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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.

1.19 "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.

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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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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

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

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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

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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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

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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.²

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 owned³ 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

² 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.

³ 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

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

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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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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 or 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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