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F. ANN RODRIGUEZ, RECORDER  
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AMERICAN TITLE INSURANCE  
6245 E BROADWAY  
TUCSON AZ 85711



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AMENDED AND RESTATED DECLARATION  
OF COVENANTS, CONDITIONS, RESTRICTIONS,  
AND EASEMENTS  
FOR MESQUITE RANCH

Dated: September 17, 2001

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**AMENDED AND RESTATED DECLARATION OF COVENANTS,  
CONDITIONS, RESTRICTIONS,  
AND EASEMENTS FOR MESQUITE RANCH**

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS is executed to be effective as of the 17th day of September, 2001, by American Title Insurance of Arizona, Inc., an Arizona corporation, as Trustee under Trust No. 12,177 and not otherwise, whose sole beneficiary is Mesquite Ranch Real Estate Development Co., Inc., an Arizona Corporation.

**RECITALS**

A. Declarant is the owner and developer of land located east of Houghton Road in Pima County, Arizona, generally known as Mesquite Ranch, described as follows:

Mesquite Ranch, Lots 1 through 619 and Common Areas A through L, an R.C.P. subdivision of Pima County, Arizona, recorded Book 54 of Maps and Plats at Page 92, Pima County Records.

B. The above-described land is defined herein as the "Covered Property" and is subject to the terms and provisions hereof. Declarant desires to see the Covered Property developed as one or more planned communities with residential and other areas, together with recreational areas, developed and undeveloped open spaces, pedestrian trails, and other facilities, while preserving, to the maximum extent practicable, the aesthetic character of the land comprising the Covered Property.

C. As part of the development of the Covered Property, and without obligation to do so, Declarant intends to provide for the Recordation of various additional covenants, conditions and restrictions apart from this Declaration in the form of separate Supplemental Declarations which shall cover certain portions of the Covered Property to be specified in such Supplemental Declarations.

D. Declarant desires and intends that the Covered Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions and easements in this Declaration, which: (i) are for the purpose of protecting the value, desirability, attractiveness and character of the Covered Property; (ii) shall run with all of the real property comprising the Covered Property; (iii) shall be binding on all parties having any right, title or interest in the Covered Property, or any part thereof; and (iv) shall inure to the benefit of the aforementioned parties and their successors and assigns.

E. Declarant desires to form an Arizona nonprofit corporation to be known as the "Mesquite Ranch Homeowners Association," for the purposes of, among other things: (i) holding title in fee or otherwise to the Common Areas; (ii) the efficient

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preservation of the values and amenities of the Covered Property, in regard to which the Association will be delegated certain powers of administering and maintaining the Common Areas and enforcing this Declaration and the Design Guidelines adopted pursuant hereto; and (iii) establishing, collecting, disbursing and enforcing the Assessments created herein.

F. Until such time as the Association is incorporated, Declarant shall and does hereby reserve to itself, its successors and assigns, the right to exercise the powers, rights and duties granted to or imposed upon the Association under this Declaration.

G. The provisions hereof shall serve to amend and restate in its entirety the provisions of that certain DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS recorded Docket 11583, Page 854, Pima County Records.

NOW, THEREFORE, Declarant hereby declares, covenants and agrees as follows:

## ARTICLE 1 DEFINITIONS

As used in this Declaration, the following terms shall have following meanings:

1.1 "Agency" or "Agencies" shall mean the FHA, the VA, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation and any other governmental agency or financial institution participating in the insuring or guaranteeing of home loans within the Covered Property.

1.2 "Annual Assessments" shall mean the annual assessments levied by the Board pursuant to Section 8.2 of this Declaration.

1.3 "Articles" shall mean the Articles of Incorporation of the Association, as amended or restated from time to time, on file with the Arizona Corporation Commission.

1.4 "Assessments" shall mean all Annual Assessments, Special Assessments and Maintenance Assessments.

1.5 "Assessment Lien" shall mean the charge and continuing servitude and lien against a Lot for payment of Assessments and Special Use Fees as described in Section 8.1 of this Declaration.

1.6 "Assessment Period" shall mean each period for which Assessments are to be levied against a Lot pursuant to this Declaration, as more particularly described in Section 8.8 below.

1.7 "Association" shall mean the "Mesquite Ranch Homeowners Association," an Arizona nonprofit corporation, its successors and assigns.

1.8 "Association Rules" shall mean the rules and regulations adopted by the Association pursuant to Section 6.3 and 12.2 of this Declaration.

1.9 "Board" shall mean the Board of Directors of the Association.

1.10 "Bylaws" shall mean the Bylaws of the Association, as amended or restated from time to time.

1.11 "City" shall mean the City of Tucson.

1.12 "Common Areas" shall mean all real property and the improvements or amenities thereon, all easements and licenses, and all personal property and facilities, which shall from time to time be owned, controlled or operated by the Association (including, but not limited to, areas used for landscaping, flood control, drainage, bicycle or jogging paths, parks, recreational areas, open space, walkways, equestrian trails and pedestrian and vehicular ingress and egress), or with respect to which the Association has undertaken administrative, maintenance or other similar responsibilities.

1.13 "Covered Property" shall mean Lots 1 through 619 and Common Areas A through L, as shown on the plat for the Property as described above in the Recitals, all subject to the further provisions hereof, including those dealing with withdrawal of land. The Declaration shall, however, also govern the conduct of Owners with respect to adjacent public rights of way or Government Property, including with respect to parking thereon.

1.14 "Declarant" shall mean American Title Insurance of Arizona, Inc., an Arizona corporation, as Trustee under Trust No. 12,177 and not otherwise, and any assignee of all or part of the rights and duties granted or reserved to Declarant herein, which assignment shall be evidenced by a Recorded instrument executed by the assigning Declarant.

1.15 "Declarant Affiliate" shall mean any Person 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, corporation or trust in which Declarant (or another Declarant Affiliate) is a general partner, managing member, controlling shareholder, or beneficiary, provided such Person or entity is designated in writing by Declarant as a Declarant Affiliate.

1.16 "Declaration" shall mean this Declaration of Covenants, Conditions, Restrictions and Easements for Mesquite Ranch, as amended or supplemented from time to time.

1.17 "Delinquent Amount" shall mean any Assessment or Special Use Fee, or installment thereof, not paid when due.

1.18 "Design Guidelines" shall mean the rules and regulations adopted, amended and supplemented by the Design Review Committee pursuant to Section 4.12 of this Declaration.

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1.19 "Design Review Committee" shall mean the committee(s) formed pursuant to Article 4 of this Declaration.

1.20 "Developer Owner" shall mean a Person in the business of developing, leasing and/or selling real property and who has acquired one or more Lots in Mesquite Ranch in connection with, and in the course of, such business, for the purpose of developing, leasing or selling such Lots; however, Declarant must have agreed in writing that such person may enjoy the status of a Developer Owner.

1.21 "Dwelling Unit" shall mean any building, or part thereof situated upon a Lot and intended for use and occupancy as a residence by a Single Family.

1.22 "Eligible Insurer or Guarantor" shall mean a governmental insurer or guarantor of a First Mortgage who has in writing requested notice of certain matters from the Association in accordance with this Declaration.

1.23 "Eligible Mortgage Holder" shall mean a First Mortgagee who has in writing requested notice of certain matters from the Association in accordance with Section 14.1 of this Declaration.

1.24 "Event of Foreclosure" shall mean the foreclosure, the acceptance of a deed in lieu of foreclosure, or the transfer of title by trustee's deed at a trustee's sale in regard to a mortgage, deed of trust or other encumbrance inferior in priority to an Assessment Lien.

1.25 "Exempt Property" shall mean:

1.25.1 All Government Property;

1.25.2 All Common Areas for so long as Declarant or the Association is the owner thereof;

1.25.3 all Limited Common Areas; and,

1.25.4 All unmanned utility substations which provide utility services to all or any portion of the covered Property unless and to the extent that the applicable Supplemental Declaration or other appropriate Recorded instrument indicates such a Lot is subject to Assessments.

1.26 "FHA" shall mean the Federal Housing Administration.

1.27 "First Mortgage" shall mean any mortgage or deed of trust on any Lot, or portion thereof, with the first priority over any other mortgage or deed of trust encumbering such Lot, or portion thereof.

1.28 "First Mortgagee" shall mean the holder of any First Mortgage.

1.29 "Funds" shall mean all funds and property collected and received by the Association from any source.

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1.30 "Government Property" shall mean all land and improvements owned by or dedicated to a public or governmental agency or authority for so long as the public or governmental agency or authority is the owner or beneficiary thereof, except for land or improvements, or both, owned and/or operated by a public or governmental agency or authority acting in a proprietary capacity, or owned and occupied as a residence by a Single Family. Government Property comprising a park, or other property owned in fee by a city or county, shall not be deemed encumbered by any of the provisions of this Declaration. Owners shall, however, be restricted in their use of Government Property consisting of roads (i.e., the parking, signage and other regulations hereof).

1.31 "Limited Common Area" shall mean any Common Area expressly limited for the use and enjoyment of fewer than all the Members.

1.32 "Lot" shall mean an area of real property designated as a "Lot" on any Recorded subdivision plat.

1.33 "Maintenance Assessments" shall mean the Assessments, if any, levied by the Board pursuant to Sections 8.7 and 11.2 through 11.5 of this Declaration.

1.34 "Member" shall mean any Owner, including Declarant.

1.35 "Membership" shall mean the amalgam of rights and duties of Owners, including Declarant, with respect to the Association.

1.36 "Non-Developer Owner" shall mean any Owner who is not a Developer Owner.

1.37 "Occupant" shall mean:

1.37.1 each Tenant who resides on the Covered Property and the licensees, guests, and members of the immediate family of each Tenant who reside on the Covered Property;

1.37.2 each Owner who resides on the Covered Property and the licensees, guests, and members of the immediate family of each Owner who reside on the Covered Property; and

1.37.3 such persons as the Board, in its absolute discretion, may authorize.

1.38 "Owner" shall mean shall mean (a) a record holder of beneficial or equitable title, and legal title if legal title has merged with the beneficial or equitable title, to the fee simple interest in any Lot or (b) the purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale, or any similar contract governed by A.R.S. § 33-741, et seq. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, or a lessee or Tenant of an Owner as defined above, or a purchaser or vendee under any executory contract of sale which has not been fully consummated with a Recorded deed to the purchaser.

1.39 "Person" shall mean a corporation, partnership, limited liability company, joint venture, individual, trust or any other legal entity.

1.40 "Plat" shall mean the recorded plat for the Covered Property, as amended from time to time.

1.41 "Recorded Assessment Lien" shall mean an Assessment Lien with respect to which the Board has Recorded a notice of lien covering the Delinquent Amount plus interest and accrued collection costs against the applicable Lot; provided, however, that the Board's failure to Record an Assessment Lien against a Lot shall not be deemed to invalidate or extinguish the Assessment Lien with respect to such Lot.

1.42 "Record", "Recording" and "Recorded" shall mean placing or having placed a document of public record, or the act of recording, in the Official Records of Pima County, Arizona.

1.43 "Residential Use" shall mean use for single family residential use.

1.44 "Single Family" shall mean a group of persons living together and maintaining a single nonprofit housekeeping unit together with their domestic servants.

1.45 "Special Assessments" shall mean the assessments, if any, levied by the Board pursuant to Section 8.5 of this Declaration.

1.46 "Special Use Fees" shall mean any fees charged by the Association for use of the Common Areas pursuant to Section 3.1 of this Declaration.

1.47 "Supplemental Declaration" shall mean any declaration of additional covenants, conditions and restrictions or like instrument Recorded after the Recording of this Declaration in regard to one or more Lots, by the Owner of such Lots, which shall in all cases be consistent with and subordinate to this Declaration.

1.48 "Taking" shall mean condemnation by eminent domain or sale or other transfer under threat of condemnation.

1.49 "Tenant" shall mean a Person occupying any part of the Covered Property under any type of rental agreement, whether such rental agreement is within the definition set forth in A.R.S. §33-1310(11) or otherwise.

1.50 "VA" shall mean the United States Veterans' Administration.

1.51 "Visible From Neighboring Property" shall mean, with respect to any given object, that such object is or would be visible to a Person six feet tall, standing at ground level on neighboring property (including Common Area) six feet back from the property line of the neighboring property, provided, however, that the Design Review Committee shall have the right to determine the meaning of the term "Visible From Neighboring Property" as applied on a case by case basis, and the determination of the Design Review Committee shall be binding in that regard, subject to any appeal rights to the Board.

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**ARTICLE 2  
PROPERTY AND PERSONS BOUND  
BY THIS DECLARATION**

2.1 General Declaration. Declarant hereby declares that all of the Covered Property is and shall be held, conveyed, hypothecated, encumbered, leased, occupied, built upon or otherwise used, improved or transferred, in whole or in part, subject to this Declaration and any Supplemental Declarations applicable thereto, as amended or modified from time to time. Notwithstanding the preceding sentence, except as expressly provided herein, property owned by or dedicated to a governmental agency or the public shall not be subject to this Declaration, provided, however, that any restrictions imposed in this Declaration upon the Owners and Occupants concerning the use and maintenance of such property shall be applicable at all times. This Declaration is declared and agreed to be in furtherance of a general plan for the development and sale of the Covered Property and is established for the purpose of enhancing and perfecting the value, desirability and attractiveness of the Covered Property.

2.2 Covenants Running with the Land. This Declaration shall run with the Covered Property for all purposes and shall be binding upon and inure to the benefit of Declarant, the Association, and all Owners and Occupants of the Covered Property and their successors in interest. Nothing in this Declaration or in any Supplemental Declaration shall be construed to prevent Declarant from modifying any Plat for the Covered Property or from dedicating or conveying portions of Mesquite Ranch for uses other than as a Lot or Common Areas.

