

Frank Verrado 2nd Supplement 5 704 Final 052005.doc

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**SECOND SUPPLEMENTAL DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR VERRADO PARCEL 5.704**

**MAIN STREET PROMENADE**

**BY**

**FRANK RESIDENTIAL  
Division of Frank Development Group, Inc.  
1819 E. Morten Avenue, Suite 180  
Phoenix, AZ 85020**

**SECOND SUPPLEMENTAL DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR VERRADO PARCEL 5.704**

**MAIN STREET PROMENADE**

This Second Supplemental Declaration of Covenants, Conditions and Restrictions for Verrado Parcel 5.704 ("Second Supplemental Declaration") is made effective this 20th day of May, 2005, by SF III PROPERTIES MAIN STREET LIMITED PARTNERSHIP, an Arizona limited partnership ("Developer") and the Existing Owners defined below, and is consented to by DMB WHITE TANK, LLC, an Arizona limited liability company ("Founder").

A. Founder executed and recorded the Community Charter for Verrado on or about September 30, 2002 in the Official Records of the Maricopa County Recorder as document no. 2002-1008906, and thereafter caused it to be amended by the First Amendment thereto recorded in the official records of Maricopa County, Arizona, as Document No. 2004-0015591 (as amended, the "Charter"). Any capitalized terms used in this Supplement shall, unless separately defined herein, have the same meanings as are assigned to such terms in the Charter.

B. Founder executed and recorded the Covenant for Community for Verrado ("Covenant") on or about April 28, 2003 in the Official Records of the Maricopa County Recorder as document no. 2003-0531387, and has adopted certain other Governing Documents for Verrado.

C. Founder executed and recorded the Supplemental Declaration of Covenants, Conditions and Restrictions for Verrado Parcel 5.704 (the "Supplemental Declaration") on or about October 15, 2004, which was recorded on October 21, 2004 in the Official Records of the Maricopa County Recorder as document no. 2004-1230407.

D. The Charter contemplates that Supplements for parcels located within the portion of Verrado referenced in the Charter as the Village will be executed and recorded periodically as the development of the Village proceeds.

E. Developer and the Unit owners executing this Second Supplemental Declaration or an addendum to this Second Supplemental Declaration ("Existing Owners") are the owners of the Units in that portion of the Village described on Exhibit "A" attached hereto known as and referred to herein as "Main Street Promenade".

F. Main Street Promenade is subject to the Charter, the Covenant, the Supplemental Declaration, and the Governing Documents. Developer and Existing Owners wish to establish in this Second Supplemental Declaration and to record certain additional covenants, conditions and restrictions to be imposed upon Main Street Promenade. By its execution of this Second Supplemental Declaration, Founder wishes to evidence its consent to this Second Supplemental Declaration.

G. This Second Supplemental Declaration shall be effective as of the date first set forth above.

## DECLARATION OF COVENANT

The covenants, conditions and restrictions in this Second Supplemental Declaration are in addition to the Charter, Covenant, Supplemental Declaration and other Governing Documents and shall run with the title to property in Main Street Promenade, binding not only Developer and Existing Owners and their respective successors and assigns, but also the future Owners of any portion of Main Street Promenade, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of such property.

### 1. SPECIAL COVENANTS AND EASEMENTS FOR MAINTENANCE OF RESIDENCES

1.1 Disclosure Regarding Construction of Residences. The residences of Main Street Promenade have been designed as single family detached residences, and each residence has a separate foundation, roof, and walls. There are no accessible side lots between the walls of adjacent residences; they are "double zero-lot line" residences. There is a separation of approximately four inches (4") between the side walls of adjacent residences. Developer has joined the exterior walls and roofs of adjacent residences with flashing, caulking, and other materials to create a unified appearance. While the flashing, caulking, and other materials used to join the exterior walls and roofs of adjacent residences shall be considered to be "party structures" governed by Section 6.4 of the Charter, the residence walls and roofs are not "party walls" or "party structures" and are not subject to Section 6.4 of the Charter. The Owner of each Unit is responsible for maintaining all of the structures within the boundaries of the Unit owned by Owner.

