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BY-LAWS  
OF  
ARIZONA MADERA AT RITA RANCH ASSOCIATION

ARTICLE I  
Name and Location

The name of the corporation is Arizona Madera at Rita Ranch Association ("Association"). The location of the principal office of the Association shall be as provided in the Articles of Incorporation.

ARTICLE II  
Definitions

The words and terms used herein shall be deemed to have the same meanings as are given those words and terms in that certain Declaration of Covenants, Conditions and Restrictions for Arizona Madera at Rita Ranch recorded in the office of the County Recorder of Pima County, Arizona, in Docket 11360 at Page 969 on August 11, 2000, (the "Declaration").

ARTICLE III  
Meeting of Members

Section 1. Annual Meetings. The first annual meeting of the Members shall be held within the month of May, and each subsequent regular annual meeting of the Members shall be held each September thereafter at a time and place determined by the Board of Directors.

Section 2. Special Meetings. Special meetings of the Members may be called at any time by the President or by the Board of Directors, or upon written request of the Members who are entitled to vote one tenth (1/10) of all of the votes of the Members.

Section 3. Notice of Meetings. Written notice of each meeting of Members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, not less than fifteen (15) days nor more than thirty (30) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. Meetings of Members and directors may be held at such places within the State of Arizona, County of Pima, as may be designated by the Board of Directors.

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Section 4. Quorum. The presence of the Declarant at the meeting, or the presence of Members entitled to cast, or of proxies entitled to cast, ten percent (10%) of all of the votes (exclusive of those members whose voting rights are suspended) of the Members shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these Bylaws. If, however, such quorum will not be present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

Section 5. Proxies. At all meetings of Members, each Member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary. Every proxy will be revocable and shall automatically cease upon conveyance by the Member of his Lot. No proxy may be valid after twenty-five (25) months from the date of its execution.

#### ARTICLE IV

##### Board of Directors: Selection and Term of Office

Section 1. Number. The affairs of this Association will be managed by a Board of Directors. The Board shall have the exclusive right to determine and manage the affairs of the Association, excluding only rights expressly reserved to the Declarant. The initial Board of Directors and each Board of Directors thereafter for so long as there is a Class B Member of the Association shall consist of three (3) Members (or other persons) and the Declarant shall have the right to appoint all such directors. Commencing with the first annual meeting of the Members when there is no longer a Class B Member, the Board of Directors shall consist of, and the voting Members shall elect, seven (7) directors, all of whom must be Members (or an individual designated by a corporate, partnership or other non-individual Member).

Section 2. Term of Office. The directors designated in the Articles shall hold office until the first annual election of directors, which shall take place at the first annual meeting of Members, or until their successors are elected and qualified. The term of each of the directors shall be for one (1) year until there is no longer a Class B Member. Thereafter, the initial terms of the directors shall be four (4) directors for a one (1) year term and three (3) directors for a two (2) year term, thus establishing a staggered Board of Directors. At each annual meeting thereafter, the Members shall elect directors to replace those directors whose terms have expired, and all such directors shall be elected for a term of two (2) years.

Section 3. Removal and Vacancies. Any director may be removed from the Board, with or without cause, by the vote or approval of the Members of the Association. In the event of the death, resignation, or removal of a director, his successor shall be selected by the remaining Members of the Board and such successor shall serve for the unexpired term of his predecessor.

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Section 4. Compensation. No director will receive compensation for any service he may render to the Association in such capacity; However, any director may be reimbursed for his actual expenses incurred in the performance of his duties as a director and may receive a salary or wages if he is employed by the Association in a capacity in addition to serving as a director.

Section 5. Action Taken Without a Meeting. The Directors shall have the right to take any action in the absence of a meeting which they could take at a meeting by obtaining the written approval of all the directors. Any action so approved shall have the same effect as though taken at a meeting of the directors.

#### ARTICLE V Nomination and Election of Directors

Section 1. Nominations. At such time as there is no longer a Class B Member, nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting of the Members. The Nominating Committee will consist of a Chairman, who shall be a member of the Board of Directors, and two (2) or more persons who are either Members of the Association, officers of a corporate Member, members of a limited liability company Member or partners in a partnership Member. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting, and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled.