2.3 Owners and Occupants Bound. Upon the Recording of this Declaration, this Declaration shall be binding upon all Owners and Occupants of the Covered Property and their successors and assigns, whether or not stated in any document or deed transferring any interest in any Lot to or from such Owners or Occupants.

2.4 Association Bound. Upon the incorporation of the Association, this Declaration shall be binding upon and benefit the Association, and its successors and assigns:

**ARTICLE 3  
EASEMENTS AND RIGHTS OF ENJOYMENT  
IN THE COMMON AREAS**

3.1 Easements and Rights of Enjoyment. Each Owner shall have a nonexclusive easement for use and enjoyment in and to the Common Areas, which nonexclusive easement shall be appurtenant to and shall pass with the title to each Owner's Lot. All Occupants shall have a nonexclusive, nontransferable temporary license to use and enjoy the Common Areas so long as they remain Occupants. The foregoing grants and rights are subject, among other things, to the following limitations:

3.1.1 The right of the Association pursuant to this Declaration to charge Owners, other than Declarant and Developer Owners, reasonable Special Use Fees for the use of the Common Areas. The Special Use Fees shall be set by the Board from time to time, in its absolute discretion. Special Use Fees shall be charged only for

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actual entry upon or utilization of those Common Areas selected by the Board to be subject to a Special Use Fee, and shall be intended to collect revenue from the actual users of such selected Common Areas so that all of the costs of operating such selected Common Areas are not borne by all of the Owners through Annual Assessments, but rather are borne, at least in part, by the Owners, Occupants and other persons utilizing such selected Common Areas;

3.1.2 The right of the Association to suspend the voting rights and the rights to use and enjoyment of the Common Areas of any Owner or Occupant, as the case may be:

(a) for any period during which an Assessment remains delinquent;

(b) for a period not to exceed sixty (60) days for any infraction of this Declaration, a Supplemental Declaration, the Association Rules, or the Design Guidelines; or

(c) for successive sixty (60) day periods if any such delinquency or infraction is not corrected during any preceding suspension period;

3.1.3 The right of the Association to limit the number of guests of an Owner or Occupant who may use the Common Areas; and,

3.1.4 The right of the Association to regulate use of the Common Areas in accordance with this Declaration, and to mortgage or convey portions of Common Area with the affirmative vote or written consent of Owners who own at least two-thirds (2/3rds) of the Lots within the Covered Property, excluding Declarant, except that notwithstanding the foregoing, at any time during the pendency of the Class B Membership Declarant shall have the right to convey, or cause the Association to convey, minor, insignificant or immaterial portions of Common Area (such as those caused by encroachment areas, boundary line discrepancies, survey errors and other such matters) without the consent or vote of any other Person or Member, should Declarant determine that such conveyance or transfer is in the best interests of the Covered Property and that the said Common Areas are no longer necessary or are a burden to the Association and that the interests of the Association are best served by disposing of same. Any sale or disposition of the Common Area shall serve to extinguish any interests therein of Owners pursuant to the provisions hereof. The rights of Declarant hereunder with respect to Common Area shall include conveyance and dedication to the public of roads, streets, drainageways, culverts, and sewer facilities, none of which shall require the approval of any Owners or Members of the Association.

3.2 Delegation of Use. Any Owner or Occupant, in accordance with the Association Rules and this Declaration, may delegate his rights of use and enjoyment in the Common Areas to the members of his family or his occupants, employees, customers or guests subject to the limitations set forth herein and in the Association Rules.

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3.3 Waiver of Use. No Owner shall be exempted from personal liability for Assessments, nor shall the Owner's Lot be released from liens or charges arising under this Declaration or any Supplemental Declaration, by waiver of any rights of use or enjoyment of the Common Areas.

3.4 Temporary Sign Easement. Declarant hereby reserves to itself and its agents and assignees a temporary easement over, upon and across those portions of the Common Areas adjacent to publicly dedicated streets and roadways for purposes of installing and maintaining signs for the purpose of, among other things, identifying Persons building upon or developing portions of the Covered Property, and otherwise promoting the Covered Property or any property owned by Declarant. The easement reserved hereby shall expire and terminate upon completion of construction and sales activities upon the Covered Property, but in no event later than 25 years after the date this Declaration is recorded.

3.5 Exclusive Use and Benefit Easements. On certain Common Areas, dividing walls may be constructed within the Common Area at varying distances from the adjacent Lot line. Portions of the Common Areas may be located on the Lot side of any such dividing wall (each, an "Easement Area"). Each Easement Area may adjoin and be contiguous to a Lot (each, a "Dominant Lot"). The Association may, in its sole discretion, at any time and from time to time, grant to the Owner of a Dominant Lot a perpetual exclusive use and benefit easement over the Easement Area abutting that Dominant Lot for the use, benefit and enjoyment of that Owner (each, an "Easement"). Each Easement is effective upon Recording and without the consent of the Owner of the Dominant Lot. Each Easement runs with the land and is appurtenant to the abutting Dominant Lot and may not be sold, transferred or otherwise conveyed apart therefrom. The Easements are limited to the extent that no structure or improvement of any nature may be placed, maintained or permitted to remain in any Easement Area. The Association will have no possession or control of the Easement Areas, except that the Association will have the right of ingress and egress for the sole purpose of any maintenance and repair obligations the Association may have with respect to the dividing wall. Each Easement Area must be possessed, controlled, maintained and insured by the Owner of the abutting Dominant Lot and not by the Association. Any separate insurance maintained by the Association is excess and non-contributory. Each Owner of a Dominant Lot shall indemnify, protect, defend and hold harmless the Association for, from and against any and all losses, costs, claims, actions, damages, expenses and liabilities of any kind whatsoever arising from or in connection with the Easement Area abutting that Owner's Dominant Lot.

3.6 Blanket Easements. There is hereby created a blanket easement in favor of the Association, Declarant and its assigns upon, over and under each Lot, the Common Areas and the Limited Common Areas, but not under any buildings, foundations, walls or permanent structures, for ingress to and egress from all portions of the Covered Property and for the installation, replacement, repair and maintenance of all utility equipment and service lines and systems (including electric, gas, telephone, cable, water and sewer), as such equipment, lines and systems are installed in connection with the initial development of Lots, Common Areas and Limited Common Areas and the construction of buildings thereon.

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Notwithstanding anything to the contrary contained in this subparagraph, no utility or service equipment or lines may be installed or relocated on any Lot, the Common Areas or the Limited Common Areas except as approved by Declarant or the Design Review Committee, or, if installed after Recordation of a Supplemental Declaration, as approved by the Owner of same and either Declarant or the Design Review Committee.

## ARTICLE 4 DESIGN REVIEW COMMITTEE

4.1 Organization of Design Review Committee. The Board shall establish a Design Review Committee and shall adopt the procedural rules and regulations for the performance of the duties of the Design Review Committee. The Design Review Committee shall be organized as follows:

4.2 Powers and Duties. The Design Review Committee shall have all of the powers, authority, and duties conferred upon it by this Declaration or by the Articles, Bylaws, or Association Rules, or by any Supplemental Declaration or similar Recorded instrument approved in advance by the Board. Without limiting the generality of the foregoing, it shall be the duty of the Design Review Committee to consider and act upon all proposals or plans submitted to it pursuant to the provisions of this Declaration or the Design Guidelines, including approval of all landscaping to be planted or placed upon the Covered Property, to perform any other duties delegated to it by the Board, and to carry out all other duties imposed upon it by this Declaration.

4.3 Committee Composition. The Design Review Committee shall consist of at least three (3) and not more than seven (7) members, provided, however, that the number of members may be increased or decreased at any time by a vote of the Board. A member shall not be required to satisfy any particular qualification for membership and may be a member of the Board, an officer of the Association, or an officer, agent or employee of Declarant or of a Developer Owner approved by Declarant.

4.4 Alternate Members. In the event of the absence or disability of a regular member or members of the Design Review committee, the remaining regular members, even though less than a quorum, may designate an alternate member to act as a substitute regular member of the Design Review Committee so long as any one or more regular members remain absent or disabled.

4.5 Term of Office. Unless a member of the Design Review Committee has resigned or been removed, his or her term of office shall be for a period of two (2) years, or until the appointment of his or her respective successor. Any new member appointed to replace a member who has resigned or been removed shall serve such member's unexpired term. Members of the Design Review Committee who have resigned, been removed or whose terms have expired may be reappointed.

4.6 Appointment and Removal. Except as hereinafter provided, the right to appoint and remove all regular and alternate members of the Design Review Committee at any time shall be and is hereby vested solely in the Board, provided, however, that no regular or alternate member may be removed from the Design Review Committee by

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the Board except by the vote or written consent of at least fifty-one percent (51%) of the members of the Board.

4.7 Resignations. Any regular or alternate member of the Design Review Committee may at any time resign from the Committee by giving written notice thereof to the Board.

4.8 Vacancies. Vacancies on the Design Review Committee, however caused, shall be filled by the Board. A vacancy or vacancies on the Design Review Committee shall be deemed to exist in case of the death, resignation or removal of any regular or alternate member.

4.9 Multiple Committees. The Declarant may, at its discretion, create more than one Design Review Committee and give each such Committee the authority to perform duties delegated to it by the Declarant with respect to specific portions of the Covered Property. For so long as Declarant owns a single Lot, the authority under this Section shall vest solely with Declarant, and thereafter with the Board.

4.10 Control By Declarant. Notwithstanding the foregoing provisions of this Article or any other provision of this Declaration, in order to enhance the aesthetic and economic value of the Covered Property and to maintain uniformity of architectural and landscaping standards throughout the Covered Property, until the Class B Membership ceases, or so long as Declarant owns a single Lot within the Covered Property, whichever is later, Declarant shall have the exclusive right:

4.10.1 to appoint and remove all regular and alternate members of the Design Review Committee, and to maintain the number of persons serving thereon to three (3) in number; and

4.10.2 to adopt, supplement and amend the Design Guidelines, as deemed necessary by Declarant.

4.10.3 to assign, in its discretion, any of its reserved rights of appointment hereunder to one or more Developer Owners.

4.11 Meetings and Compensation of Design Review Committee. The Design Review Committee shall meet from time to time as necessary to perform its duties hereunder. Subject to Section 4.4, the vote of the majority of a quorum of the members or written consent of a majority of the regular members shall constitute the act of the Design Review Committee. The Design Review Committee shall keep and maintain a written record of all actions taken by it. Although members of the Design Review Committee shall not be entitled to compensation for their services, consultants hired by such Committee, if such are authorized by the Board, may be, entitled to compensation at the discretion of the Board. Notwithstanding the foregoing, for so long as Declarant is in control of the Design Review Committee pursuant to Section 4.10 of this Declaration, members of the Design Review Committee may be paid for their services at the discretion of the Board.

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4.12 Design Guidelines. Subject to the written approval of the contents thereof by the Declarant for so long as Declarant is in control of the Design Review Committee pursuant to Section 4.10 of this Declaration, the Board shall adopt, and may from time to time amend, supplement and repeal, the Design Guidelines, which may be different for various portions of the Covered Property. The Design Guidelines shall interpret, implement and supplement this Declaration, and shall set forth procedures for Design Review Committee review and the standards for development within the Covered Property. The Design Guidelines shall include, without limitation, provisions regarding:

4.12.1 the size of Single Family Dwelling Units;

4.12.2 architectural design, with particular regard to the harmony of the design with surrounding structures and topography;

4.12.3 placement of buildings;

4.12.4 landscaping design, content and conformity with the natural desert character of Mesquite Ranch;

4.12.5 requirements concerning exterior color schemes, exterior finishes, and materials, and requirements concerning yard and building ornaments, recreational equipment, exterior lighting and exterior furniture, and other items or improvements Visible From Neighboring Property;

4.12.6 signage and mailboxes; and

4.12.7 perimeter and screen wall design and appearance.

The Design Guidelines shall have the same force and effect as the Association Rules.

The Design Guidelines shall, without limitation, apply to each Owner and Developer Owner within the Covered Property, and the Declarant shall have the right to compel the Board of Directors to take specific action against any builder, Developer Owner or other person to compel compliance with the provisions hereof and with the Design Guidelines. The Declarant may take such enforcement action, or cause the Board to take such action whether or not the alleged infraction is a violation of zoning, development standards, the provisions hereof or of the Design Guidelines, or merely separate agreement with the Declarant imposing special land use or improvement guidelines or requirements.

4.13 Obligation to Obtain Approval.

4.13.1 No building, fence, wall, pool, roadway, driveway, or other structure or improvement, nor any excavation, grading, landscaping, or other work, shall be commenced, erected, repaired, or maintained within the Covered Property, nor shall any exterior addition or change or alteration be made to or in any such structure or improvement, including, without limitation, awnings, patio covers, antennas, exterior walls, fences, the color of any structure or improvement, or the drainage or grading on

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any Lot, except in compliance with plans and specifications therefor that have been submitted to and approved by the Design Review Committee.

4.13.2 No trees, bushes, shrubs, plants or other landscaping shall be planted or placed upon the Covered Property except in compliance with plans and specifications therefor which have been submitted to and approved by the Design Review Committee in accordance with this Declaration and the Design Guidelines;

4.13.3 No material changes or deviations in or from the plans and specifications for any work to be done on the Covered Property, once approved by the Design Review Committee, shall be permitted without approval of the change or deviation by such Committee.

4.14 Special Landscaping Provisions. Except as expressly provided herein, landscaping on the Covered Property shall be consistent with the character of the native desert environment surrounding Mesquite Ranch, and shall comply with the provisions of the Design Guidelines (which expressly shall include landscaping regulations) relating to permitted and prohibited plants, and with all applicable native plant preservation regulations of the City and the State of Arizona. If and to the extent required by the Design Review Committee, native plants which must be removed to permit construction work on the Covered Property shall be inventoried prior to removal, and shall be transplanted to another location on the Covered Property or replaced with equivalent plants approved by the Design Review Committee in accordance with the applicable Design Guidelines. Plants shall be transplanted in accordance with customary professional standards. Transplanted or replacement plants shall be maintained and watered as appropriate until reestablished. To the extent required by the Design Review Committee, any native plants on the Covered Property which die as a result of transplanting or construction activity on the Covered Property shall be replaced with equivalent plants approved by the Design Review Committee in accordance with the Design Guidelines.