1.2 Fences between Rear Courtyards. The fences separating the rear courtyards of adjacent residences which are not structural walls of either residence are "party walls", and are subject to Section 6.4 of the Charter.

1.3 Maintenance and Repair of Residences. Subject to the provisions of the Supplemental Declaration, each Owner shall be responsible for maintenance, repair and replacement of the residence and other improvements on such Owner's Unit. Although the residences of Main Street Promenade have a unified appearance, the structures are not maintained by the Assembly, the Association nor any condominium association or homeowners association, but are to be maintained by the respective Owners of the residences in accordance with the Charter, Covenant, Supplemental Declaration and other Governing Documents and the Community-Wide Standard. Owners shall exercise the utmost care to avoid damaging or otherwise affecting the integrity of the adjacent residences, or the flashing, caulking, and other materials used to join the exterior walls of adjacent residences.

1.4 Easement for Maintenance and Repair. Because of the close proximity of the Units in Main Street Promenade, it may occasionally be necessary for an Owner to have access to portions of another Owner's Unit in order to repair or maintain his or her residence. Owners are advised that the easements granted in this Section will permit your neighbor(s) in any adjacent Unit to use the roof, walls, and other portions of your property as necessary to gain access to repair and maintain the neighbor's property. These easements will also permit you to use the roof, walls, and other portions of neighboring property to gain access to repair and maintain your property. This is necessary due to the close proximity of the residences, the differing elevations of the residences, and the obligation of each Owner to repair and maintain his or her own residence, as described in Sections 1.1, 1.2 and 1.3 above. Developer and each of the Existing Owners grant reciprocal appurtenant easements to each Unit for the purpose of permitting access to the exterior portions of any land, building or improvement located in any adjacent Unit as may be necessary to permit the Owner of the benefited Unit to maintain and repair the residence or other improvement on the benefited Unit. Except in cases of emergency, an Owner shall give at least 24 hours advance notice to a neighbor whose Unit may need to be accessed. All use of a neighbor's Unit pursuant to this Section 1.4 shall be strictly limited to performing maintenance and repairs, and all work associated with the exercise of the easements described herein shall be performed so as to minimize interference with the use and enjoyment of the Unit burdened by the easement and at the expense of the accessing neighbor. Upon completion of the work, the Owner exercising the easement shall promptly restore the property, to the extent reasonably possible, to the condition existing prior to commencement of the work.

1.5 Easement for Storm Water. Owners are advised by Developer that the easements granted in this Section may permit the flow of storm or flood water from the roof or property of a neighbor onto your roof or property, to be drained through and from your property. These easements will also permit storm or flood water from your roof or property to flow onto and drain from the neighboring properties. This is necessary due to the close proximity of the residences, the joined roofs of the residences, and the differing elevations of the residences. Developer and each of the Existing Owners grant reciprocal appurtenant easements to each Unit for the purpose of permitting the flow and drainage of storm or flood water across the roofs and parapets of residences and over and through the land within the Units. No Owner shall obstruct, divert, alter, regrade, or interfere with any portion of a Unit as it relates to the proper drainage of storm or flood water. It shall be the responsibility of each Owner desiring to install any improvement (such as a landscaping feature) or to alter the grade or level of such Owner's Unit, in addition to complying with all requirements of the Governing Documents relating to improvements, to determine at such Owner's sole expense whether the desired improvement or alteration will obstruct, divert, alter or interfere with any drainage, drainage easement, or other drainage feature, in which event the installation of such improvement or making of such alteration is hereby prohibited. Each Owner shall at his or her own expense maintain the surface drainageways and channels on such Owner's Unit in proper condition free from obstruction.