Section 2. Election. At such time as there is no longer a Class B Member, election to the Board of Directors shall be by secret written ballot. At such election the Members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration or the Articles. The persons receiving the largest number of votes shall be elected.

#### ARTICLE VI Meetings of Directors

Section 1. Regular Meetings. Regular meetings of the Board shall be held at such time and place as shall be determined by the Board. Such meetings shall be held at least once during each fiscal year.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two (2) Directors, after not less than three (3) days notice to each Director.

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Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

ARTICLE VII  
Powers and Duties of the Board of Directors

Section 1. Powers. The Board of Directors will have the power to:

A. Suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any Assessment levied by the Association. Such rights may also be suspended (i) for a period not to exceed sixty (60) days for infraction of the Declaration, and (ii) for successive sixty (60) day periods if any such infraction is not corrected during any prior sixty (60) day suspension period.

B. Exercise for the Association all powers, duties and authority vested in, or delegated to, this Association and not specifically reserved to the Members or the Declarant by other provisions of these Bylaws, the Articles or the Declaration.

C. Declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors; and

D. Employ a manager, independent contractors, or such other employees as deemed necessary and to prescribe the duties of such persons.

Section 2. Duties. It shall be the duty of the Board of Directors to:

A. Cause to be kept a complete record of all of its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is required in writing by Members entitled to vote one-fourth (1/4) of all of the votes of the Members.

B. Cause the Association to perform all of its duties as established pursuant to the terms of the Articles or the Declaration.

ARTICLE VIII  
Officers and Their Duties

Section 1. Enumeration of Officers. The officers of this Association shall be a President, who shall at all times be a member of the Board of Directors, a Secretary and a Treasurer, and such other offices as the Board may from time to time by resolution create.

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Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the Members.

Section 3. Term. The officers of this Association shall be elected annually by the Board of this Association for one (1) year unless said officers are removed or otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom will hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the President or the Secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of said resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer replaced.

Section 7. Multiple Offices. The offices of Secretary and Treasurer may be held by the same person. No person shall simultaneously hold more than one (1) of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

A. President. The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; and, shall sign all written documents and instruments.

B. Secretary The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses; and perform such other duties as required by the Board.

C. Treasurer. The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks and promissory notes of the Association; shall keep proper books of account; and, shall prepare an

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annual budget and statement of income and expenditures to be presented to the Board.

D. Delegation. The Board may delegate the duties listed above or other duties to a manager or managing agent, or other; however, such delegation shall not relieve any member of the Board of his responsibility for such duties.

ARTICLE IX  
Committees

The Board shall appoint a Nominating Committee as provided in these Bylaws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out the purposes of the Association.

ARTICLE X  
Books and Records

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any Member. The Declaration, the Articles and the Bylaws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI  
Amendments

These Bylaws may be amended by majority vote of the Board of Directors; provided that until the Class B Membership ceases pursuant to Article VI of the Declaration, the FHAVA shall have the right to veto any such Amendment(s).

ARTICLE XIV  
Interpretation

In the event of any conflict between the Articles of Incorporation and these Bylaws, the Articles shall control; and in the case of any conflict between the Declaration and these Bylaws, the Declaration shall control.

ARTICLE XIII  
Fiscal Year

The fiscal year of the Association shall begin on the 1st day of January and end on the 31st day of December of each year, except the first fiscal year will begin on the date of incorporation of the Association and end on the 31st day of December thereafter.


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ARTICLE XIV  
Adoption by Directors

These Bylaws were adopted by unanimous vote of the three (3) Directors of the Corporation on September 18<sup>th</sup>, 2000.

DATED this 18<sup>th</sup> day of September, 2000.

  
\_\_\_\_\_  
Arthur L. Flagg, Director

  
\_\_\_\_\_  
Russell Dennis, Director

  
\_\_\_\_\_  
Kristie Rust, Director

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CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting Secretary of Arizona Madera at Rita Ranch Association, and Arizona non-profit corporation; and,

THAT the foregoing Bylaws constitute the original Bylaws of said Association, as adopted by unanimous written consent of the Board of Directors thereof, on the 18<sup>th</sup> day of September, 2000.

