

Prepared by and return to:

Jessica Paz Mahoney, Esq.  
DONNA J. FELDMAN, P.A.  
19321-C U.S. Highway 19 North  
Suite 600  
Clearwater, FL 33764

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**FIRST AMENDMENT TO DECLARATION  
OF RESTRICTIONS AND PROTECTIVE COVENANTS  
FOR SAN SIMEON PHASE 1**

THIS **FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS AND PROTECTIVE COVENANTS FOR SAN SIMEON PHASE 1** ("**Amendment**") is made on this 28 day of OCTOBER, 2009, by KC SAN SIMEON, LLC, a Florida limited liability company, whose address is 8875 Hidden River Parkway, Suite 150, Tampa, Florida 33637 (hereinafter referred to as "**Developer**"), and joined in by D. R. HORTON, INC., a Delaware corporation whose address is 1245 South Military Trail, Suite 100, Deerfield Beach, Florida 33442 (hereinafter "**Builder**").

WITNESSETH:

WHEREAS, Developer is the Developer under that certain Declaration of Restrictions and Protective Covenants for San Simeon Phase 1 recorded as Instrument Number 2006000393300 in the Public Records of Lee County (the "**Public Records**"), by virtue of that certain Assignment of Developer's Rights made by OREO CORP., an Ohio corporation, as successor-in-title, of all the Property to the extent owned by Levitt and Sons of Lee County, LLC, a Florida limited liability company, in favor of Developer, recorded as Instrument Number 2009000299266 of the Public Records (hereinafter collectively, the "**Declaration**"); and

WHEREAS, pursuant to Article XIII, Section 6, of the Declaration, for so long as the Developer has the right to appoint the entire Board of Directors of the Association, Developer has the right to unilaterally amend the Declaration without the joinder or consent of any other person or legal entity; and

WHEREAS, Developer desires to amend the Declaration relative to only the portion of the Property described on **Exhibit "A"** attached hereto owned by Developer or Builder (collectively referred to herein as, the "**Lots**" or "**Developer/Builder Lots**"), in accordance with the terms and conditions of this Amendment, without affecting the rights or obligations of the Owners of any other portion of the Property.

NOW, THEREFORE, Developer, with Builder's joinder and consent, hereby amends the Declaration in the following respects and declares that the Developer/Builder Lots shall be held, sold and conveyed subject to the terms and conditions of the Declaration, as amended hereby:

1. Exterior Surfaces. Article IV, Section 8 of the Declaration does not apply to the Developer/Builder Lots. Alternatively, the terms and conditions of Section 1 of this Amendment govern the exterior maintenance of the Developer/Builder Lots as follows:

No Owner shall authorize the painting, refurbishing, or modification of the exterior surfaces or roof of his Unit or of the Building without the consent of the Architectural Control Board (the "ACB"). The maintenance of the exterior surfaces, including but not limited to the maintenance, repair, and replacement of the roof of each Unit, shall be the responsibility of the Owner(s) thereof to complete in accordance with the standards set forth in this Declaration, within thirty (30) days after the need for such maintenance, repair and/or replacement arises. The Association shall have the right to require any repair or painting of the exterior of the Units, and/or roof replacements to be done uniformly at the same time for the entire Building. If the Association requires the roofing or exterior to be maintained, repaired or replaced uniformly, or as to any Unit, the cost thereof shall be shared by the affected Owner(s), who shall cooperate and coordinate among themselves to cause such maintenance, repair and/or replacement to be completed in a good and workman-like manner, by licensed and insured contractors, with materials and to specifications required and/or approved by the ACB, and paid for in full by such Owner(s), within ninety (90) days of any such requirement by the Association. If the applicable Owner(s) fail timely to cause any required maintenance, repair and/or replacement to be so completed and paid in full within the required 90-day period, then the Association shall have the right (without obligation), in addition to any other enforcement rights afforded the Association hereunder, to cause such maintenance, repair and/or replacement to be completed at the affected Owner(s)' shared cost and expense, without regard to liability as to the cause of any condition necessitating the maintenance, repair and/or replacement or any Owner(s)' share of the cost thereof, and to collect the cost of the maintenance, repair, and/or replacement from such affected Owner(s) as a Special Assessment against such Owner(s)' Lots as provided in the Declaration. Notwithstanding the foregoing, any maintenance, repair or replacement of exterior surfaces, including the roof, cause by acts or omissions of any Owner, his family, guests, tenants, or invitees, whether by negligence, willful, or otherwise, shall be the responsibility of said Owner to cause such maintenance, repair or replacement to be completed, in accordance with the requirements of this Declaration, within thirty (30) days after the need for such maintenance, repair or replacement arises. In the event the same is not performed by said Owner, the Association shall have the right (without obligation) to perform the same and collect the cost thereof from such Owner as a Special Assessment against such Owner's Lot as provided in the Declaration.. Notwithstanding the foregoing, at any time, the Developer reserves the right for itself (so long as Developer has the right to appoint the entire Board of Directors), and the Association, in its sole discretion, and upon at least sixty (60) days prior written notice to the

Owner(s), to assume the responsibility for the regular maintenance, replacement and repair obligations, described in this Section 8, and to assess the affected Owner(s) by inclusion of the cost thereof in the General Assessments and/or to levy a Special Assessment against the Owners of the affected Lots as described herein. Notwithstanding anything in this section to the contrary, the Owner(s) of the Developer/Builder Lots shall be responsible for timely satisfying the maintenance, repair and replacement obligations set forth herein regardless of Owner's recovery under any insurance policy carried by such Owner, and dispute and/or delay associated therewith.