1.6 Disclosure Regarding Easement for Placement of Trash Receptacles. Developer hereby advises each Owner that trash and garbage removal will occur in the one-way alley behind the residences. Because the alley is one-way, all trash and garbage receptacles will

be required to be located on one side only of the alley. In order to permit this, Section 8 of the Supplemental Declaration imposed upon each Unit adjacent to an Alley Tract a non-exclusive perpetual easement for the placement and use of a trash receptacle. The effect of such easement is that if your Unit is located on the collection side of the alley, you must allow the Owner of the Units located on the opposite side of the alley to place permitted trash and garbage receptacles at a designated location bordering the alley on your property. The time periods when receptacles may be placed for collection and the deadlines for removal of the receptacles will be governed by rules adopted by the Association. All use associated with the exercise of the easement described herein shall be performed so as to minimize interference with the use and enjoyment of the Unit burdened by the easement. In the event any trash or garbage from the receptacle of a benefited Unit is dumped or spilled on the property of a burdened Unit, the Owner of the benefited Unit shall promptly clean up and remove such debris.

1.7 Adjacent Lot Easement. In the event any wall, or fence of a Unit, or any driveway, sidewalk or walkway providing access to a Unit, as initially constructed by Developer, encroaches upon any adjacent Unit, Developer and Existing Owners hereby grant an easement for the encroachment, and the Owner of the encroaching Unit shall also have an easement over the adjacent Unit for the purpose of repairing, maintaining and replacing the portion of the wall, fence, driveway, sidewalk or walkway which encroaches upon the adjacent Unit. That encroaching portion of a Unit shall be for the exclusive use of the Owner of the encroaching Unit and the guests and the invitees of such Owner, and shall be maintained by the Owner of the encroaching Unit.

1.8 Indemnity. Upon acquiring title to a Unit, each Owner (the "Indemnifying Owner") shall be bound to indemnify, defend, and hold harmless all Owners and occupants of any other Unit from and against all damages which may occur or claims which may arise as a result of the Indemnifying Owner's activities or negligence, including but not limited to claims or damages resulting from the Indemnifying Owner's use of any easement granted in this Second Supplemental Declaration.

## 2. PROHIBITIONS OF CERTAIN ACTIONS AFFECTING ADJACENT UNITS

2.1 Actions Affecting Walls of Adjacent Units. Because of the close proximity of the side walls of residences on adjacent Units, as described in Section 1.1, and because the side wall of a neighbor's residence may be part of an outside courtyard wall or fence of an Owner's Unit, Owners are prohibited from taking any actions which could affect the side wall of an adjacent residence. No Owner shall take any action inside or outside of such Owner's residence, or permit the accumulation on or flow of water from such Owner's Unit, which could damage or otherwise adversely affect the side wall or foundation of a residence, structure, or improvement located on an adjacent Unit.

2.2 Actions Affecting Common Fences. No Owner shall take any action on such Owner's side of any common fence, or permit the accumulation on or flow of water from such

Owner's Unit, which could damage or otherwise adversely affect the property of any adjacent Unit.

### 3. MISCELLANEOUS

3.1 Effectiveness. This Second Supplemental Declaration and the covenants, conditions and restrictions contained herein shall be effective commencing upon the date first set forth above, and shall remain in full force and effect for so long as the Charter remains in effect.

3.2 Amendment. This Second Supplemental Declaration may be amended as follows:

(a) Until conveyance of the first Unit to a person other than Developer or an affiliate of Developer, Developer may amend this Second Supplemental Declaration unilaterally;

(b) Thereafter, Developer may unilaterally amend this Second Supplemental Declaration if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance policies on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to make, purchase, insure, or guarantee mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any amendment under this paragraph shall not adversely affect the title to any Unit unless the Owner shall consent in writing;

(c) Except as otherwise specifically provided in (a) and (b) above, this Second Supplemental Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Owners representing 75% of the total Units held by Owners other than the Developer;

(d) Notwithstanding anything to the contrary in subsections (a), (b) or (c) above, during the Development and Sale Period any amendment to this Second Supplemental Declaration shall also require the Founder's written consent.

3.3 Severability. Any determination by any court of competent jurisdiction that any provision of this Second Supplemental Declaration is invalid or unenforceable shall not affect the validity or enforceability of any of the other provisions hereof.