All Lots, excluding driveways and parking areas, and in the case of a Lot, excluding that portion of the Lot, if any, which is enclosed by a perimeter wall around the rear yard, shall be landscaped using plants, soil and ground covers approved by the Design Review Committee.

4.15 Waiver. The approval by the Design Review Committee of any plans, drawings or specifications for any work done or proposed, or for any other matter requiring the approval of the Design Review Committee, shall not be deemed to constitute a waiver of any right to withhold approval of any similar plan, drawing, specification or matter subsequently submitted for approval.

4.16 Liability. Neither Declarant nor the Design Review Committee nor any member thereof shall be liable to the Association, any Owner or any other party for any damage, loss or prejudice suffered or claimed on account of:

4.16.1 the approval or disapproval of any plans, drawings or specifications, whether or not defective;

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4.16.2 the construction or performance of any work, whether or not pursuant to approved plans, drawings and specifications;

4.16.3 the development of any Lot; or

4.16.4 the execution and filing of any estoppel certificate or statement, whether or not the facts therein are correct, provided, however, that with respect to the liability of a member of the Design Review Committee, such member has acted in good faith on the basis of such information as may be possessed by him.

4.16.5 Without in any way limiting the generality of any of the foregoing provisions of this Section, the Design Review Committee, or any member thereof, may, but is not required to, consult with or hear the views of the Association or any Owner, other than the Owner applying for consent or approval, whose views the Design Review Committee shall be required to hear, with respect to any plans, drawings, specifications, or any other proposal submitted for review.

4.17 Master Plan Program. In addition to the foregoing, the Association shall have the duty and power to enforce to the fullest extent all provisions of the "Mesquite Ranch Master Plan Program" (the "Master Plan Program"), as submitted to and approved by the City of Tucson in Zoning Case C9-99-22 (the "Zoning Case"), as well as all provisions of the Design Guidelines relating to the content and regulations of such Master Plan Program. The Association shall also assure compliance with all zoning conditions established for the Covered Property, and no exemption, right or privilege of any person or entity herein shall be interpreted to allow for any deviation from the purpose, intent or effect of any zoning condition or provision of the approved Master Plan Program. The provisions of the Master Plan Program are incorporated herein by this reference, and its provisions shall be deemed requirements imposed upon the Covered Property, and upon each Developer Owner. Without limitation, as may be shown upon the Plat, there exist certain natural and restored areas and washes, including the Mesquite Ranch Wash, and all natural or revegetated areas associated therewith and shown upon the Plat as a Common Area or natural area shall be maintained by the Association as such in perpetuity. Riparian areas in connection with such washes or natural areas shall be preserved and enhanced to the fullest extent. Natural open space areas shall be fenced off and protected prior to any on-site development.

Trails and trail systems shall provide connectivity within the project, to and from the main sidewalk systems, and to and from properties to the east and south, including to the Civano project. Scenic route and arterial street landscape buffers shall be maintained and preserved, and drought-tolerant plantings shall be maintained therein, as well as in all other project open spaces, with a consistent theme throughout. Water harvesting shall be assured through project design in each phase of the project, with the Design Review Committee to enforce drainage patterns that direct flows to the landscaped open spaces and medians, as well as to riparian areas in need of water along the wash areas where consistent with plans approved, or required, by the City. Such harvesting shall include utilization of rooftop, parking area, and parking area access lane waters directed to the common facilities as outlined above.

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As shown on the Plat, each major phase of the project shall continue to offer direct vehicular, bicycle and pedestrian circulation not only to the phase, but to the larger project, with Common Areas and open spaces to have ready access from nearby residential development within the project. Community gathering features shall be accessible easily from residential areas and from other open spaces such that each portion of the project may enjoy the trails and open spaces. Trails and open spaces shall to the extent dedicated to the public, by easement or otherwise, remain accessible to the public. Portions of internal open space upon which a dedicated public easement exists shall be accessible to adjacent regional parks, trail systems and schools within the Civano project. The Covered Property shall continue to conform to the City of Tucson Criteria for Sustainable Neighborhoods, City of Tucson manual for Creative Solutions for Quality Community Design, and the general policies of the South Pantano Area Plan in effect as of the date of the Zoning Case.

Upon each submittal of plans to the Design Review Committee, each Developer Owner shall demonstrate compliance with the provisions of this Declaration, including an analysis of the viability of native plant preservation in-place or transplanted, compliance with permitted plant lists, including drought-tolerant plants, and compliance with all mitigation requirements for archeological and cultural remains. Each Developer Owner shall assure, prior to any ground modification, that an "on-the-ground" survey by a qualified archeologist has been performed, and if remains are encountered, a data recovery program approved by the Arizona State Museum shall have been approved. Each Developer Owner shall be solely responsible for compliance with endangered species laws and regulations, as well as regulations of the Arizona Game and Fish Department, including those pertaining to raptors, bats, gila monsters, and special status plants and animals. Each Developer Owner shall coordinate with utility companies to assure energy efficient design. No development may interfere with established wildlife corridors as determined within designated open spaces. Each Developer Owner shall comply with such "Safe by Design" concepts as the Design Review Committee may impose in consultation with the Tucson Police Department.

All development within the Covered Property shall utilize earthtone colors and materials. Brighter colors may be used for accent. Any building greater than twenty (20) feet in height shall have a variety of rooflines. Elevations showing these rooflines shall have been submitted during the platting process. All required scenic route buffer landscaping shall be provided on private property.

The Association, in addition to its usual authority over parking, and the right to adopt rules in connection therewith, shall maintain four (4) parking spaces designated for the public at each common recreation facility (Common Areas K & L). At least one of the four (4) spaces will be labeled "handicapped." The Declarant or its agents will install parking and directional signage as approved by Tucson Parks and Recreation. It will be the Association's responsibility to maintain this signage. Tucson Parks and Recreation will install and maintain signage addressing the rules of use for the trail in Common Area I. The maintenance of Common Area I shall be the responsibility of Tucson Parks and Recreation.

Any deviation from the foregoing standards must be acceptable to Declarant or the Association, and must comply with applicable laws and regulations.

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4.18 Appeal to Board. Except as provided in this Declaration, any Owner or Occupant aggrieved by a decision of the Design Review Committee may appeal the decision to the Board in accordance with procedures to be established in the Design Guidelines. In the event the decision of the Design Review Committee is overruled by the Board on any issue or question, the prior decision of the Design Review Committee shall be deemed modified to the extent specified by the Board. Notwithstanding the foregoing, for so long as Declarant retains control over the Design Review Committee as provided herein, no Owner or Occupant shall have the right to appeal any decision of the Design Review Committee to the Board and the decisions of the Design Review Committee shall be final.

4.19 Fee. The Board may establish a reasonable processing fee to defer the costs of the Design Review Committee in considering any requests for approvals submitted to the Design Review Committee or for appeals to the Board, which fee shall be paid at the time the request for approval or review is submitted.

4.20 Inspection. Any member or authorized consultant of the Design Review Committee, or any authorized officer, director, employee or agent of the Association, may at any reasonable time and without being deemed guilty of trespass enter upon any Lot, after reasonable notice to the Owner or Occupant of such Lot, in order to inspect the improvements constructed or being constructed on such Lot to ascertain that such improvements have been, or are being, built in compliance with the Design Guidelines, this Declaration, and any applicable Supplemental Declaration.

## ARTICLE 5 SUPPLEMENTAL DECLARATIONS AND ESTABLISHMENT OF USE RESTRICTIONS

5.1 Approval of Declarations. Except with respect to Covered Property owned by Declarant, no Supplemental Declaration, or further covenants, conditions, restrictions, or easements, or any amendments or modifications thereto, shall be Recorded against any Lot without the written approval of the Declarant or, if Declarant has waived and relinquished such right, of the Board (or the Design Review Committee and the applicable committee, if any, if such authority has been delegated to such committees), which approval shall be evidenced on the Recorded instrument, and without such approval such Supplemental Declaration or further covenants, conditions, restrictions, and easements, or any amendments or modifications thereto, shall be null and void. All Supplemental Declarations or other Recorded covenants, conditions, or restrictions, or any amendments or modifications thereto, shall be consistent with and subordinate to this Declaration and shall contain such provisions as Declarant or the Class B Member shall reasonably require. A Supplemental Declaration shall not be amended except as specifically permitted by this Declaration or by such Supplemental Declaration, and a Supplemental Declaration shall not be amended without the written consent of Declarant for so long as Declarant owns any Lot in the Covered Property.

5.2 Covenants, Conditions, Restrictions, and Easements Applicable to All Lots. The following covenants, conditions, restrictions and reservations of easements and rights shall apply to all Lots, and to the Owners and Occupants thereof:

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5.2.1 Plat Notes. In addition to the restrictions contained herein, the Covered Property shall be subject to all restrictions and limitations set forth on the Recorded Plat for Mesquite Ranch, as may be amended from time to time.

5.2.2 Prohibited Uses. The following uses are prohibited:

(a) any use which is offensive by reason of odor, fumes, dust, smoke, noise, glare, heat, sound, vibration, radiation or pollution, or which constitutes a nuisance, or which is hazardous by reason of risk of fire or explosion, or which is injurious to the reputation of any Owner; and,

(b) any use which is in violation of the laws (after taking into account the application of any validly granted or adopted variance, exception or special use ordinance or regulation) of the United States, the State of Arizona, the City or any other governmental entity having jurisdiction over the Covered Property.

5.2.3 Temporary Occupancy and Temporary Buildings; Outside Storage. No trailer, tent, shack, garage, barn or temporary structure of any kind shall be used as a residence, whether temporary or permanent, except that during the construction process, a temporary building or structure may be erected, installed or maintained on a Lot with the prior written approval of the Design Review Committee in accordance with Article 4, including the approval of the structure's location and appearance. Such temporary structures shall be removed immediately after completion of such construction, and that portion of the Lot from which the same are removed shall be promptly placed in such condition as is otherwise required by this Declaration. Except during construction, no materials, supplies, equipment, finished or semifinished products or articles of any nature shall be stored on any area outside of a building unless approved in advance in accordance with Article 4. Any permitted outside storage shall be screened by a solid visual barrier so as not to be Visible From Neighboring Property, provided, however, that during construction of improvements on any Lot, necessary construction materials and supplies may be stored on the Lot without the need for a solid visual barrier providing such materials and supplies are kept in neat order considering the construction activities. The Design Review Committee is authorized to designate the areas and manner in which supplies of building materials and construction equipment shall be stored and the routes construction vehicles may use. All such designations shall be reasonable.

5.2.4 Repair of Buildings. No building or improvement on any Lot shall be permitted to fall into disrepair and each such building and improvement shall at all times be kept in good condition and repair and adequately painted or otherwise finished to maintain a first class appearance of the building or improvement. In the event any building or improvement is damaged or destroyed, then, subject to approval in accordance with Article 4, such building or improvement shall be immediately repaired, rebuilt or demolished by the Owner. If any Owner fails to make the necessary repairs, after receiving notice from the Board of the requirement to perform such repairs, within the time limits established by the Board, the Board is empowered to enter on the Lot and to make the necessary repairs. The cost of these corrective measures shall be charged to the Owner and collected in the same manner as Assessments.

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5.2.5 Maintenance of Landscaping and Driveways. Unless otherwise provided in a Supplemental Declaration, each Owner shall be responsible for the proper maintenance of all landscaping in the following locations:

(a) on the Owner's Lot (including set back areas), except that in the event the maintenance of any portions of such Owner's Lot is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility;

(b) portions of the Common Areas adjacent to an Owner's Lot and which are on the Lot's side of any wall erected on the Common Areas; and,

(c) public right-of-way area; between sidewalks (or bicycle paths or equestrian trails) and the street curb on the Owner's Lot, or other public or easement areas adjacent to the Owner's Lot, except that in the event the maintenance of such areas is the responsibility of the Association, a utility, or a governmental or similar authority, then only for so long as such entities are not undertaking such responsibility.

As used herein, maintenance shall include but not be limited to keeping the areas neatly trimmed, cultivated and free of trash, weeds and unsightly materials. All lawn areas shall be timely mowed as needed to keep an even, well groomed appearance and shall be watered and fertilized at such times and in such quantities as required to keep the grass alive and attractive and free of weeds. All trees, shrubs, plants and ground covers shall be timely and properly trimmed (including, without limitation, the removal of dead wood therefrom) according to their plant culture and landscape design and shall be watered and fertilized at such times and in such quantities as required to keep them alive and attractive. Any dead tree, shrub, plant or ground cover shall be removed and replaced immediately. All bed areas shall be kept free of weeds and cultivated periodically as needed. Landscaping may be required to be placed on a Lot within certain time frames established by the Design Review Committee. Each Owner shall maintain in good condition and repair all paved and concrete areas, including driveways, roadways and parking areas, located on the Owner's Lot. Any Owner who fails to properly maintain the landscaping upon the Lot, shall be given a reasonable period to conduct such maintenance. In the event Owner fails to provide such landscaping maintenance to his/her Lot, after receiving notice from the Board to do so, the Association is empowered to enter upon the Lot, conduct the necessary landscaping maintenance, and charge the cost to the Owner. Such charges shall be collected in the same manner as assessments.