2. Insurance and Hazard Losses. Notwithstanding anything in Article X of the Declaration to the contrary, the Association shall not be required to maintain, or use any effort to maintain, any insurance policies relative to the Developer/Builder Lots including, without limitation, policies covering any Owner's individual Unit or the exterior thereof, the roofs and/or the Buildings, or covering casualty, loss, liability, or any other risk related thereto, and/or any other form of insurance including, without limitation, flood insurance. The Owner(s) of the Developer/Builder Lots are required to procure and maintain, with respect to such Owner(s)' individual Lot and Unit, the insurance required by Article X, Section 1, subsections (a) through (e) and Article X, Section 2, subsections (a), (b), (c) and (d), of the Declaration. In addition to any other requirements in the Declaration relative to insurance coverage required to be maintained by the Owners, each Owner shall provide the Association with a copy of a binder, a policy, or other proof satisfactory to the Association, of the insurance coverage required by this Section.
3. Telecommunications Services. Notwithstanding anything in Article XIV, or elsewhere in the Declaration, to the contrary, each Owner of a Developer/Builder Lot shall procure, at its sole cost and expense, any and all cable, internet and Telecommunications Services benefiting their Lot and Unit including, without limitation, security monitoring services, and the installation of any lines and connection relative to all of the foregoing with respect to such Owner's Lot and Unit. The Developer, the Association and the Builder shall not have any obligation to provide any of the foregoing to the Developer/Builder Lots, or to enter into agreements with providers for the installation of improvements related to such services, or for the provision of such services.
4. Association Assessments. In consideration of the foregoing amendments as to the Developer/Builder Lots, and notwithstanding anything in Article VI, or elsewhere in the Declaration, to the contrary, the Board shall prepare and adopt a separate annual budget for the Developer/Builder Lots, which shall provide for the allocation of expenses among the Developer/Builder Lots as provided in the Declaration, as amended hereby. To the extent that any obligation under the Declaration is designated to the Owner(s) of the Developer/Builder Lots versus the Association by this Amendment, then the cost and expense thereof shall not be included in, and hereby is expressly excluded from, the general expenses of the Association with respect to the budget related to the Developer/Builder Lots.
5. Capitalized Terms; Effect of Amendment. Any capitalized terms used in this Amendment, which are not otherwise defined herein, shall have the meanings ascribed to

them in the Declaration. Except as expressly modified by this Amendment with respect to the Developer/Builder Lots, the Declaration, as previously amended, shall remain unmodified and unamended, and Developer hereby ratifies and reaffirms same. The Declaration is not amended hereby with respect to any Lots, Units or Owners other than the Lots, Units and Owners of Developer/Builder Lots.

IN WITNESS WHEREOF, Developer, with Builder's joinder and consent, has executed this Amendment the date first stated above.

David B. Langhout  
Printed Name: David B Langhout

**KC SAN SIMEON, LLC,**  
a Florida limited liability company

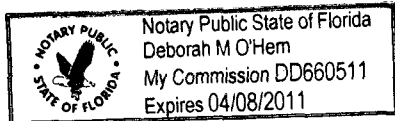
By: James P. Harvey  
James P. Harvey, Vice President

Deborah M. O'Hem  
Printed Name: DEBORAH M. O'HEM

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of OCTOBER, 2009, by James P. Harvey, the Vice President of KC San Simeon, LLC, a Florida limited liability company, on behalf of the company, who / is personally known to me or / has produced \_\_\_\_\_ as identification.

Deborah M. O'Hem  
Notary Public, State of Florida



\_\_\_\_\_  
Print Name

My Commission Expires: \_\_\_\_\_

(Notary Seal)

*[Builder's joinder and consent follows.]*

[Signature page- San Simeon Phase 1 - First Amendment]

JOINED IN AND CONSENTED  
TO BY BUILDER:

[Signature]  
Printed Name: Nicole Gatturna

[Signature]  
Printed Name: Gayla Scott

**D. R. HORTON, INC.,**  
a Delaware corporation

By: [Signature]  
Printed Name: Christian Gausman  
Its: Asst. Secretary

STATE OF Florida  
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of November, 2009, by Christian Gausman, the \_\_\_\_\_ of D. R. Horton, Inc., a Delaware corporation, on behalf of the corporation, who  is personally known to me or  has produced \_\_\_\_\_ as identification.

[Signature]  
Notary Public, State of Florida

Nicole Gatturna  
Print Name

My Commission Expires: 9/30/2012

(Notary Seal)

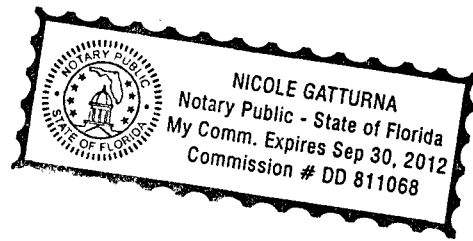


EXHIBIT "A"

Legal Description of Developer/Builder Lots

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

ALL OF SAN SIMEON PHASE I ACCORDING TO THE PLAT THEREOF, RECORDED UNDER INSTRUMENT NO. 2005000084958, LESS AND EXCEPT THE FOLLOWING:

LOTS 9 THROUGH 22, 63, 64, 65 AND 67 THROUGH 171 AND TRACTS A THROUGH K, OF SAN SIMEON PHASE 1, ACCORDING TO THE PLAT THEREOF RECORDED IN INSTRUMENT NO. 2005000084958, OF THE PUBLIC RECORDS OF LEE COUNTY, FLORIDA.