the Declaration, and, when appropriate, to levy Special Assessments or Individual Assessments therefor. The Declarant, each Owner and the District or its successor shall have the right to enforce the obligations of the Association described in this Paragraph 6.

It shall be the responsibility of each Owner at the time of construction of a Dwelling, building or structure, to comply with the construction plans for the surface water management system pursuant to Chapter Chapter 40D-4, F.A.C., approved and on file with the District.

7. District Approval of Certain Amendments. Neither the Declaration nor this Second Supplemental Declaration may be amended without the prior written consent of the District if such amendment would change any of the provisions of the Declaration or of this Second Supplemental Declaration governing the operation, maintenance or repair of the surface water management system for the Properties.

EXHIBIT "A"

"THE PHASE ONE PROPERTY"

All of LOMA LINDA PHASE I, according to the Plat thereof as recorded in Plat Book 89, Pages 13 and 14, of the Public Records of Polk County, Florida.

"ADDITIONAL PROPERTY"

All of LOMA LINDA PHASE II, according to the Plat thereof as recorded in Plat Book 91, Pages 2 and 3, of the Public Records of Polk County, Florida.

"ADDITIONAL PROPERTY"

All of LOMA LINDA PHASE III, according to the Plat thereof as recorded in Plat Book 91, Pages 41 and --, of the Public Records of Polk County, Florida.