5.2.6 Nuisances; Dust Control; Construction Activities. No rubbish or debris of any kind shall be permitted to accumulate upon or adjacent to any Lot so as to create a nuisance or render any such property or activity thereon unsanitary, unsightly or offensive. Each Lot shall be landscaped and maintained in a manner which will minimize the possibility of dust being transmitted into the air and over adjacent properties. Although normal construction activities shall not be considered a nuisance or otherwise prohibited, Lots must be kept in a neat and tidy condition during construction periods. No noxious or offensive activity shall be carried on or permitted on any Lot, nor shall anything be done thereon which may be, or may become, an annoyance or

nuisance to Persons or property in the vicinity of such Lot or to Mesquite Ranch, or which shall interfere with the quiet enjoyment of each of the Owners and Occupants.

5.2.7 Diseases and Insects. No Owner or Occupant shall permit any thing or condition to exist upon any Lot which shall induce, breed or harbor infectious plant or animal diseases or noxious insects.

5.2.8 Antennas and Dishes; Solar Devices. No television, radio, or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 47 CFR Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time.

The Association shall be empowered to adopt rules governing the types of antennae that are permissible hereunder, and to establish reasonable, non-discriminatory restrictions relating to location and safety of antennae structures.

To the extent that reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not Visible From Neighboring Property, or integrated with the Residence and surrounding landscaping to prevent or limit such visibility. Antennae shall be installed in compliance with all applicable laws and regulations.

5.2.9 Mineral Exploration. No Lot shall be used in any manner to explore for, quarry, mine, remove or transport any water, oil or other hydrocarbons, minerals, gravel, gas, earth or any earth substance of any kind, except in each case as Declarant shall specifically approve.

5.2.10 Clothes Drying Facilities. No outside clotheslines or other facilities for drying or airing clothes shall be placed on any Lot without the prior written consent of the Design Review Committee unless they are not Visible from Neighboring Property.

5.2.11 Party Walls. Except as hereinafter provided, the rights and duties of Owners of contiguous Lots which have shared walls or fences ("Party Walls") shall be as follows:

(a) each Owner shall have the right to use the Party Wall, provided that such use does not interfere with the other Owner's use and enjoyment thereof;

(b) if a Party Wall is damaged or destroyed through the willful or negligent act of an Owner or the Owner's Occupants, agents, guests or family, the Owner or Occupant as the case may be, shall be obligated to rebuild and repair the Party Wall at the Owner's sole expense;

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(c) in the event any Party Wall is damaged or destroyed other than by the willful or negligent act of an adjoining Owner or the Owner's Occupants, agents, guests or family, or deteriorates from ordinary wear and tear, it shall be the joint obligation of all Owners whose Lots adjoin the damaged or destroyed portion of such Party Wall to immediately rebuild and repair such Party Wall, such expense to be ratably divided among such Owners on the basis of the amount of frontage of their respective Lots on the damaged or destroyed Party Wall;

(d) in the event of a dispute between Owners with respect to a Party Wall or the sharing of the cost thereof, such Owners shall submit the dispute to the Design Review Committee; whose decision shall be binding unless appealed to the Board, in which event the Board's decision shall be binding and final;

(e) notwithstanding the foregoing and, unless otherwise expressly agreed in writing by the Association, in the case of walls or fences: (a) between Common Areas and Lots; or (b) situated on Common Areas within or adjacent to a Lot, the Owners and Occupants of such Lots shall be responsible, at their expense, for all maintenance, repair, painting and replacement thereof. Further, unless otherwise approved in writing by the Board, any wall situated generally between a Lot and Common Areas shall be situated entirely upon such Lot, and not upon the Common Areas, immediately adjacent to the boundary line between the Lot and the Common Areas.

5.2.12 Overhead Encroachments. No tree, shrub or planting of any kind shall be allowed to overhang or encroach upon any public right-of-way, bicycle path or any other pedestrian way from ground level to a height of eight (8) feet, without the prior written approval of the Design Review Committee.

5.2.13 Trucks, Trailers, Campers, Boats and Motor Vehicles. No motor vehicle, motor home, mobile home, trailer, camper shell, detached camper, boat, boat trailer, snow mobile, jet ski or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed, repaired or stored on any Lot or on any street so as to be Visible From Neighboring Property (including but not limited to any Common Areas, Limited Common Areas or street, public or private). The foregoing limitation on parking shall not apply to:

(a) automobiles, trucks or vans, or mini-motor homes not exceeding seven (7) feet in height from ground level and twenty-two (22) feet in length, so long as such automobiles, trucks or vans or mini-motor homes (i) are parked as provided in Section 5.2.30 , and (ii) are used on a regular and recurring basis for basic transportation. The Board or the Design Review Committee shall have the authority, however, to adopt and enforce regulations regarding parking of such vehicles on a Lot (including, but not limited to, regulations requiring the screening of delivery trucks and vans, or other business vehicles) if, in the sole discretion of the Board or the Design Review Committee, such regulations are necessary to prevent such vehicles from being or becoming an eyesore or nuisance to the Owners or Occupants of adjacent property; or

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(b) temporary facilities maintained during, and used exclusively in connection with, construction activities, provided, however, that such activities are approved in advance and in writing by the Design Review Committee.

Notwithstanding subsection (a) above, no automobile, motorcycle, motorbike or other motor vehicle shall be constructed, repaired or, if inoperable, stored upon any Lot or street so as to be Visible From Neighboring Property.

5.2.14 Health, Safety and Welfare. In the event uses of, activities on, or facilities upon or within a Lot are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners or Occupants, the Board or the Design Review Committee may make rules restricting or regulating their presence.

5.2.15 Window Coverings. No window covering or reflective covering may be placed, or permitted to remain, on or adjacent to any window of any building, structure or other improvement without the prior written approval of the Design Review Committee.

5.2.16 Lot Coverage. The percentage of each Lot which may be covered by buildings (as well as the location of such buildings and other improvements on each Lot) shall be subject to the review and approval of the Design Review Committee, as part of the Design Review Committee's review of plans for proposed improvements on such Lot pursuant to this Declaration, but shall in no event violate City ordinances and regulations in effect from time to time.

5.2.17 Duty of Maintenance. Each Owner shall, at such Owner's sole cost and expense, keep such Owner's Lot, including buildings, improvements, private drives, easement areas and grounds thereon, in a well-maintained, clean, neat and attractive condition at all times and shall comply in all respects with all governmental health, fire and safety statutes, ordinances, regulations and requirements.

5.2.18 Utility Lines and Connections. All utility wires, lines, pipes, conduits, facilities, connections and installations, including, without limitation, electrical, telephone, cable television, water, gas and sanitary sewer, shall be installed and maintained underground or concealed in, under, or on structures approved in writing in advance by the Design Review Committee. All transformers shall be placed on or below the surface of the Lot. Temporary above-ground power or telephone structures and water lines incident to construction activities shall be permitted but only with the prior written approval of the Design Review Committee. This provision shall in no way require Declarant or any Developer Owner to install existing overhead facilities underground, nor shall it prohibit surface transformers, meters, and like equipment owned by utility companies on the surface of the land.

5.2.19 On-Site Grading and Drainage. No water shall be drained or discharged from any Lot, or building thereon, except in accordance with: (a) the master drainage study, including any amendments thereto, approved by the appropriate governmental agency(ies) and the Design Review Committee (or other drainage study approved by such Committee, if no such master drainage study exists); and (b) grading

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plans approved by the Design Review Committee in accordance with Article 4 and applicable City ordinances.

Finished grades along the periphery of a Lot shall match the existing grades or the top of curb of any constructed or proposed streets which are part of the overall master infrastructure for the Covered Property; the tolerance allowed shall be approved in writing by the Design Review Committee. Further, no Owner or Occupant shall interfere with the drainage established by the grading plan for the remainder of the Covered Property or any other property adjacent to the Lot.

5.2.20 Building Exteriors. All colors of materials on the building exteriors and all exterior wall surfaces of any building shall be in accordance with plans and designs approved in accordance with Article 4. All materials used for the exterior of the buildings shall be high quality, long-life, low maintenance materials.

5.2.21 Restrictions on Further Subdivision, Property Restrictions, and Rezoning.

(i) All proposed site plans, subdivision plats, easements or further covenants, conditions or restrictions, or applications for rezoning, variances or use permits for any Lot, or any portion of a Lot, must be approved in writing by the Declarant prior to the expiration of the Class B Membership, and by the Board thereafter. The required approval shall be evidenced on such instrument by the signature of the Declarant or of an authorized representative of the Board, as applicable. Except for property owned by the Declarant, no Lot, or any portion of a Lot, shall be further subdivided and no portion less than all of the Lot, or any easement or other interest therein, shall be conveyed or transferred by any Owner without the prior written approval of the Board.

(b) No site plan or subdivision plat, or further covenants, conditions, restrictions or easements, and no application for rezoning, variances or use permits, shall be made, filed, submitted to, or recorded with City or any other governmental authority or agency unless it has first been approved in writing as provided in this Section. No changes or modifications shall be made in any such documents, instruments or applications once they have been approved as provided in this Section (whether requested by the City or otherwise) unless such changes or modifications have also been approved in advance, in writing, in accordance with this Section. This Section (b) does not apply to portions of the Covered Property owned by Declarant or to site plans, subdivision plats, or further covenants, conditions, restrictions or easements, or applications for rezoning, variances or use permits, made, filed, submitted or recorded by Declarant and pertaining to portions of the Covered Property owned by Declarant.

5.2.22 Single Family Residential Use. No structure whatsoever, other than one private, single family residence, together with a private garage for not more than four (4) cars and one (1) guest residence, one gazebo, one tennis court, one swimming pool, and one storage facility shall be erected, placed or permitted on any Lot, unless specifically approved otherwise by the Design Review Committee.

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5.2.23 Permissible Encroachments. Each Owner hereby acknowledges and agrees that Dwelling Units, or privately-owned patio walls, improvements and fixtures, once built and completed, and which were initially constructed on the Covered Property in the course of original construction by a Developer Owner may from time to time encroach in minor degree upon the Common Areas or other Lots in the Covered Property. Such encroachments caused incidentally and which are minor in scope and degree, such as those caused by good faith survey error, and where removal of improvements would cause gross economic waste, shall be deemed acceptable. Each Owner consents thereto and agrees that title to the land lying within such incidental encroachments is conveyed to the Owner of the Lot upon which the majority of the encroaching structure is built.

5.2.24 No Commercial Use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on or in any Lot except as set forth in this subparagraph. The Declarant and a Developer Owner may maintain sales offices, construction offices and sales models on the Covered Property and an Owner may carry on a "Home Occupation" as provided below. A "Home Occupation" as permitted hereby means work within the Dwelling Unit (such as the performance of accounting work, creation of art work, etc.) provided that:

(a) the existence or operation of the business activity is not apparent from the outside of the Dwelling Unit and no sound or smell from the outside of the Dwelling Unit indicating the conduct of business is detectable;

(b) the business activity conforms to all zoning requirements for the Lot; and

(c) the business activity does not involve frequent or annoying traffic by persons who do not reside therein; and

(d) the business activity is consistent with the residential character of the neighborhood and does not constitute a nuisance or hazard or offensive use, nor threaten the security or safety of other residents of the Covered Property as determined in the discretion of the Board.

If the Board determines that the Home Occupation violates the provisions hereof, then the Board shall have the authority to require that the Home Occupation in question cease immediately.

5.2.25 Leasing. The entire (but not less than all) of a Dwelling Unit may be leased to a Single Family Tenant from time to time by the Owner, subject to the provisions of this Declaration, any applicable Supplemental Declaration and the Association Rules.

5.2.26 Animals. No animal, livestock, poultry or fowl of any kind other than a reasonable number of generally recognized house pets, shall be maintained on or in any Lot and then only if they are kept or raised thereon solely as domestic pets and not for commercial purposes. No house pets shall be permitted to make an unreasonable amount of noise or create a nuisance. No structure for the care, housing

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or confinement of any permitted pet shall be Visible From Neighboring Property. Notwithstanding the foregoing, no permitted pets may be kept on or in any Lot which result in an annoyance to other Owners or Occupants in the vicinity. All permitted pets shall be leashed when not on a Lot owned by the pet's owner or on which the pet's owner is a Tenant, guest or invitee. Persons walking pets shall carry a "pooper scooper" (a hand held shovel or other instrument designed for removing animal excrement from the ground) with them at all times and shall remove the pet's excrement from the Covered Property.

5.2.27 Garbage. No garbage or trash shall be allowed, stored or placed on a Lot except in sanitary, covered containers. In no event shall such containers be Visible From Neighboring Property, except for a reasonable time immediately prior to and after collection. All trash and garbage shall be regularly removed from each Lot and shall not be allowed to accumulate thereon. The Board may also determine to require that the Association or individual Owners shall employ one or more of a limited number of waste management or pick-up companies to retrieve waste and refuse from the Covered Property or portions thereof. The Board may establish regulations as to the times and duration that waste containers may be visible from Neighboring Property for pick-up, and may determine and regulate the type and appearance of waste containers.

5.2.28 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated, stored or maintained upon any Lot except;

(a) during the period of construction, such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of a building, appurtenant structures or improvements thereon; or

(b) that which Declarant or the Association may require for the development, operation and maintenance of the Covered Property or other portions of Mesquite Ranch.

5.2.29 Signs. No signs of any nature shall be placed on the Common Areas except with respect to Association or Common Areas matters as approved by the Board. No signs of any nature shall be placed on any Lot except

(a) signs required by legal proceedings;

(b) a maximum of two (2) identification signs for Dwelling Units, each with a maximum face area of seventy-two (72) square inches or less;

(c) "for sale" and "for lease" signs, the nature, number, location, content and design of which shall comply with the Design Guidelines; and

(d) such other signs as the Design Review Committee shall approve.

5.2.30 Parking. It is the intent of Declarant to eliminate on-street parking (public street or private street) as much as possible within the Covered Property. Except for temporary guest parking, such as during social functions where parking space of a

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Lot is inadequate, no vehicle shall be parked on any public or private street or roadway shown on any map of dedication, or similar instrument, Recorded by Declarant unless otherwise expressly provided either:

(a) in or on such Recorded map of dedication or similar instrument showing the street or roadway; or

(b) in a separate Recorded instrument executed by Declarant.