IN WITNESS WHEREOF, I have hereunto subscribed my name on this 18<sup>th</sup> day of September, 2000.

Kristie Rust  
Kristie Rust, Secretary



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B. Animals. No animal, bird, fowl, poultry or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal, bird, fowl, poultry, or livestock shall be allowed to make an unreasonable amount of noise or to become a nuisance. No structure for the care, housing or confinement of any animal, bird, fowl, poultry, or livestock shall be maintained so as to be Visible From Neighboring Property. Upon the written request of any Member or Resident, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal, bird, fowl, poultry, or livestock is a generally recognized house or yard pet, whether such a pet is a nuisance, or whether the number of animals or birds on any such property is reasonable. Any decision rendered by the Board shall be enforceable in the same manner as other restrictions contained herein.

C. Temporary Occupancy and Temporary Buildings. No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structures of any kind, shall be used at any time for a residence, either temporary or permanent. Temporary buildings or structures used during the construction of a dwelling on any property shall be removed immediately after the completion of construction.

D. Maintenance of Lawns and Planting. Each Owner of a Lot shall keep all shrubs, trees, hedges, grass and plantings of every kind located on

- (i) his Lot (including set back areas and Common Areas),
- (ii) planted public right-of-way areas between sidewalks (or bike paths) and the street curb in front of his property, if any,
- (iii) any other public right-of-way or easement area which abuts the Owner's Lot and which is located between the boundary line of his Lot and the paved area of any street, sidewalk, bike path or similar area, and
- (iv) any non-street public right-of-way or easement area adjacent to his Lot,

neatly trimmed, and shall keep all such areas properly cultivated and free of trash, weeds and other unsightly material; provided, however, that such Owner shall not be responsible for maintenance of any area over which (1) the Association assumes the responsibility in writing; (2) the Association has been given such responsibility by a Recorded instrument as provided in Article X, Section 1 of this Declaration; or (3) the City of Tucson assumes responsibility, for so long as the Association or the City of Tucson assumes or has responsibility as provided in Subsections (1), (2) or (3). The Architectural Committee may require landscaping by the Owner of the areas described in Subsections (ii), (iii) and (iv) above.

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E. Nuisances; Construction Activities. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise or emit therefrom, so as to render any such property or any portion thereof, or activity thereon, unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to the occupants of such other property. No other nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupants. Without limiting the generality of any of the foregoing provisions, no exterior speakers, horns, whistles, firecrackers, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such property. Normal construction activities and parking in connection with the building of improvements on a Lot shall not be considered a nuisance or otherwise prohibited by this Declaration, but Lots shall be kept in a neat and tidy condition during construction periods, and trash and debris shall not be permitted to accumulate.

F. Diseases and Insects. No Owner shall permit anything or any condition to exist upon any Lot which shall induce, breed or harbor infectious plant diseases, noxious insects or odors.

G. Repair of Building. No building or structure on any Lot shall be permitted to fall into disrepair and each such building and structure shall at all times be kept in good condition and repair and adequately painted or otherwise finished. In the event any building or structure is damaged or destroyed, then, subject to the approvals required by Subsection (a) above, such building or structure shall be immediately repaired or rebuilt or shall be demolished.

H. Antennas. No antenna or other device for the transmission or reception of television or radio signals or any other form of electromagnetic radiation shall be erected, used or maintained outdoors on any Lot, whether attached to a building or structure or otherwise, unless approved by the Architectural Committee.

I. Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth or any earth substance of any kind.

J. Trash Containers and Collection. No garbage or trash shall be placed or kept on any Lot except in covered containers of a type, size and style which are approved by the Architectural Committee. Except in the instance where such garbage or trash containers are placed out for collection, such garbage or trash containers will be screened by a masonry wall or kept in a closed garage. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to affect such collection. All rubbish, trash, or garbage shall be removed from the Lots and shall not be allowed to accumulate thereon. No outdoor incinerators shall be kept or maintained on any Lot.

