

When recorded, return to:  
First American Title Insurance Company  
Subdivision Trust Department  
P.O. Box 52023  
Phoenix, AZ 85072-2023

---

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**SIERRA MOUNTAIN RANCH**  
Apache County, Arizona

THIS DECLARATION is made by First American Title Insurance Company, Inc., a California corporation, as Trustee, under its Trust No. 8701 (the "Trust"), referred to as "Trustee", acting on behalf of Declarant with regard to the Property.

Declarant hereby declares that all of the Parcels, or any portion thereof, shall be held, sold and conveyed subject to the following covenants, conditions, and restrictions, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of all the Parcels, and all of which are hereby declared to be for the benefit of the Property and the Owners.

**1. PURPOSE OF THESE COVENANTS, CONDITIONS AND RESTRICTIONS**

The purpose of these covenants, conditions and restrictions is to assure the use of the Property for attractive residential and non-commercial ranch purposes (as set forth herein) only, and securing to each Owner the full benefit and enjoyment of each Owner's Parcel in furtherance of a common plan.

**2. DEFINITIONS**

As used herein, including in the foregoing recitals, the following terms have the following meanings:

A. "Association" means the Sierra Mountain Ranch Property Owners Association as referred to in Section 3 of this Declaration.

B. "Declarant" means the undersigned as the Second Beneficiary of the Trust, and Declarant's successors, assigns, designees and successors in title to the Property, including but not limited to Declarant Affiliate.

C. "Declarant Affiliate" means any person or entity directly or indirectly controlling, controlled by or under common control with Declarant, and shall include, without limitation, any general or limited partnership, limited liability company, limited liability partnership or corporation in which Declarant (or another Declarant Affiliate) is a general partner, managing member or controlling shareholder.

D. "Declarant First Lien Encumbrance" means any mortgage, deed of trust, or contract for deed that secures the repayment of any indebtedness owed to Declarant or any Declarant Affiliate in connection with the sale of any Parcel by Declarant or any Declarant Affiliate.

E. "Declaration" means this Declaration of Covenants, Conditions and Restrictions.

F. "First Beneficiary" shall mean and refer to the parties comprising the First Beneficiary under the aforesaid Trust 8701, and the respective heirs, executors, personal representatives, successors and assigns of such parties.

G. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee or equitable or beneficial title to any Parcel, including Trustee and Declarant, and the heirs, successors, grantees and assigns of the same. Owner shall include the purchaser of a Parcel under an executory contract for purchase. The foregoing definition does not include persons or entities who or which hold an interest in any Parcel as security for the performance of an obligation.

H. "Parcel" or "Parcels" means the Parcel and Parcels as shown on the Result of the Survey, either individually or collectively, as the case may be, and any divisions thereof as allowed by law, in which event each of such divisions shall be a separate and distinct Parcel.

I. "Property" means the real property described in the Result of Survey or any part thereof, specifically, Parcels 1 through 153, Sierra Mountain Ranch Unit I, according to the Result of Survey recorded in Book 2245 of Surveys, pages 3, records of Apache County, Arizona.

J. "Result of Survey" means the result of the survey of record, and subsequent results of survey included by the annexation of additional real property pursuant to Section 4 below, as may hereafter be amended, as prepared by Declarant and recorded in the office of the Apache County, Arizona Recorder.

### **3. PROPERTY OWNERS ASSOCIATION**

A. There is hereby created the Sierra Mountain Ranch Property Owners Association. The purpose of the Association is to maintain and improve the roadways, gates, signs, fences, cattle guards and culverts involving such roadways, water wells and any common areas, including the designated common areas as shown on the Result of Survey, and to maintain and improve roadways not part of the Record of Survey which provide access and connectivity to and between Association roadways, or otherwise so designated by Declarant as an Association function, all in accordance with the provisions of this Declaration. The Association may construct, maintain, operate and improve existing or future roadways within the recorded easements, including but not limited to the easements' surface and subsurface grading, placing of additional materials or surfacing, cutting, filling or removing existing soils and materials to adjust or change road grades, angles, turns, or drainage, moving, transporting or excavating soil

from within or below the surface to and from other locations within the recorded easements, along with the placement, removal, adjustment, maintenance, operation and improvements of gates, fences, signs, culverts or any other desired component involving such roadways and any common areas, so designated by Declarant as an Association function, all in accordance with the provisions of this Declaration. The foregoing described areas, functions and matters for which the Association shall be responsible shall be referred to in this Declaration as the "Areas of Common Responsibility."