Vehicles shall be kept in garages or other designated parking areas on each Lot, or as otherwise required in a Supplemental Declaration, but in all cases, the parking of the first two vehicles by any Owner or Occupant shall be in a garage, and any additional vehicles shall be parked first in available paved spaces on the Lot. No garage doors shall be permitted to remain open except for a temporary purpose and no less than two stalls in all garages shall be kept free of obstruction and available for parking of vehicles. The Association may adopt additional parking restrictions including the establishment of fines and assessments for their violation, and including the regulation of parking in public or private streets, including in any specifically designated areas intended for temporary or guest parking. The Association may further permit parking for special events, parties and the like.

5.2.31 Commercial Vehicles. No vehicle shall be permitted to park on a Lot if the exterior of the vehicle contains or exhibits any signage relating to a commercial enterprise or commercial activity that is visible from the exterior of such vehicle, except such signage that is limited to the exterior driver or passenger door of such vehicle shall be permitted. No vehicle shall be permitted to park on a Lot, even if such vehicle otherwise qualifies under Section 5.2.13, if such vehicle is used for a commercial enterprise or activity and such vehicle has ladders, work beds, lights and/or other commercial items attached to or hanging from such vehicle so as to be visible from the exterior of such vehicle. This provision does not apply to temporary parking by vendors, repairmen, or the like.

5.2.32 Model Homes. Nothing contained herein or in any applicable Supplemental Declaration shall prohibit the construction and maintenance of model homes, sales offices, administrative offices, and parking incidental thereto by persons engaged in the construction, marketing, rental or management of Dwelling Units within the Covered Property, provided, however, that the models are open only during reasonable hours and otherwise are in compliance with the provisions of this Declaration and ordinances of the City. Except as otherwise approved in writing by the Board:

(a) all model homes and sales offices shall cease to be used as such at any time the owner (or lessee thereof as the case may be) is not actively engaged in the construction or sale of Dwelling Units within the Covered Property; and

(b) no model home or sales office shall be used for the sale or rental of residences not located within the Covered Property.

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5.3 Variances. The Board may, at its sole discretion, grant variances from the restrictions set forth in Article 5 hereof or in any Supplemental Declaration if the Board determines that:

5.3.1 either (a) a particular restriction would create a substantial hardship or burden on an Owner or Occupant and that such hardship is not attributable to the Owner's or Occupant's acts; or (b) a change of circumstances has rendered the particular restriction obsolete; and

5.3.2 the activity permitted under the requested variance will not have a substantially adverse effect on other Owners and Occupants. The request for a variance must be made in writing and be accompanied by adequate supporting documentation. The Board shall approve or disapprove the request, in writing, as promptly as possible under the particular circumstances. All decisions of the Board shall be final and nonappealable.

5.4 Declarant's and Developer Owners' Exemption. Nothing contained in this Declaration shall be construed to prevent the construction, installation or maintenance by Declarant or a Declarant Affiliate, or by any Developer Owner, or their agents during the period of development and construction on the Covered Property of improvements, landscaping or signs deemed necessary or convenient by Declarant or a Declarant Affiliate, or by a Developer Owner, in its sole discretion, to the development or sale of property within the Covered Property, provided that all activities of any Developer Owner must be approved in accordance with the provisions hereof, and in accordance with the Design Guidelines.

## ARTICLE 6 ORGANIZATION OF ASSOCIATION

6.1 Formation of Association. The Association shall be a nonprofit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, the Bylaws, and this Declaration. Neither the Articles nor the Bylaws shall be amended or interpreted so as to be inconsistent with this Declaration.

6.2 Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws. The initial Board and each Board thereafter shall, for so long as there exists a Class B Membership, consist of not fewer than three (3) Members or other persons, and not more than seven (7), all as provided in the Bylaws. Commencing with the first annual meeting of the Members when there is no longer a Class B Member, the Board shall consist of, and the voting Members shall elect, at least five (5) and not more than seven (7) directors, but never an even number, all of whom must be Members, or an individual designated by a corporate, partnership or other non-individual Member. The foregoing reference to five (5) to seven (7) directors shall be subject to increase in the number of Directors as provided in the Bylaws. The term of each of the Directors shall be for one (1) year until there is no longer a Class B Member. Thereafter the initial terms shall be at least three (3) and not more than four (4) Directors for one (1) year terms and at least (2) and not more than three (3) Directors for two (2) year terms, thus establishing a staggered Board. In

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succeeding years, all directors shall be elected for a two (2) year term. The Board may appoint various committees at its discretion. The Board may also appoint or engage a manager to be responsible for the day-to-day operation of the Association and the Common Areas. The Board shall determine the compensation to be paid to the manager which may include transfer fees from certain property transactions.

6.3 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal the Association Rules. The Association Rules may restrict and govern the use of the Common Areas, provided, however, that the Association Rules shall not discriminate among Owners and Occupants except to reflect their different rights and obligations as provided herein, and shall not be inconsistent with this Declaration, the Articles, or the Bylaws. The Association Rules shall be intended to enhance the preservation and development of the Covered Property, the Common Areas and the Limited Common Areas. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth herein. A copy of the Association Rules as adopted, or amended, shall be available for inspection at the office of the Association.

6.4 Personal Liability. No Board member, officer, committee member, employee or representative of the Association, or the Association, shall be personally liable to any Owner, or to any other Person, including the Association, for any damage, loss, costs, fees (including reasonable attorneys' fees), or prejudice suffered or claimed on account of any of their acts, omissions, errors or negligence, provided, however, that the limitations set forth in this Section 6.4 shall not apply to any Person who has failed to act in good faith or has engaged in willful or intentional misconduct.

6.5 Mergers or Consolidations. The Association shall have the right, power and authority to participate in mergers or consolidations with any other nonprofit corporation whose objectives, methods, and taxable status and format of operation are similar to those of the Association (a "Merger Candidate"). Merger or consolidation of the Association with a Merger Candidate must be approved in advance by Members holding at least two-thirds (2/3) of the votes in each class of Members of the Association, whether in Person or by proxy, at a meeting duly called for such purpose. The Association's properties, rights and obligations shall be transferred to and assumed by the surviving or consolidated corporation by operation of law, or, alternatively, the properties, rights and obligations of the Merger Candidate shall be transferred by operation of law to the Association as the surviving corporation. The surviving or consolidated corporation, at a minimum, shall have the same administrative responsibilities and enforcement rights established by this Declaration in regard to the Covered Property. In addition, for so long as there is a Class B Member and to the extent Declarant has theretofore sought the approval of an Agency in regard to the Association, any such merger or consolidation will be subject to the approval by such Agency if so required by the rules and regulations of the Agency.

## ARTICLE 7 MEMBERSHIPS AND VOTING

7.1 Votes of Owners of Lots. Every Owner of a Lot that is not Exempt Property shall automatically be a Member of the Association and shall remain a Member



for so long as such ownership continues. Each Owner shall have the following applicable number of votes in regard to votes of the Members of the Association:

7.1.1 For each Class A Member, One (1) vote for each Lot owned.

7.1.2 For the Class B Member, there shall be three (3) votes for each Lot owned or deemed owned as provided herein.

The votes of the Class B Member shall be determined by considering all of the Covered Property. For purposes solely of calculating voting rights of the Declarant, and in order to effectively pursue the development of Mesquite Ranch as a cohesive and unified development, Declarant shall at all times during the pendency of the Class B Membership be deemed to own that number of Lots which equals the difference between:

(i) the total number of Lots appearing on the recorded Plat for the Covered Property; and

(ii) the number of Lots within the Covered Property owned by Class A Members not paying a partial Assessment pursuant to Section 8.3.<sup>1</sup>

Declarant shall have the right to assign its rights and privileges as the Declarant and as the Class B Member, which assignment may be in whole or in part. Such assignment may include the special voting provisions set forth herein.

7.2 Membership is Appurtenant to Ownership. Each Owner's Membership in the Association shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable. There shall be only the Memberships for each Lot as described herein. Joint ownership or ownership of undivided interests in any property as to which a Membership is established pursuant hereto shall not increase the number of Memberships or votes attributable to the Lot.

7.3 Declarant. Declarant shall be a member of the Association for so long as it holds a Class A or Class B Membership.

7.4 Voting Classes. The Association shall have two classes of voting Members:

7.4.1 Class A. Class A Members shall be all Owners except Declarant, until the conversion of Declarant's Class B Membership to Class A Membership as provided below. Subject to the authority of the Board to suspend an Owner's voting rights in accordance with the provisions hereof, a Class A Member shall have the number of votes provided in Section 7.1. Notwithstanding the foregoing, during the pendency of the Class B Membership, a Class A Member shall not be entitled to vote

<sup>1</sup> For example, if 200 Lots with homes constructed thereon have been sold to Non-Developer Owners, and 250 more lots are owned by Developer Owners paying partial Assessments, then the Class B Member would be deemed to own 419 Lots (619 less only the 200 Lots sold to Non-Developer Owners=419. Then,  $419 \times 3 = 1257$ ). Upon expiration of the Class B Membership, Declarant and Developer Owners shall have Class A votes as provided herein (see Section 7.4.1).

with respect to any Lots in regard to which the Owner is paying only a reduced Assessment pursuant to Section 8.3 unless otherwise determined in writing by Declarant in its sole discretion, and Declarant's determination in such regard shall be final and conclusive; provided, however, that upon expiration of the Class B Membership, Declarant shall be deemed to have relinquished its votes with respect to Lots owned by Class A Members paying reduced Assessments pursuant to Section 8.3, in which case said Class A Members shall have one (1) vote for each Lot owned.

**7.4.2 Class B.** The Class B Member(s) shall be Declarant and any Declarant Affiliate owning any portion of the Covered Property. The Class B Member(s) shall have the number of votes as provided in Section 7.1 of this Declaration for all property owned or deemed owned in the Covered Property specifically identified herein or in a Supplemental Declaration. The Class B Membership shall terminate and be converted to a Class A Membership upon the happening of the first of the following events:

(a) subject to the provisions of Section 7.4.1 above, the date which is 120 days after the date upon which the total votes of the Class A Members entitled to vote equals the total votes of the Class B Member(s) (including the votes Declarant is entitled to cast as a result of Developer Owners paying partial Assessments as provided herein);

(b) the date which is six (6) years after the date this Declaration is recorded; or

(c) the date on which all Class B Members relinquish their Class B Memberships by notifying the Class A Members in writing.

The Class B Membership shall be revived should events cause the votes of the Class B Member to exceed those of the Class A Members. For purposes hereof, a Developer Owner paying reduced Assessments shall be deemed to be continuing to pay partial assessments pursuant to Section 8.3.1 notwithstanding any required contribution toward deficits hereunder. A Developer Owner shall be deemed to be paying full assessments only when the privilege of paying partial assessments pursuant to Section 8.3.1 has expired or the Developer Owner has in writing relinquished the privilege.

**7.5 Right to Vote.** No change in the ownership of a Lot shall be effective for voting purposes until the Board receives written notice of such change together with satisfactory evidence thereof, for example, the Recorded deed showing the name of the Owner of such Lot. The vote for each Member must be cast as a single unit. Fractional votes shall not be allowed. In the event that a Lot is owned by more than one Person and such Owners are unable to agree as to how their vote or votes shall be cast, they shall not be entitled to vote on the matter in question. If any Owner casts a vote or votes representing a certain Lot, the Owner will thereafter be conclusively presumed to be acting with the authority and consent of all other Owners of such Lot unless objection thereto is made to the Board, in writing, at or prior to the time the vote or votes are cast. In the event more than one (1) Person casts or attempts to cast a vote for a particular Lot all such votes shall be deemed void.

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7.6 Members' Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration, the Articles, the Bylaws, the Association Rules, and the Design Guidelines.

7.7 Transfer of Membership. The rights, duties and obligations of a Class A Member cannot and shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership of such Class A Member's Lot, and then only to the transferee thereof. Such transfer may be effected by deed, intestate succession, testamentary disposition, foreclosure, or other legal process authorized under Arizona law. Any attempt to make a nonapproved form of transfer shall be void. Any transfer of ownership in a Lot shall operate to transfer the Membership appurtenant to ownership to the new Owner.

## ARTICLE 8 ASSESSMENTS AND CREATION OF LIEN

8.1 Creation of Assessment Lien; Personal Obligation of Lot Owner. Except as otherwise provided herein, each Owner of a Lot, by acceptance of a deed therefor (whether or not it should be so expressed in any such deed or other instrument), is deemed to covenant and agree to pay to the Association when due, all Assessments levied or imposed by the Association, and all Special Use Fees as provided in Section 3.1. The amount and time for payment of the Assessments and Special Use Fees shall be determined by the Board pursuant to this Declaration and the Articles and Bylaws. In determining the amount of the Assessments and Special Use Fees, the Board may give such consideration as it determines appropriate to any surplus funds or other revenue balances held by the Association from prior years and the Board shall be entitled to establish such reasonable reserves for the Association as it deems appropriate. Special Use Fees and the Assessments, together with interest thereon and the costs and reasonable attorneys' fees, if any, incurred by the Association in connection with the enforcement and collection thereof or in otherwise enforcing this Declaration, shall be a charge and continuing servitude and lien upon the Lot against which such Special Use Fees or Assessments are made and, in addition, shall be the personal obligation of the Owner of such Lot at the time when such Special Use Fees or Assessments become due and payable.

8.2 Annual Assessments. The Association by and through the Board shall determine and levy the Annual Assessments for the purposes set forth hereinbelow. The Annual Assessments levied by the Association shall be used to promote the recreation, health, safety and welfare of the Owners and Occupants, to enhance the quality of life within the Covered Property, to preserve and enhance the value of the Covered Property, to pay the costs of administration of the Association and the maintenance of the Common Areas, to establish reasonable reserves, and to otherwise further the interests of the Association as the Board deems appropriate. Subject to the limitations hereof, the Board may, during an Assessment Period, revise the amount of the Annual Assessment in order to meet expenses which exceed the amounts previously budgeted by the Association. The first Annual Assessment shall commence not later than the date of conveyance of a completed home and Lot to a Non-Developer Owner.

