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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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## ARTICLE 4 DESIGN REVIEW COMMITTEE

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.12.1 the size of Single Family Dwelling Units;

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

4.12.3 placement of buildings;

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

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

4.12.6 signage and mailboxes; and

4.12.7 perimeter and screen wall design and appearance.

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

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

4.13 Obligation to Obtain Approval.

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

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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