B. Each and every Parcel Owner, in accepting a deed or contract for any Parcel, whether or not it shall be so expressed in such deed or contract, automatically becomes a member of the Association (a "Member"), and agrees to be bound by such rules and regulations as may, from time to time, be established by the Association. The membership of a Member shall be appurtenant and may not be separated from the ownership of the Parcel. The rights and obligations of an Owner and membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way, except upon transfer of ownership of such Parcel, whether by intestate succession, testamentary disposition, foreclosing of a mortgage, or such other legal processes as now in effect or as may be hereafter established pursuant to the laws of the State of Arizona. The Association shall be operated and conducted on a strictly cooperative and non-profit basis. Each Parcel Owner as a Member shall have such voting rights as set forth in this Declaration.

C. As used in this Declaration, "Vote" or "Votes" means, with respect to the votes of Members, a vote or votes cast by Members entitled to vote either in person or by absentee ballot. Votes shall be on the basis of one (1) Vote per Parcel; provided, however, Declarant shall have nine (9) Votes for each of the Parcels owned by Declarant. Any Parcel which is legally further divided, upon any such division, shall be entitled to one (1) Vote for each of the Parcels into which such Parcel is divided. The total number of Parcels; therefore, the total number of Votes, also may be increased from time to time by an annexation of additional real property pursuant to Section 4 below, as evidenced by a Declaration of Annexation incorporating this Declaration, executed and recorded by Declarant. Unless otherwise specifically provided in this Declaration, all Association matters shall be determined by a majority of the Votes. If more than one person is the Owner of a Parcel, all such persons shall be Members. The vote for such Parcel shall be exercised as such persons among themselves determine, but in no event shall more than one ballot be cast with respect to any such Parcel that has multiple Owners. The vote or votes for each such Parcel must be cast as a unit, and fractional votes shall not be allowed. In the event joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a Vote representing a certain Parcel, thereafter it shall be conclusively presumed for all purposes that such Owner was acting with the authority and consent of all other Owners of the same Parcel. In the event more than one Vote is cast for a particular Parcel, none of said Votes shall be counted and said Votes shall be deemed void.

D. In furtherance of its purposes, which are generally as set forth above, the Association shall provide necessary and appropriate action for the maintenance, repair,

replacement and management of the facilities referred to in Section 3(A) above and shall have the right to enter upon a Parcel, if reasonably necessary, in order to accomplish its purpose.

E. The Association shall have the power to borrow and encumber its assets and, in all respects, shall have the powers necessary to carry out its purposes, whether or not specifically set forth herein, including the power to enter into contracts with third parties to perform all or part of its functions and to hire its own employees to do so. The Association shall have the power to obtain appropriate insurance, to create reserves, and to issue rules and regulations.

F. Each Owner is obligated to pay: (i) regular assessments for normal maintenance and repair and reserves, along with Association insurance and operating costs; (ii) special assessments for capital improvements with such assessments to be established by the Association. The regular and any special assessments, late payment penalties and charges, if any, together with interest, (all as set by the Association) costs and reasonable attorney's fees, shall be a lien on the Parcel. Each Owner shall be personally responsible for his or her share of the assessments assessed by the Association. This personal obligation for assessments shall not pass to the Owner's successor in title, unless expressly assumed by such successor; however, the obligation to pay same shall be a continuing lien on the Parcel, excepting for the provisions of Paragraph 3.L below, relating to mortgages.

G. For each fiscal year of the Association commencing upon the conveyance of a Parcel by Declarant to a purchaser, the Association shall adopt a budget for the Association containing an estimate of the total amount of funds which the Association believes to be required during the ensuing fiscal year to pay the following common expenses (the "Common Expenses"): (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of any of the Areas of Common Responsibility; (ii) the cost of wages, materials, insurance premiums, services, supplies and maintenance or repair of any of the Areas of Common Responsibility including all improvements thereon and for the general operation and administration of the Association; and, (iii) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacement. For each fiscal year of the Association commencing upon the conveyance of a Parcel by Declarant to a purchaser, the total amount of the estimated Common Expenses shall be assessed by the Association.