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8.3 Rate of Assessment. The amount of the Annual Assessments, Maintenance Assessments and Special Assessments shall be established by the Board, in its sole discretion. Except as otherwise specifically provided herein, Annual Assessments and Special Assessments shall be uniform.

8.3.1 Obligation of Developer Owner. The Developer Owner of a Lot may enjoy the privilege of paying partial Assessments, but only in accordance with the following:

(a) For a period of twenty-four (24) months from the date of the first conveyance by any Developer Owner of a completed home and Lot to any Non-Developer Owner anywhere within the Covered Property, Developer Owners shall be required to pay only twenty-five percent (25%) of the Annual Assessments and Special Assessments. The said twenty-four (24) month period shall commence as to all Lots from the said initial conveyance (regardless of the Lot or by whom), and shall in no case be deemed extended, or to endure longer, as to other Lots, regardless of when acquired by any Developer Owner.

(b) Upon expiration of the said twenty-four (24) month period, at which time all Developer Owners shall together cease to qualify for the reduced twenty-five percent (25%) rate as provided above, Developer Owners shall be required to pay only fifty percent (50%) of the Annual Assessments and Special Assessments for each Lot owned until initial conveyance of a completed Dwelling Unit thereon to a Non-Developer Owner.<sup>2</sup>

Notwithstanding the foregoing, should the Association suffer or incur a deficit during any Assessment Period, then those Developer Owners paying a reduced or partial assessment pursuant to Section 8.3.1 above shall pay and satisfy the deficit, pro-rata, but no Developer Owner shall be required to pay greater than the full Annual Assessment and Special Assessment applicable to each Lot. The Association shall have the right to determine a reasonable formula for the calculation of each Developer's pro-rata share of such deficit. Should a deficiency still exist after full payment hereunder by each Developer Owner, then Declarant, for each Lot actually owned<sup>3</sup> shall contribute as provided in Section 8.13 below. The obligations of each Developer Owner and of the Declarant are supported by the Assessment Lien of the Association.

If a Developer Owner should cease to qualify for either the twenty-five percent (25%) or fifty percent (50%) partial assessment rate during any Assessment Period, that Developer Owner shall immediately notify the Board, in writing, of its change in status. If an Owner of a Lot who has the right to pay a reduced Assessment amount as provided for in this Declaration, fails to notify the Board of the date the

<sup>2</sup> By way of clarification, if the first home and Lot conveyed to a Non-Developer Owner should be conveyed November 30, 2001, then the privilege of any and all Developer Owners of paying partial Assessments at the twenty-five percent (25%) rate shall expire as to all Lots, regardless of by whom owned or when acquired, on October 31, 2003. Thereafter, Developer Owners shall pay only fifty percent (50%) of the Annual Assessments and Special Assessments for each Lot owned until initial conveyance of a completed Dwelling Unit thereon to a Non-Developer.

<sup>3</sup> For purposes of this obligation, only those Lots actually owned by Declarant shall be considered. Lot which are deemed owned by Declarant for purposes of voting rights have no application to this provision.

payment amount is to be increased, that Owner shall still be liable for the full amount of the Assessment as of the date it was required to pay the full amount of the Assessment and such Owner's failure to notify the Board shall not relieve the Owner of liability for the full amount of the Assessment. The Association may at any time request that any Developer Owner which is being assessed at a reduced rate furnish the Association with evidence that such Developer Owner continues to be entitled to a reduced assessment rate under this Section. If such Developer Owner fails to produce such evidence within thirty days of the date of the Association's request, or if the evidence which is furnished is unsatisfactory, in the Board's reasonable discretion, to demonstrate that Developer Owner's continued entitlement to the reduced assessment rate, the Board may terminate the reduced assessment rate as of a date reasonably deemed appropriate by the Board.

8.3.2 Obligation of Non-Developer Owner. A Non-Developer Owner (not including Declarant) is not entitled to the reduced assessment rates set forth in the above Sections and a Developer Owner is only entitled to such reduced rates if it is a Developer Owner of the specific Lot being assessed.

8.4 Special Assessments. The Association may levy a special Assessment but only for the purpose of defraying the cost of any construction, reconstruction, repair or replacement of a capital improvement owed by the Association or for defraying other extraordinary expenses; provided, however, that such Special Assessment shall have the prior assent of two-thirds (2/3) of the votes of each class of Members voting in Person or by proxy at a meeting of the Association duly called for such purpose, except that during the pendency of the Class B Membership, the vote required shall merely be a majority of the votes held by the total membership, rather than each Class of Members. Special Assessments shall be assessed uniformly among the Owners, in the same proportions as the Annual Assessments are charged and collected.

8.5 Working Capital Fund. To ensure that the Association shall have adequate funds to meet its expenses, such as for necessary equipment and services, each purchaser of a Lot from Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to seventy-five dollars (\$75.00) for each Lot conveyed to such Owner. Thereafter, each bona fide purchaser for value (excluding conveyances from a land banker to a Developer Owner, and excluding conveyances between a trustee and its then current beneficiary, and the like) shall pay, immediately upon becoming the Owner of the Lot, a sum equal to twenty-five percent (25%) of the then-current full (not partial) Annual Assessment applicable to such Lot (the "Working Capital Fund Contribution"). A Working Capital Fund Contribution shall continue to be payable upon each subsequent sale of a Lot. Funds paid to the Association pursuant to this Section may be used by the Association for payment of operating expenses or any other purpose permitted under this Declaration and the Articles and Bylaws. Payments made pursuant to this Section shall be nonrefundable and shall not be considered as advance payment of any Assessments levied by the Association.

8.6 Notice and Quorum for Any Action Authorized Under This Article. Written notice of any meeting of the Members of the Association called for the purpose of conducting a vote required under this Article shall be sent to all Owners not less than fifteen (15) days nor more than fifty (50) days in advance of such meeting. At such

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meeting, the presence of Members or of proxies entitled to cast thirty percent (30%) of all the votes of the Members (without segregation as to class of Member) shall constitute a quorum. If the required quorum is not present, another meeting shall be called for such purpose, subject to the foregoing notice requirements, and the required quorum at the subsequent meeting shall be one-half of the quorum required at the initially scheduled meeting. The subsequent meeting shall be held within sixty (60) days following the date of the initially scheduled meeting.

8.7 Maintenance Assessments. In addition to any Annual Assessment or Special Assessment, the Board has the authority to levy and collect Maintenance Assessments for costs and expenses arising out of any special characteristics or needs of a particular Lot, or if the Owner of a Lot contracts with the Association for the Association to provide particular maintenance services to such Owner's Lot. Furthermore, if any common expense is caused by the misconduct of an Owner of a Lot, his/her Tenants, guests, invitees or licensees, the Association may assess that expense exclusively against that Owner and such Owner's Lot. Without limitation, this Section 8.7 shall permit Maintenance Assessments against Lots benefited by private gates, special or limited Common Area features or facilities, unique or special improvements not enjoyed by the community at large, or the like.

8.8 Annual Assessment Period. Except as otherwise provided herein below, the Assessment Period shall be the calendar year. The Board may, in its sole discretion, from time to time, change the Assessment Period. The Annual Assessments shall be prorated for the initial Assessment Period.

8.9 Billing and Collection Procedures. The Board shall have the right to adopt procedures for the purpose of making, billing and collecting the Assessments and Special Use Fees, and may elect to bill and collect Assessments on a monthly, quarterly, semi-annual or other basis. The failure of the Association to send a bill to an Owner shall not relieve such Owner of the Owner's liability for an Assessment or Special Use Fee. No Recorded Assessment Lien shall be foreclosed or otherwise enforced until the Owner has been given not less than thirty (30) days written notice thereof prior to the commencement of such foreclosure or enforcement. The notice shall be addressed to the Owner at the address of the Owner on the records of the Association. It shall be the responsibility of the Owner to inform the Association in writing of a change of address. The Association shall be under no duty to refund any payments received by the Association even if the ownership of a Lot changes during an Assessment Period. Any successor Owner shall be given credit for any unrefunded prepayments made by a prior Owner. In case the Owner of a Lot having a right to pay a reduced payment amount as provided herein fails to notify the Board at such time as the payment amount should be increased, such Owner shall nonetheless be liable for the increased amount of the Assessment and such Owner's failure to notify the Board shall not relieve such Owner of the liability for such increased Assessment.

8.10 Collection Costs and Interest on Delinquent Amounts. Any Delinquent Amount shall have added thereto a late charge of the greater of fifteen dollars (\$15.00) or ten percent (10%) of the Delinquent Amount if such Delinquent Amount is not paid within thirty (30) days after notice thereof, addressed to the Owner at the address of the Owner on the records of the Association, is given. In addition, the Delinquent Amount

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shall bear interest from its due date until paid at a rate equal to the greater of twelve percent (12%) per annum, or the then prevailing interest rate on loans insured by FHA or VA, but only to the extent allowed by law. The Owner shall be liable for all costs, including but not limited to attorneys, fees and collection agency fees, which may be incurred by the Association in collecting any Delinquent Amount. The Board may also Record an Assessment Lien against the applicable Lot and may establish a fixed fee to be reimbursed to the Association for the Association's cost in Recording such Assessment Lien, processing the delinquency, and Recording a release of lien. The foregoing fee shall be treated as a collection cost of the Association secured by the Recorded Assessment Lien. The Board's failure to record an Assessment Lien against a Lot shall not be deemed to invalidate or extinguish the Assessment Lien with respect to such Lot.

8.11 Statement of Payment. Upon receipt of a written request therefor from any Owner or Resident, the Board, within a reasonable time thereafter, shall issue to the requesting party a written statement stating that as of the date of that statement:

8.11.1 all Assessments and Special Use Fees (including collection fees, if any in regard thereto), have been paid with respect to such Owner's or Occupant's Lot; or,

8.11.2 if such have not been paid, the amount then due and payable.

The Association may make a reasonable charge for the issuance of such statement. Any such statement shall be conclusive and binding with respect to any matter set forth therein.

8.12 Exempt Property. Exempt Property shall be exempt from Assessments and the Assessment Lien, and the owner thereof shall have no voting rights in the Association, provided, however, that should any Exempt Property cease to be Exempt Property for any reason, it shall thereupon be subject to Assessments (prorated as of the date it ceased to be Exempt Property) and the Assessment Lien, and shall have voting rights in the Association as otherwise determined in this Declaration.

8.13 Declarant's Exemption. Anything in this Declaration to the contrary notwithstanding, the Declarant shall not be liable for and shall not be required to pay Assessments upon Lots owned by Declarant, except that Declarant shall pay Assessments on Completed Lots owned by Declarant. For purposes of this Section, "Completed Lots" shall mean any Lot with a Dwelling Unit ready for occupancy as a home that is in the condition of any other Dwelling Unit sold to persons living in the Covered Property (e.g., carpet, kitchen countertops and cabinets, plumbing and lighting fixtures, etc., installed), but shall not include any Lots with improvements thereon used by Declarant as models or sales offices. Nor shall Declarant be liable for the payment of any Assessments for any Lot that, having been previously sold to a purchaser, has been deeded back to the Declarant by foreclosure or deed in lieu of foreclosure, unless such Lot is a Completed Lot.

In consideration for Declarant's exemption from assessment, Declarant agrees that it shall pay, for any given Assessment Period in which Declarant has paid or

contributed to the Association less than the full Annual Assessment for each Lot owned, the actual shortfall or deficiency, if any, in necessary ordinary operating revenue to pay current ordinary expenses for the operation and maintenance of the Association and Common Areas, but only up to the full Annual Assessment for each such Lot actually owned by Declarant, and only after each Developer Owner shall have first contributed up to the full Annual and Special Assessment as provided in Section 8.3.1; provided, however, that Declarant shall not be liable for any shortfall or deficiency created by any decrease in the amounts of the Annual Assessments from those charged during any prior year, nor for any shortfall or deficiency incurred after expiration of the Class B Membership. Declarant may at any time at its sole discretion elect to cease paying the shortfall or deficiency, if any, and to pay up to the full Annual Assessment for each Lot owned by Declarant instead. Declarant's obligation to contribute toward a deficiency as provided herein is supported by a lien on Declarant's Lots.

Should Declarant assign its rights to the exemption from Assessments as provided herein, whether such assignment be in whole or in part, then the assignee shall, in the case of any deficiency as described above (and meeting the conditions set forth above), be liable for its ratable share of same, up to the full amount of the Annual Assessment for each Lot owned, and not more. In addition, such assignee's exemption, if any, shall expire with respect to any Lot upon which construction of improvements has been completed.

In no event shall Declarant be required to contribute to any deficiency after the termination of the Class B Membership. Declarant is exempt from all Special Use Fees and similar charges.

## ARTICLE 9 ENFORCEMENT AND THE ASSESSMENT LIEN

9.1 Association Remedies to Enforce Assessments. If any Owner fails to pay any Assessments or Special Use Fees when due, the Association may (and each Owner hereby authorizes the Association to enforce the payment thereof and the Assessment Lien and Recorded Assessment Lien by taking either or both of the following actions, concurrently or separately (and by exercising either remedy the Association does not prejudice or waive its right to exercise the other remedy):

9.1.1 Bring an action at law against the Owner to recover judgment against the Owner who is personally liable for the Assessments or Special Use Fees; and,

9.1.2 Foreclose the Recorded Assessment Lien against the appropriate Lot in accordance with then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency) and, at the Association's option, the Association may bid for and purchase the Lot at any foreclosure sale.