*[Signatures appear on the following page.]*

IN WITNESS WHEREOF, Developer, Existing Owners, and Founder have executed the foregoing instrument as of May 20, 2005. Execution by Existing Owners has been effected by execution of one or more Addenda hereto which are either attached hereto and recorded herewith, or are separately executed and recorded.

DEVELOPER:

SF III PROPERTIES MAIN STREET  
LIMITED PARTNERSHIP

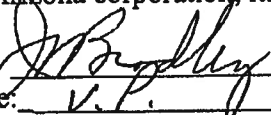
By:   
General Partner

FOUNDER:

DMB WHITE TANK, LLC, an Arizona limited liability company

By: DMB REALCO LLC, an Arizona limited liability company, its Manager

By: DMB Associates, Inc., an Arizona corporation, its Manager

By:   
Title: V.P.

STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 1 day of June, 2005, by Robert M. FRANK, the General Partner of SF III PROPERTIES MAIN STREET LIMITED PARTNERSHIP, an Arizona limited partnership, on behalf of the partnership.

My Commission Expires:

January 31, 2008

[Signature]  
NOTARY PUBLIC



STATE OF ARIZONA )  
 ) ss.  
County of Maricopa )

The foregoing instrument was acknowledged before me this 20<sup>th</sup> day of May, 2005, by John Bradley, the Vice President of DMB Associates, Inc., an Arizona corporation, in its capacity as Manager of DMB REALCO LLC, an Arizona limited liability company, in its capacity as Manager of DMB WHITE TANK, LLC, an Arizona limited liability company, for and on behalf thereof.

My Commission Expires:



[Signature]  
NOTARY PUBLIC



**EXHIBIT "A"**

**Legal Description of Land**

The Final Plat for Verrado Parcels 5.704, recorded in the Official Records of the Maricopa County Recorder on or about January 12, 2004 as document no. 2004-0029131.

**Vince Merenda**

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**From:** Neil Biskind [neil@biskindlaw.com]  
**Sent:** Sunday, March 13, 2005 10:22 AM  
**To:** Ray Leppien; Vince Merenda  
**Cc:** Mary Alexander  
**Subject:** FW: Frank Development - Verrado

fyi

4.624

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**From:** Susan Mann [mailto:susan@mannlegal.com]  
**Sent:** Friday, March 11, 2005 2:17 PM  
**To:** Neil Biskind  
**Cc:** Bob Frank - Frank Development  
**Subject:** Frank Development - Verrado

Neil, you may recall that in Late December, you sent me the Supplemental Declarations of CC&Rs for the two Frank Development parcels at Verrado. I have reviewed and discussed them with Bob Frank, and based on that I've made some additional revisions in our Second Supplemental Declaration, which is attached for your review. Following is a brief description of the revisions:

1. I will now prepare two documents, one for each parcel, to conform to what was done in October. I'm attaching the version for Parcel 5.704, but the other one will be identical except for the parcel number and recording information. Bob Frank had indicated that there might be a third parcel which may be included in Main Street Promenade, so we will also have to do a supplement for that parcel when the time comes.
2. I removed the section describing the service area designation, since that was taken care of in Section 12 of the Supplemental Declaration.
3. In section 1.6 regarding the easement for trash receptacles, the easement has already been created in the supplemental Declaration, so I removed the language granting the easement. Instead, I used this provision as a disclosure, cross-referencing the provision in the Supplemental Declaration. I also left the provisions at the end of 1.6, which are not now contained in the easement language.
4. I removed the references to the original owner, Fidelity National Trust B176, since that entity no longer has an interest in the property.

The remaining provisions of the Second Supplemental Declaration do not duplicate provisions already contained in the Supplemental Declaration, so I think it is appropriate to retain them.

Please let me know if you think any other revisions would be necessary in order to get the approval of DMB and the Verrado Community Association. If this looks OK, I'll prepare the document for the other parcel, and we can arrange for execution and recording.

**Susan M. Mann**  
(602) 788-2525  
(602) 992-5995 (fax)  
susan@mannlegal.com

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3/14/2005