H. Each Owner shall be responsible to pay the regular assessments commencing on the first day of the month following the date of recordation of the deed or purchase contract wherein the Owner acquired legal, beneficial, or equitable title to the Parcel. Notwithstanding anything in this Declaration to the contrary, neither Declarant nor any Declarant Affiliate shall be responsible for any regular or special assessments on any Parcel owned by Declarant or by a Declarant Affiliate, including any Parcel, the title to which Declarant or any Declarant Affiliate reacquired pursuant to a foreclosure, forfeiture or deed in lieu of foreclosure under a Declarant First Lien Encumbrance. Regular assessments shall be set by the Association on an annual calendar year basis. The initial regular assessment per Parcel shall be \$250 per year. In the event of a division of a Parcel the assessments due with respect to such Parcel and the Parcels into which such Parcel is divided shall be prorated and allocated as of the date of such division. An Owner acquiring such Owner's interest from Declarant or any Declarant Affiliate during the calendar year shall be obligated for a portion of the regular and special assessments assessed

with respect to the subject Parcel, prorated to the date of the acquisition of the title of such Parcel. The Association shall fix the amount of the regular assessments at least thirty (30) days prior to the end of the fiscal year of the Association. Written notice of the assessments shall be sent to every Owner. The payment due date shall be established by the Association.

I. In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Areas of Common Responsibility, including fixtures, improvements and personal property related thereto, or for any other lawful Association purpose, provided that any such special assessment shall have the assent of Members having at least two-thirds ( $2/3$ ) of the Votes entitled to be cast by Members who are voting in person or by absentee ballot at a meeting duly called for such purpose. Special assessments shall be levied at a uniform rate for all Parcels.

J. All sums assessed by the Association chargeable to a Parcel, but unpaid, shall constitute a lien on such Parcel and shall have priority over all other liens excepting ad valorem liens in favor of a governmental assessing unit or special assessment district, and the lien of any Declarant First Lien Encumbrance. The Association lien may be foreclosed by the Association in a like manner as a foreclosing of a real property deed of trust or mortgage. The Association shall have the power to bid on the delinquent Parcel at a foreclosure sale, and acquire, hold, lease, encumber and convey same. A suit to recover a money judgment for unpaid assessments and charges shall be maintainable by the Association without foreclosing or waiving the lien securing same.

K. Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of the Members is required under this Declaration shall be sent to all Members no less than thirty (30) days nor more than fifty (50) days in advance of the meeting. At the first such meeting called, the presence of Members entitled to cast sixty percent (60%) of all the Votes shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half ( $1/2$ ) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

L. The Association shall have the power to adopt Bylaws and to appoint its officers and directors, as well as promulgate reasonable regulations relating to the matters within its purpose.

M. Where title to a Parcel is obtained as a result of foreclosure, forfeiture or deed in lieu of foreclosure with respect to a Declarant's First Lien Encumbrance, such acquirer of title, its successors and assigns, shall not be liable for the regular or the special assessment chargeable to such Parcel which became due prior to the acquisition of title to such Parcel by such acquirer. Such acquirer, if not the Declarant or a Declarant Affiliate, shall be responsible, as any Owner, for regular and special assessments, or the portion thereof, due subsequent to the date of such acquisition.

N. In the event the Association determines that any Parcel Owner has not complied with the provisions of this Declaration, then the Association may, at its option, give written notice to the Owner of the conditions complained of. The Owner shall correct same or, if not readily correctable fifteen (15) days after notice from the Association, the Owner shall submit corrective plans proposing its remedy to the condition complained of within fifteen days after notice from the Association. The Association shall approve or disapprove any plans submitted by the Owner and set forth a reasonable time for correction of the condition complained of. In the event such condition is not corrected according to the approved plans, within the allotted time, the Association shall have the right to undertake to remedy such condition or violation complained of. The cost thereof shall be deemed to be an assessment to such Owner and enforceable by the Association as if any other unpaid assessment.

#### 4. EXPANSION AND ANNEXATION

Declarant, without any obligation, reserves the right to annex under this Declaration portions of the real property adjacent to the Property (the "Annexable Property). Upon the annexation of any portion of the Annexable Property under this Declaration, any reference in this Declaration to the Property also shall mean and refer such portion of the Annexable Property so annexed. Any portion of the Annexable Property so annexed shall be subdivided into parcels which shall constitute "Parcels" under this Declaration. In the case of the annexation of all or any part of the Annexable Property, Declarant shall execute, acknowledge and record a Declaration of Annexation or other instrument effecting and evidencing such annexation, and such annexation shall be deemed effective only upon such recordation.

#### 5. GENERAL RESTRICTIONS AND ADDITIONAL PROVISIONS APPLICABLE TO ALL PARCELS

A. Residential and Recreational Use Only. All Parcels shall be used for residential and recreational hobby ranching purposes only. All installations shall comply with all governmental standards and all appropriate building permits shall be obtained. No commercial business shall be conducted on a Parcel. This restriction shall not prohibit a home office where business is conducted through telephone, computer, or other electronic means and where the business is not apparent from the exterior of the residence; does not create noise or unreasonably increase the amount of traffic or parking; and preserves the residential nature of the subdivision.