9.2 Subordination of Assessment Lien. The Assessment Lien shall be superior to all charges, liens or encumbrances which hereafter are or may be imposed on any Lot except:

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9.2.1 the lien of any First Mortgage encumbering the Lots; and

9.2.2 the lien for taxes or other governmental assessments which is deemed superior hereto by applicable law.

Sale or transfer of any Lot shall not affect the Assessment Lien provided, however, the sale or transfer of any Lot pursuant to any First Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the Assessment Lien only as to payments which became due prior to such sale or transfer. No other sale or transfer shall relieve a Lot, or the Owner thereof, for liability from any Assessment theretofore becoming due nor from the Assessment Lien arising in regard thereto. In addition, no Event of Foreclosure shall impair the Assessment Lien or a Recorded Assessment Lien, except that a Person obtaining an interest in a Lot through an Event of Foreclosure shall take title subject only to such Assessments as shall accrue subsequent to the date the Person acquires its interest.

9.3 Release of Recorded Assessment Lien. Upon the complete curing of any default for which a Recorded Assessment Lien was Recorded by the Association, the Association shall Record an appropriate release of the Recorded Assessment Lien.

## ARTICLE 10 USE OF ASSOCIATION FUNDS

10.1 Use of Association Funds. In addition to the powers enumerated in the Articles and Bylaws, the Association shall apply all Funds for the good and benefit of the Covered Property, the Owners and the Occupants. The Funds may be used, among other things, to insure, acquire, construct, alter, maintain, provide and operate, in any manner whatsoever, any and all land, properties, improvements, services, projects, programs, studies and systems, within the Covered Property and the Common Areas, which may be necessary, desirable or beneficial to the interests of the Owners and the Occupants.

10.2 Borrowing Power. The Association may borrow money in such amounts, at such rates, upon such terms and security, and for such periods of time as the Board deems necessary or appropriate.

10.3 Association's Rights in Spending Funds from Year to Year. The Association shall not be obligated to spend in any year all Funds received by it in such year, and the Board may carry forward as surplus any balances remaining. The Association shall not be obligated to reduce the amount of the Annual Assessment in the succeeding year if a surplus exists from a prior year.

## ARTICLE 11 MAINTENANCE

### 11.1 Common Areas and Public Rights-of-Way

11.1.1 Areas of Association Responsibility. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas,

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provided, however, that the Association shall not be responsible for providing or maintaining the landscaping or structures on any Common Areas located on or within Lots unless:

(a) such landscaping or structures are intended for the general benefit of the Owners and Occupants; and,

(b) the Association assumes in writing the responsibility for such maintenance and such instrument is Recorded.

The Association shall also maintain any landscaping and other improvements not located on Lots but located within the Covered Property if such areas are intended for the benefit of Owners and Occupants, unless such areas are to be maintained by a governmental entity or public utility and in fact are being maintained by such entity or utility or are the responsibility of a Lot Owner pursuant to this Declaration. Common Areas to be maintained by the Association may be identified on Recorded subdivision plats approved by Declarant, or in a Supplemental Declaration or in deeds from Declarant, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect thereto. The Association may also in its discretion elect to maintain landscaping and similar improvements within public rights of way located within Mesquite Ranch to the extent the Association wishes to augment or enhance the degree of repair and maintenance provided by any governmental entity to such public rights of way.

11.1.2 Delegation of Responsibilities. In the event any Recorded subdivision plat, Supplemental Declaration, Recorded map of dedication, Recorded deed restriction or this Declaration permits the Association to determine whether Owners of certain Lots shall be responsible for maintenance of certain Common Areas or public rights-of-way, the Board shall have the sole discretion to determine whether the Association or an individual Owner or group of Owners should be responsible for such maintenance, considering cost, uniformity of appearance, location and other relevant factors. The Board may also cause the Association to contract with others for the performance of such maintenance and other obligations of the Association and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and the Owner may agree.

11.1.3 Standard of Care. The Association shall use a reasonably high standard of care in providing for the repair, management and maintenance of the Common Areas so that the Covered Property will reflect a high degree of pride of ownership. The Board shall be the sole judge as to the appropriate level of maintenance of all Common Areas.

11.1.4 Drainage and Detention/Retention Facilities Inspection. In addition to the foregoing, the Association shall have an Arizona Registered Professional Civil Engineer prepare a certified inspection report of the drainage and detention/retention facilities at least once each year, and also following any damaging floods. Such inspection reports shall be retained in the Association's books and records and shall be

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subject to review by the staff of the City of Tucson, upon written request. The staff of the City of Tucson has the right to inspect the private drainage and detention/retention facilities to verify that any scheduled and unscheduled maintenance activities are being adequately performed by the Association. The Association shall be obligated to reimburse the City of Tucson for any costs associated with maintaining the private drainage and detention/retention facilities in the event that it determines that the Association has been deficient in its obligation to adequately maintain such facilities.

11.2 Assessment of Certain Maintenance Costs. In the event the need for maintenance or repair of areas maintained by the Association is caused through the willful or negligent act or omission of any Owner (or of any other person for whom such Owner is legally responsible under applicable state law), the cost of such maintenance or repair shall be added to and become a part of the Assessments to which such Owner and such Owner's Lot is subject and shall be secured by the Assessment Lien, and by a Recorded Assessment Lien if deemed appropriate by the Board. Any charges to be paid by an Owner in connection with a maintenance contract entered into by the Association pursuant to Section 11.1 shall also become a part of such Assessments and be secured by the Assessment Lien, and by a Recorded Assessment Lien if deemed appropriate by the Board.

11.3 Improper Maintenance and Use of Lots. In the event any portion of any Lot is maintained so as to present a nuisance, or substantially detracts from or affects the appearance or quality of any neighboring Lot or other area, or is used in a manner which violates this Declaration or any applicable Supplemental Declaration, or in the event the Owner of any Lot fails to perform such Owner's obligations under this Declaration, any applicable Supplemental Declaration, the Association Rules, or the Design Guidelines, the Association, by Board resolution, may make a finding to such effect, specifying the particular condition(s) that exist, and thereafter give notice to the Owner of such Lot that unless specified corrective action is taken within a specified time period the Association, at such Owner's cost, may take whatever action is appropriate to compel compliance including, without limitation, appropriate legal action. If at the expiration of the specified time period the requisite corrective action has not been taken by the Owner, the Association is hereby authorized and empowered, at its sole discretion, to cause corrective action to be taken or to commence appropriate legal action and the cost thereof, including court costs and attorneys' fees, shall be added to and become a part of the Assessments to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien, and by a Recorded Assessment Lien if deemed appropriate by the Board.

11.4 Excess Maintenance Costs. In the event any use of, or activity on, any Lot causes the maintenance or repair costs incurred or to be incurred by the Association with respect to any portion of the Common Areas to be substantially greater than those costs which would typically be incurred for such portion of the Common Areas if such portion were adjacent to Lots used only for typical Single Family residential housing and related purposes, whether such use or activity is of a continuing nature or an isolated event, the Board may, by resolution, make a finding to such effect, of the amount of the excess costs incurred or expected to be incurred by the Association and of the method of determining such excess costs. Upon the adoption of such a resolution, the amount of such excess costs at any time or from time to time incurred by the Association for the

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reasons specified in the resolution shall be added to and become a part of the Assessments for which the Owner of any Lot upon which such use or activity is conducted is liable and all of such Assessments shall be secured by the Assessment Lien on such Owner's Lot.

11.5 Certain Maintenance Activities. Where the Association has undertaken, by virtue of its obligations hereunder or pursuant to any special contract executed by the Association, the responsibility to maintain, repair, replace, repave, resurface or operate private streets or private roadways or any open space, recreational or other common facilities or any guard gates, the Board, if in its discretion determines that such private streets or private roadways (or appurtenant equipment and facilities) or open space, recreational or other common facilities or guard gates, exclusively or disproportionately benefit the Owners of Lots within a particular subdivision of other Lots, may assess all (or such appropriate portion as the Board shall determine in its discretion) of the cost of such maintenance, repair, replacement, repaving, resurfacing and operation solely against the Lots within such subdivision (and the respective Owners thereof) as additional Maintenance Assessments, which shall be assessed equally against each of the Lots within such subdivision and shall be secured by the lien for Assessments as described herein. Such additional Maintenance Assessments may also include amounts to establish and fund reserves as the Board may deem reasonable and appropriate. One of the purposes of this Section 11.5 is to establish a mechanism whereby various facilities intended and designed solely or primarily for use by the Owners of Lots within a particular subdivision may be owned and maintained by the Association at the sole and primary expense of such Owners.

## ARTICLE 12 RIGHTS AND POWERS OF ASSOCIATION

12.1 Rights, Powers and Duties of the Association. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are set forth in the Articles and Bylaws, together with such rights and powers and duties as may be reasonably necessary in order to effect all the objectives and purposes of the Association as set forth herein. A copy of the Articles and Bylaws shall be available for inspection at the office of the Association during reasonable business hours.

12.2 Rules and Regulations. In addition to the right to adopt, amend and repeal rules and regulations on the matters expressly mentioned elsewhere in this Declaration, the Association, acting through the Board, shall have the right to adopt, amend and repeal rules and regulations with respect to all other aspects of the Association's rights, activities and duties, provided such rules and regulations are not inconsistent with the provisions of this Declaration, the Articles, and the Bylaws. Upon adoption, the Association Rules shall be enforceable in the same manner as this Declaration and shall have the same force and effect as if they were set forth in and were a part of this Declaration.

12.3 Association's Rights of Enforcement. The Association, as the agent and representative of the Owners, shall have the right, but not the obligation, to enforce the provisions of this Declaration and all Supplemental Declarations that shall have been

executed pursuant or subject to the provisions of this Declaration or otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant. If the Association shall fail or refuse to enforce the provisions of this Declaration or the Supplemental Declarations after receipt of written request to enforce from any Owner, then any Owner shall have the right and authority, but not the obligation, to enforce the provisions of this Declaration.

12.4 Contracts with Others. Subject to the restrictions and limitations contained herein, the Articles, the Bylaws, and the laws of the State of Arizona, the Association may enter into contracts with others, including Declarant and Declarant Affiliates, and such contracts shall not be invalidated by the fact that one or more directors or officers of the Association are employed by or otherwise affiliated with Declarant or Declarant Affiliates, provided, however, that the fact of such interest shall be previously disclosed or made known to the other members of the Board acting upon such contract or transaction and, provided further, that the transaction or contract is fair and reasonable. Notwithstanding the foregoing, any contract entered into by the Association be fore a term not exceeding one year and must be terminable, without penalty, by the Association for cause at any time and without cause upon no more than thirty (30) days notice.

### ARTICLE 13

#### EMINENT DOMAIN AND INSURANCE INVOLVING THE COMMON AREA

13.1 Eminent Domain. The term "Taking" as used in this Section shall mean condemnation by eminent domain or sale under threat of condemnation. In the event of a threatened Taking of all or any portion of the Common Area, the Owners hereby appoint the Board and such persons as the Board may delegate to represent all of the Owners in connection with the Taking. The Board shall act, in its sole discretion, with respect to any awards made or to be made in connection with the Taking and shall be entitled to make a voluntary sale to the condemnor in lieu of engaging in a condemnation action. Any awards received on account of the Taking shall be paid to the Association. In the event of a total Taking, the Board may, in its sole discretion, retain any award in the general funds of the Association or distribute pro rata all or a portion thereof to the Owners, and all holders of liens and encumbrances, as their interest may appear of Record.

13.2 Authority to Purchase Insurance. The Association shall purchase and maintain such property damage and liability insurance upon the Common Areas and such other insurance as the Board, in its absolute discretion, may determine. The Association shall be the named insured in all policies providing such insurance. Neither the Association nor the Board, nor any member of the Board or officer or agent of the Association, shall be liable to any Person for failure of the Association to secure and maintain any such insurance coverage where such insurance coverage is not available in the State of Arizona at a reasonable cost and on other reasonable terms and conditions. Notwithstanding the foregoing, the Association shall obtain and maintain at all times, at the Association's expense, directors' and officers, liability insurance covering all officers and directors of the Association as well as all regular and alternate members of the Design Review Committee, in amounts and on terms adequate to

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permit the Association to meet its obligations to indemnify such persons pursuant to the Articles and Bylaws.

13.3 Individual Responsibility. It shall be the responsibility of each Owner or Occupant to provide insurance for himself on his real or personal property interests on or within the Covered Property, including, but not limited to, his additions and improvements thereto, furnishings and personal property therein, his personal liability to the extent not covered by the property and public liability insurance, if any, obtained by the Association. Each Owner and Occupant shall also provide such other insurance which is not carried by the Association as such Person desires. No Person shall maintain any insurance which would limit or reduce in any manner the insurance proceeds payable under the insurance maintained by the Association in the event of damage to the improvements or fixtures on the Common Areas. Neither the Association nor any Board member nor Declarant shall be liable to any Person or mortgagee if any risks or hazards are not covered by the insurance obtained by the Association or if the amount of such insurance is not adequate.

13.4 Insurance Claims. The Association is hereby irrevocably appointed and authorized by the Owners to adjust all claims arising under insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims, and to do all other acts reasonably necessary to accomplish any of the foregoing. The Board has full and complete power to act for the Association in this regard and may, at its discretion, appoint an authorized representative or committee, or enter into an insurance trust agreement wherein the trustee shall have authority, to negotiate losses under any policy purchased by the Association.

