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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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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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