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K. Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected, placed and maintained exclusively within a fenced service yard or otherwise concealed and shall not be Visible From Neighboring Property.

L. Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to a Lot except (i) such machinery or equipment as is usual and customary in connection with the use, maintenance or construction (during the period of construction) of a building, appurtenant structures, or other improvements; (ii) that which Declarant or the Association may require for the operation and maintenance of Arizona Madera at Rita Ranch.

M. Signs. No signs whatsoever (including, but not limited to, commercial, political and similar signs) which are Visible From Neighboring Property shall be erected or maintained on any Lot except:

(i) Signs required by legal proceedings.

(ii) No more than two (2) identification signs for individual residences, each with a face area of seventy-two (72) square inches or less.

(iii) Signs (including "For Sale" and "For Lease" signs) the nature, number, and location of which have been approved in advance and in writing by the Architectural Committee.

(iv) Promotional and advertising signs of builders on any Lot approved from time to time by the Declarant as to number, size, colors, design, message content, location and type.

(v) Such other signs (including, but not limited to, construction job identification signs, builder identification signs, subdivision, and apartment identification signs) which are in conformance with the requirements of the City of Tucson or other governmental agencies and which have been approved in writing by the Architectural Committee as to size, colors, design, message content and location.

N. Restriction on Further Subdivision, Property Restrictions and Rezoning. No Lot shall be further subdivided or separated into smaller Lots by any Owner, and no portion less than all of any such Lot, nor any easement or other interest therein, shall be conveyed or transferred by any Owner, without the prior written approval of the Board, which approval must be evidenced on the plat or other instrument creating the subdivision, easement, or other interest. This provision shall not, in any way, limit Declarant from subdividing or separating into Lots any property at any time owned by Declarant. No portion of a Lot but for the

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entire Lot, together with the improvements thereon, may be rented, and then only to a Single Family. No further covenants, conditions, restrictions or easements shall be Recorded by any Owner or other person against any Lot without the provisions thereof having been first approved in writing by the Board and any covenants, conditions, restrictions or easements Recorded without such approval being evidenced thereon shall be null and void. Any and all future subdivision or resubdivision actions shall be governed by the densities and regulations of the Residential Cluster Project Development as set forth by the City of Tucson for the Arizona Madera at Rita Ranch subdivision.

O. Utility Easements. There is hereby created a blanket easement upon, across, over and under each Lot for ingress to, egress from, and the installation, replacing, repairing and maintaining of, all utility and service lines and systems, including, but not limited to water, sewers, gas, telephones, electricity, television cable or communication lines and systems, etc. as such utilities are installed in connection with the initial development of the Lot and the construction of the first Dwelling Unit or other building thereon. Pursuant to this easement, a providing utility or service company may install and maintain facilities and equipment on the property and affix and maintain wires, circuits and conduits on, in and under the roofs and exterior walls of buildings on the Lots. Notwithstanding anything to the contrary contained in this Subsection, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on any Lot except as initially designed, installed and approved by the Declaration or the Architectural Committee.

P. Party Walls. Except as hereinafter provided, the rights and duties of Owners with respect to party walls between Lots or party fences between Lots shall be as follows:

(i) The Owners of contiguous Lots who have a party wall or party fence shall both equally have the right to use such wall or fence, provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.

(ii) In the event that any party wall or party fence is damaged or destroyed through the act of an Owner or any of his Tenants, agents, guests, or members of his family (whether or not such act is negligent or otherwise culpable), it shall be the obligation of such Owner to rebuild and repair the party wall or party fence without cost to the Owner of the adjoining Lot. Any dispute over an Owner's liability for such damage shall be resolved as provided in Subsection (v) below, but any liability imposed on an Owner hereunder shall not prevent the Owner from seeking indemnity therefor from the persons causing such damage.