#### ARTICLE 14 RIGHTS OF FIRST MORTGAGEES

14.1 Notification to First Mortgagees. Upon receipt by the Association of a written request from an Eligible Insurer or Guarantor or Eligible Mortgage Holder informing the Association of its correct name and mailing address and identifying the Lot, or portion thereof, to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer or Guarantor with timely written notice of the following:

14.1.1 Any condemnation loss or any casualty loss that affects a material portion of the Common Areas;

14.1.2 Any default in the performance of any obligation to be performed pursuant to this Declaration, including without limitation any delinquency in the payment of Assessments or any other charges owed by an Owner whose Lot, or portion thereof, is encumbered by a First Mortgage held, insured, or guaranteed by such Eligible Mortgage Holder or Eligible Insurer or Guarantor, if such default or delinquency is not cured within sixty (60) days;

14.1.3 Any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

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If this Declaration has received formal written approval of the Federal National Mortgage Association, then any action to terminate this Declaration for reasons other than substantial destruction or condemnation of the Covered Property shall require the approval of Eligible Mortgage Holders representing at least sixty-seven percent (67%) of the votes in the Association that are allocated to Owners whose Lots are subject to First Mortgages held by Eligible Mortgage Holders.

Any Eligible Mortgage Holder who receives a written request to approve any matter requiring approval of Eligible Mortgage Holders and who does not submit a response to the requesting party within thirty (30) days after the request is made shall be deemed to have approved such request.

14.2 Condemnation or Insurance Proceeds. No Owner, or any other party, shall have priority over any rights of any First Mortgagee pursuant to its mortgage or deed of trust in the case of a distribution to such Owner of insurance proceeds or condemnation awards for losses to or a Taking of Common Areas.

14.3 Payment of Charges by First Mortgagees. First Mortgagees may jointly or singly pay taxes or other charges that are in default and that may or have become charges against any Common Areas, and may pay overdue premiums on hazard insurance policies or secure new hazard insurance coverage for Common Areas in the case of lapse of a policy. First Mortgagees making such payments are due immediate reimbursement from the Association.

14.4 Right of Inspection of Records. Any Owner, First Mortgagee, or Eligible Insurer or Guarantor shall be entitled to: (a) inspect current copies of this Declaration, the Articles, the Bylaws, the Design Guidelines, the Association Rules, and the books, records, and financial statements of the Association during normal business hours; and (b) receive, upon written request therefor, an audited financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party.

## ARTICLE 15 TERM; AMENDMENTS; TERMINATION

15.1 Term; Method of Termination. This Declaration shall be effective upon its Recordation and, as amended from time to time, shall continue in full force and effect for a term of thirty (30) years from the date of its Recordation. Thereafter, this Declaration, as amended from time to time, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Owners casting ninety percent (90%) of the total votes then entitled to be cast at an election held for such purpose within six (6) months prior to the expiration of the initial term hereof or any ten (10) year extension. In addition, this Declaration may be terminated at any time if ninety percent (90%) of the votes then entitled to be cast by each class of Members shall be cast in favor of termination at an election held for such purpose. If the necessary votes and consents are obtained, the Board shall Record a Certificate of Termination, duly executed by the President or Vice President of the Association and attested to by the Secretary of the Association. Upon the Recording of the Certificate of Termination this Declaration shall

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have no further force and effect and the Association thereupon shall be dissolved in accordance with the terms of its Articles and Bylaws and the laws of the State of Arizona.

15.2 Amendments. Until the first conveyance of a Lot within the Covered Property to a Non-Developer Owner for use and occupancy as a Dwelling Unit, this Declaration may be amended by Recorded instrument duly executed by Declarant, without the necessity of calling a meeting of Owners or obtaining the consent of Owners. Thereafter, this Declaration may be amended (either during the initial 30-year term or during any extension thereof pursuant to Section 15.1 above) by Recording a Certificate of Amendment, duly executed by the President or Vice President of the Association, which Certificate of Amendment shall set forth in full the text of the amendment adopted, and, except as provided in Section 15.3, shall certify that Owners casting two thirds (2/3) of the total votes held by the Membership voted affirmatively for the adoption of the amendment.

Any amendment during the pendency of the Class B Membership shall have the written approval of the Class B Member.

In addition to the foregoing, Declarant shall have the right, so long as it owns any Lot, to amend this Declaration of its own volition, and without the requirement of any further consent or approval, to correct errors or eliminate ambiguities, and to make changes designed to further the intent of this instrument by further elaborating on existing powers, privileges and restrictions in cases where correction, clarification or elaboration is warranted.

15.3 Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institution. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend this Declaration or a Supplemental Declaration as may be requested or required by the FHA, VA or any other Agency with whom Declarant elects to do business as a condition precedent to such Agency's approval of this Declaration or an applicable Supplemental Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot or purchasing loans secured thereby. Any such amendment shall be effected by Declarant Recording a Certificate of Amendment duly executed and acknowledged by Declarant specifying the Agency or the lending institution requesting the amendment and setting forth the requested or required amendment(s). Recordation of such a certificate shall be deemed conclusive proof of the Agency's or institution's request or requirement and such certificate, when Recorded, shall be binding upon all of the Covered Property and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and the Association's activities during the period of planning and development of the Covered Property. If any amendment requested or required pursuant to the provisions of this section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions which shall be binding upon the Covered Property and Owners without a vote of the Owners.

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## ARTICLE 16 WITHDRAWAL OF PROPERTY

16.1 Withdrawal of Covered Property. Declarant may, at its sole discretion and without the approval, assent, or vote of the Association or other Owners or Members, from time to time until twenty (20) years after Recordation of this Declaration, withdraw any real property subject to this Declaration by executing and Recording a Notice of Withdrawal, making reference to this Declaration, and specifically describing the withdrawn property. The property so described shall be deemed completely excluded from this Declaration and shall no longer be a part of the Covered Property. Declarant may, in connection therewith, cancel any Supplemental Declaration for the land withdrawn.

Notwithstanding the foregoing, except as otherwise provided in the applicable Declaration of Withdrawal, withdrawal of any portion or portions of the Covered Property will not be effective until the Owner of the property to be withdrawn has paid all unpaid Assessments applicable to such property, prorated to the date of withdrawal.

It is specifically understood that this right of withdrawal may be exercised in Declarant's sole and absolute discretion, and that once withdrawn, none of the provisions hereof shall apply to or encumber the land.

16.2 Easements for Withdrawn Land. Declarant or the Class B Member may cause the Association to grant and convey such easements as may be necessary to benefit such land withdrawn, including easements for ingress, egress, and utilities, all on terms, if any, deemed by them to be proper.

## ARTICLE 17 DISPUTE RESOLUTION

### 17.1 Consensus for Association Action.

17.1.1 Except as provided in this Article, the Association may not commence a legal proceeding or an action without the approval of at least two-thirds of the votes of the Members eligible to vote. A Member representing Lots owned by Persons other than the Member casting the votes shall not vote in favor of bringing or prosecuting any such proceeding unless authorized to do so by a vote of Owners of two-thirds of the total number of Lots represented by the Member casting the votes. This Article shall not apply, however, to (i) actions brought by the Association for affirmative or injunctive relief to enforce governing documents, as defined below (including, without limitation, the foreclosure of liens); (ii) the imposition and collection of fines, assessments or charges; (iii) proceedings involving challenges to ad valorem taxation; or (iv) counterclaims brought by the Association in proceedings instituted against it.

17.1.2 Prior to the Association or any Member commencing any proceeding to which Declarant or any Developer Owner is a party, including but not limited to an alleged defect of any improvement, Declarant or such Developer Owner shall have the right to be heard by the Members, or the particular Member, and to

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access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

17.2 Alternative Method for Resolving Disputes. Declarant, its officers, directors employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration, including all Members of the Association; any Developer Owner, its officers, directors employees and agents; and any Person not otherwise subject to this Declaration but who agrees to submit to this Article (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 17.3.1 (singularly, "Claim," and collectively, "Claims") to the procedures set forth in 17.4.

### 17.3 Claims.

17.3.1 Unless specifically exempted herein, all claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including but not limited to, claims (a) arising out of or relating to the interpretation, application or enforcement of the Governing Documents (meaning this Declaration, the Articles or Bylaws of the Association, or any rules or regulations adopted thereunder, including the Design Guidelines) or the rights, obligations and duties of any Bound Party under the Governing Documents, (b) relating to the design or construction of improvements; or (c) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party, shall be subject to the provisions of 17.4.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be Claims and shall not be subject to the provisions of 17.4:

(a) any suit by the Association against any Bound Party to enforce the provisions hereof pertaining to assessments;

(b) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions hereof;

(c) any suit between or among Owners, which does not include as a party Declarant (or its beneficiary), a Developer Owner or the Association or an agent for whose action any of the foregoing would be liable, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

(d) any suit in which any indispensable party is not a Bound Party.

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With the consent of all parties hereto, any of the above matters identified in this Section may be submitted to the alternative dispute resolution procedures set forth herein.

#### 17.4 Mandatory Procedures.

17.4.1 Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and the Respondent referred to herein being individually, as a "Party" or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- (a) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (b) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (c) the proposed remedy; and
- (d) the fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

#### 17.4.2 Negotiation and Mediation.

(a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(b) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 days to submit the Claim to mediation under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

(c) If Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant.

(d) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall, issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

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Each Party shall bear its own costs of the mediation, including attorney's fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance herewith and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without action or prerequisite. In such event the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including without limitation, attorney's fees and court costs.

#### 17.4.3 Binding Arbitration.

(a) Upon Termination of Mediation, Claimant shall thereafter be entitled to initiate final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Such claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

(b) Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting party shall be awarded reasonable attorney's fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(c) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both parties.

17.5 Amendment of Article. Without the express prior written consent of Declarant, this Article may not be amended for a period of twenty years from the effective date of this Declaration.

17.6 Reference to Declarant. Reference in this Article 17 to Declarant shall include Declarant's beneficiary and affiliates and agents.

### ARTICLE 18 MISCELLANEOUS

18.1 Interpretation of the Covenants. Except for judicial construction and as hereinafter provided, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration, including without limitation, the land use restrictions contained herein and in any Supplemental Declarations. In the

absence of any adjudication to the contrary by a court of competent jurisdiction, the Association's construction or interpretation of the provisions hereof shall be final, conclusive and binding as to all persons and property benefited or bound by this Declaration.

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

18.3 Rules Against Perpetuities. If any of the interests, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for violation of the Rule against Perpetuities or any related rule, then such provision shall continue until twenty-one (21) years after the death of the survivor of the now living descendants of the President of the United States living on the date this Declaration is Recorded.

18.4 Change of Circumstances. Except as otherwise expressly provided in this Declaration, no change of conditions or circumstances shall operate to extinguish, terminate or modify any of the provisions of this Declaration.

18.5 Declarant's Disclaimer of Representations. Notwithstanding anything to the contrary herein, Declarant makes no warranties or representations whatsoever that the plans presently envisioned for the complete development of Mesquite Ranch can or will be carried out, or that any real property now owned or hereafter acquired by it is or will be subjected to this Declaration, or that any such real property (whether or not it has been subjected to this Declaration) is or will be committed to or developed for a particular (or any) use, or that if such real property is once used for a particular use, such use will continue in effect. While Declarant has no reason to believe that any of the restrictive covenants contained in this Declaration are or may be invalid or unenforceable for any reason or to any extent Declarant makes no warranty or representation as to the present or future validity or enforceability of any such restrictive covenant. Any Owner acquiring a Lot in reliance on one or more of such restrictive covenants shall assume all risks of the validity and enforceability thereof and by accepting a deed to the Lot agrees to hold Declarant harmless therefrom.

18.6 Successors and Assigns; Assignees of Declarant. Any reference in this Declaration to Declarant shall include any successors or assigns of Declarant's rights and powers hereunder, to the extent of such assignment, which may be in whole or in part, and to the extent such assignment is in writing making reference to such rights. Any such assignment shall be evidenced by a recorded instrument executed by Declarant and its successors or assigns. Without limitation, Declarant may assign its various exemptions and privileges hereunder, including but not limited to such exemptions and privileges as may relate to signage, business use during development, voting rights and assessments, design review, and other matters. All rights and privileges, and all exemptions and protections afforded to the Declarant, including pursuant to Article 17, shall accrue to the benefit of Declarant's beneficiary and all affiliates and agents of Declarant.

18.7 Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders;

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words used in the neuter gender shall include the masculine and feminine genders. Words in the singular shall include the plural; and words in the plural shall include the singular.

18.8 Captions. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.

18.9 Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or any resolution of the Board to be given to any Owner or Occupant then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within Pima County. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

18.10 FHA/VA Approval. If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA in regard to the Covered Property, then for so long as there is a Class B Member of the Association, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by FHA or VA: annexation of additional property, mortgaging or dedication of Common Areas (except where such dedication is required as of the date hereof by the City, and except for minor or insignificant transfers necessitated by survey error, encroachment or the like, as provided herein), and amendments of this Declaration. With respect to any action required by this Declaration to be approved by the FHA or the VA, the proposed action may be submitted to the FHA or the VA for approval, and if the agency whose approval is requested does not approve or disapprove the proposed action by written notice to the Association, Declarant or other Person requesting approval within fifteen (15) days after delivery to that agency of the request for approval, the proposed action in question will be deemed approved by that agency.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed on the date set forth on page one of this Declaration.

DECLARANT:

AMERICAN TITLE INSURANCE OF  
ARIZONA, INC., an Arizona corporation,  
as Trustee under Trust No. 12,177, and  
not otherwise

By: Gayle Boudreau  
Name: Gayle Boudreau  
Title: Trust officer

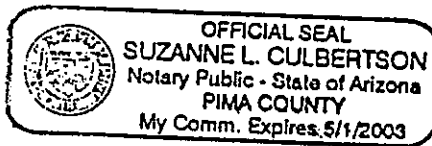
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STATE OF ARIZONA       )  
                                      ) ss.  
COUNTY OF PIMA       )

The foregoing instrument was acknowledged before me this 21<sup>st</sup> day of September, 2001, by Gayle Bourdon, the Trust officer of American Title Insurance of Arizona, Inc., an Arizona corporation, as Trustee under Trust No. 12, 177, and not otherwise.

Suzanne L. Culbertson  
Notary Public

My commission expires:  
5-1-03



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