B. No Medical Facilities. Hospitals, clinics, and other facilities for the treatment or care of the physically or mentally ill or disabled are prohibited. Facilities for the treatment or care of animals are also prohibited.

C. No Churches or Clubs. Churches or other institutions organized for religious worship or discussion are prohibited as are buildings used primarily as clubhouses or meeting facilities.

D. Sanitary Facilities. Toilets or other sanitary facilities shall be water-flush devices or other governmentally approved waste water disposal systems located within a residence.

Waste water shall be discharged into a county or other appropriate governmental agency approved septic disposal system located on the Parcel.

E. Setbacks. All structures, except fencing, which must be set back in accordance to the easements noted on the Result of Survey, shall be built at a minimum of fifty (50) feet from all Parcel side boundaries. If local governmental regulations provide for more restrictive setbacks, those regulations shall govern. In any event, any construction on a Parcel shall comply with all applicable county building regulations.

F. Vehicles. Any motor vehicle under repair or inoperable may not be parked on any roadway or other easement. When parked on a Parcel, such motor vehicles must be hidden by walls, fences, or screens so as to be not visible from roadways or from other Parcels.

G. Livestock. No swine shall be raised, bred or kept on any Parcel. A Parcel may be used for non-commercial ranching, including the use and keeping of a reasonable number of horses and cattle, provided the Parcel has been properly fenced to contain livestock. Under no circumstances shall a stockyard, dairy, riding stable, kennel, or any other commercial activity involving animals be permitted.

H. Nuisance Activities. Public events are prohibited. The unnecessary, prolonged, or indiscriminate creation of noise, including road racing and loud music, dust, fumes or odors is prohibited. In order to ensure the safety of all Owners, to limit noise and to preserve the presence of resident herds of elk, deer and antelope, outdoor recreational shooting and outdoor shooting ranges are prohibited.

I. Rubbish and Storage. No Parcel shall be used or maintained as a dumping ground for rubbish or as an open storage area.

J. Easements. No structure, including fencing, shall be constructed on a recorded easement as shown on the Result of Survey or otherwise, unless the subject easement is one common to two or more Parcels owned by the same Owner(s). In that event, fencing may be constructed on the common easement with the written approval of Declarant or Declarant's successors or designees, and provided further gates are installed at both ends of the subject easement. Approval shall be conditioned upon the Owner's agreement to provide access to the subject easement whenever requested. Declarant excepts and reserves to itself: permanent easements, the width of which are illustrated on the Result of Survey measured inward from each perimeter boundary of each Parcel for ingress and egress, including creating right of ways for conventional vehicles and public utilities; permanent easements for wildlife corridors; and, permanent easements over all existing roads and trails for ingress and egress, including creating right of ways for conventional vehicles and public utilities. Declarant reserves to itself and its lessees, a permanent easement for grazing horses and other livestock on all of the Property, provided that said easement shall not be in effect over any particular part of the Property during any period of time when that particular part is, at the sole expense of any Owner, fenced to keep out livestock. All grazing fees realized by Declarant shall be retained by Declarant and no Owners shall have any right thereto.

K. Fencing. If any Owner wishes to fence off any portion of such Owner's Parcel to restrict horses and other livestock, such Owner may do so, but when constructing a fence at the perimeter of such Owner's Parcel, construction of such fence must be set back so as not to encroach upon the above described easement or any easement shown on the Result of Survey. Each Owner, at the Owner's expense, shall have the right to move any existing fence which goes through such Owner's Parcel, provided any fence that is moved must be reconnected so that there is no gap in the overall fencing, and it does not interfere with the above described easement or any easement as shown on the Result of Survey. Declarant, at its expense, shall have the right to move any existing fence which is within the prescribed perimeter easements in order to make use of the any easement for roadway or utility purposes. Any fences installed by any Owner, shall be constructed and installed at Owner's sole expense and adequate to contain horses and other livestock. Wire fences shall be constructed with posts not more than 15 feet apart, with not less than three stays between posts, with continuous four strands of wire in accordance with normal ranch standards.

L. Roadway Alterations. If any Owner elects to change or alter any roads running through such Owner's Parcel, and if such Owner is legally entitled to do so (Declarant makes no representation as to such a legal right), such Owner shall, at such Owner's expense, construct a road around the perimeter of such Owner's Parcel within the above prescribed perimeter easements. Any such road constructed by such Owner must be a bladed and graded access road which is constructed at such Owner's expense and suitable for conventional vehicle to insure a continuous flow of traffic for public ingress and egress.