(iii) In the event any party wall or party fence is destroyed or damaged (including deterioration from ordinary wear and tear and lapse of time), other

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than by the act of an adjoining Owner, his Tenants, agents, guests or family, it shall be the obligation of all Owners whose Lots adjoin such party wall or party fence to rebuild and repair such wall or fence at their joint expense, such expense to be allocated among the Owners in accordance with the frontage of their Lots on the party wall or party fence.

(iv) Notwithstanding anything to the contrary herein contained, there shall be no impairment of the structural integrity of any party wall or party fence without the prior consent of all Owners of any interest therein, whether by way of easement or in fee.

(v) In the event of a dispute between Owners with respect to the construction, repair or rebuilding of a party wall or party fence, or with respect to the sharing of the cost thereof, such adjoining Owners shall submit the dispute to the Board, the decision of which shall be binding. Anything in the foregoing to the contrary notwithstanding.

(vi) In the case of party fences (1) between Common Areas and Lots, or (2) constructed by the Declarant or the Association on Common Areas, the Association shall be responsible for all maintenance thereof, subject to the provisions of Article X, Sections 2 and 3, except that each Owner of a Lot shall be responsible for painting the portion of the party wall or fence facing his Lot and any portion thereof which is not a portion of the Common Area.

Q. Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures approved by the Architectural Committee. No provision hereof shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures approved by the Architectural Committee.

R. Overhead Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way or other area from ground level to a height of eight (8) feet.

S. Trucks, Trailers, Campers and Boats. No motor vehicle classed by manufacturer rating as exceeding one-ton, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, boat, boat trailer, or other similar equipment or vehicle may be parked, maintained, constructed, reconstructed or repaired on any Lot or on any street in Arizona Madera at Rita Ranch so as to be Visible From Neighboring Property, the Common Areas or the streets; provided, however, the provisions of this Section shall not apply to pickup trucks of less than one-ton capacity with camper shells not exceeding seven (7) feet in height measured from

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ground level and mini-motor homes not exceeding seven (7) feet in height and eighteen (18) feet in length which are parked as provided in Subsection (U) below and are used on a regular and recurring basis for basic transportation.

T. Motor Vehicles. No automobile, motorcycle, motorbike or other motor vehicle shall be constructed, reconstructed or repaired upon any Lot, or street in Arizona Madera at Rita Ranch, and no inoperable vehicle may be stored or parked on any such Lot, or street so as to be Visible From Neighboring Property or to be visible from Common Areas or streets; provided, however, that the provisions of this Section shall not apply to (i) emergency vehicle repairs or temporary construction shelters or facilities maintained during, and used exclusively in connection with, the construction of any improvement approved by the Architectural Committee; or (ii) vehicles parked in garages on Lots so long as such vehicles are in good operating condition and appearance and are not under repair.

U. Parking. Vehicles of all Owners, and Residents, of their employees, guests and invitees, are to be kept in garages, carports, residential driveways of the Owner, and other designated parking areas wherever and whenever such facilities are sufficient to accommodate the number of vehicles at a Lot; provided, however, this Section shall not be construed to permit the parking in the above described areas of any vehicle whose parking on Arizona Madera at Rita Ranch is otherwise prohibited or the parking of any inoperable or unlicensed vehicle. The City of Tucson prohibits on street parking to one side which shall be indicated by signs.

V. Right of Entry. During reasonable hours and upon reasonable notice to the Owner or other occupant of a Lot, any member of the Architectural Committee, any member of the Board, or any authorized representative of either of them, shall have the right to enter upon and inspect any Lot, and the improvements thereon, except for the interior portions of any completed residence, for the purpose of ascertaining whether or not the provisions of this Declaration have been or are being complied with and such persons shall not be deemed guilty of trespass by reason of such entry.

W. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of structures, improvements or signs necessary or convenient to the development or sale of property within Arizona Madera at Rita Ranch.

X. Health, Safety and Welfare. In the event additional uses, activities, and facilities are deemed by the Board to be a nuisance or to adversely affect the health, safety or welfare of Owners, and Residents, the Board may make rules restricting or regulating their presence on Arizona Madera at Rita Ranch as part of the Arizona Madera at Rita Ranch Rules or may direct the Architectural Committee to make rules governing their presence on Lots as part of the architectural guidelines.