M. Waiver. Declarant, its successor or designee shall have the right to allow variances where the strict enforcement of these restrictions would cause undue hardship.

## 6. GENERAL PROVISIONS

A. Enforcement. The covenants, conditions, and restrictions contained in this Declaration shall run with the land and shall be binding upon all persons owning, leasing, subleasing or occupying any Parcel, except for those holding a reservation of grazing right under a master agreement, after the date on which this instrument shall have been recorded in the office of the Recorder of Apache County, State of Arizona. This Declaration may be enforced by Declarant, by any Owner or lessee of any Parcel, by the Association, by First Beneficiary, or any one or more of said parties acting jointly, but each and all said covenants, conditions and restrictions shall be binding upon and effective against any Owner, lessee or occupant of said Parcel whose title thereto is acquired by foreclosure, or otherwise, and provided also that the breach of any said covenants, conditions and restrictions may be enjoined, abated or remedied by appropriate proceedings. All instruments of conveyance or assignment of any interest in all or any part of the Property may refer to this instrument and shall be subject to the covenants, conditions and restrictions herein contained as fully as though this instrument were therein set forth in full; provided, however, that the terms and conditions of this instrument shall be binding upon all persons affected by its terms, whether express reference is made to this instrument or not. In no event shall any of the covenants, conditions and restrictions contained in this Declaration be enforceable against those holding or reserving any livestock grazing rights,



including without limitation the rights of First Beneficiary, Trustee and Declarant in connection with the aforesaid Trust No. 8701.

**B. Declarant's Reserved Rights.**

(i) Nothing herein shall be construed as prohibiting Declarant from maintaining a sales or development office on any Parcel or engaging in activities which Declarant deems appropriate to its development or sales program, or ranching activities.

(ii) Declarant shall reserve the right to eliminate the perimeter easement as shown on the Result of Survey along the boundary of a Parcel where there is a common ownership of the adjoining Parcel.

(iii) Subject to prior written approval of First Beneficiary which also shall be required for any amendments or termination described in Sections 6(D) and 6(E) below, Declarant reserves the right to amend this Declaration until such time as ninety percent (90%) of all Parcels, including Parcels added by annexation, have been conveyed by Declarant.

**C. Invalidity.** Invalidation of any of these covenants, restrictions, reservations, conditions and servitudes by judgment, court order, or otherwise shall in no way affect the validity of any of the other provisions of this Declaration, all of which shall remain in full force and effect.

**D. Amendments.** Subject to the provisions of Section 6(B) above, this Declaration may be amended by instrument executed by the Owners of at least sixty-six and two-thirds percent (66-2/3%) of the total number of the Parcels, and such amendment shall be recorded in the office of the Apache County Recorder.

**E. Term.** Subject to the provisions of Section 6(B) above, the covenants, conditions, restrictions and servitudes of this Declaration, as the same may hereafter be amended in accordance with the terms hereof, shall remain in force and effect for a term of twenty (20) years from and after the date of recording of this Declaration, from which time they shall be automatically renewed and extended for successive periods of ten (10) years each, unless terminated by an instrument executed by the Owners (based on the number of the Parcels) of at least sixty-six and two-thirds percent (66-2/3%) of the Parcels, such instrument to be recorded in the office of the Apache County Recorder, and such termination to be effective at any time upon said recording of such instrument.

[SEE THE ATTACHED SIGNATURE PAGE]

Executed this 6 of May, 2014.

**TRUSTEE**

First American Title  
Insurance Company, as  
Trustee, under its Trust No. 8701  
and not personally

By: Charlotte A. Knoll  
Charlotte A. Knoll  
Its Senior Trust Officer

**DECLARANT**

SPEK Investments, L.L.C.  
an Arizona Limited Liability Company

By: Richard D. Schust  
Richard D. Schust  
Its Manager

STATE OF ARIZONA     )  
  ) ss.  
County of Maricopa     )

This instrument was acknowledged before me this 8<sup>th</sup> day of May, 2014, by Charlotte A. Knoll, the Senior Trust Officer of First American Title Insurance Company, a California corporation, as Trustee under its Trust No. 8701, and not personally

Elaine M Gill

Notary Public

My Commission Expires: Jan. 9, 2016



STATE OF ARIZONA     )  
  ) ss.  
County of Maricopa     )

This instrument was acknowledged before me this 6 day of May, 2014, by Richard D. Schust, as the Manager of SPEK Investments L.L.C., an Arizona limited liability company.

Kenneth W. Dör  
Notary Public

My Commission Expires: 3-30-15