Y. Model Homes. The provisions of this Declaration which prohibit non-residential use of Lots and regulate parking of vehicles shall not prohibit the construction and maintenance of model homes by persons engaged in the construction of residential dwellings on Arizona Madera at Rita Ranch and parking incidental to the visiting of such model homes so long as the location of such model homes and the construction, operation and maintenance of such model homes otherwise comply with all of the provisions of this Declaration. The Architectural Committee may also permit Lots and other areas to be used for parking in connection with the showing of model homes so long as such parking and parking areas are in compliance with the ordinances of the City of Tucson or other applicable governmental agencies and any rules of the Architectural Committee. Any homes constructed as model homes shall cease to be used as model homes at any time the Owner or builder thereof is not actively engaged in the construction and sale of Single Family residences of Arizona Madera at Rita Ranch and no home shall be used as a model home for the sale of homes not located at Rita Ranch.

Z. Incidental Uses. The Board may approve uses of property within a Land Use Classification which are incidental to the full enjoyment by the Owners of the property within that Land Use Classification. Such approval may be subject to such regulations, limitations and restrictions, including termination of the use, as the Board may wish to impose, in its sole discretion, for the benefit of Arizona Madera at Rita Ranch as a whole.

AA. No Business. All Lots shall be used, improved and devoted exclusively to Single Family residential use. No gainful occupation, profession, trade or other non-residential use other than the keeping of an office for private use shall be conducted on any Lot and no person shall enter into any Lot for engaging in such uses or for the purpose of receiving products or services arising out of such usage.

BB. Tenants. The entire Dwelling Unit on the Lot may be let to a Single Family Tenant from time to time by the Owner, subject to the provisions of this Declaration and the Arizona Madera at Rita Ranch Rules.

Section 2. Use Restrictions Under Master Documents. The following supplementary covenants, conditions, and restrictions are additionally imposed on each of the Lots pursuant to Article III of the Declaration of Protective Restrictions to Rita Ranch recorded in Docket 7435 at Page 674 in the Office of the Pima County Recorder and such covenants, conditions and restrictions shall be enforceable by the Declarant thereunder (the "Master Declarant").

A. Roof Top Heating and Air Conditioning Units. Without the prior written approval of the Master Declarant, no heating or air conditioning units shall be installed on the roof of any building or improvement used as a residence on any portion of the Covered Property zoned for residential uses. Air conditioning and heating units may be installed on the roofs of other buildings if such units are

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adequately screened from view. No window air conditioners or portable units of any kind shall be installed in any buildings.

B. Antennae and Other Exterior Equipment. Without the prior written approval of the Master Declarant, no exterior television, radio, CB or other antennae or satellite dish of any sort shall be placed, allowed or maintained upon any building or improvement used as a residence or any portion of Rita Ranch zoned for residential uses. Satellite dishes and antennae may be installed on other buildings or improvements and on other portions of the Covered Property if adequately screened from view.

C. Utilities. All utilities shall be underground, except for those installed within a strip of land thirty (30) feet in width inside the southern and western boundaries of Rita Ranch. All exterior transformers, utility pads, cable TV and telephone boxes shall be placed out of view, and screened with walls, fences or vegetation.

D. Drainage Plan. All improvement work shall be consistent and compatible with the drainage plan for Rita Ranch prepared by the Master Declarant, a copy of which may be obtained from the Declarant. Conformance with the drainage plan may require acceptance of the flow of water from another Parcel.

E. Community Plan. Without the prior written approval of the Master Declarant, Owners shall not take any action (including filing any application with Pima County or any other governmental agency) inconsistent with the Community Plan for Rita Ranch (CO #13-82-1), approved by the Pima County Board of Supervisors on November 15, 1983, or with any of the conditions of the approval of such Community Plan by Pima County. By way of example, and not as a limitation of this provisions, no Owner shall take any action which would cause Pima County or any other governmental agency possessing jurisdiction to revoke or withdraw all or any portion of its approval of the Community Plan. To the extent that Pima County has imposed conditions of approval related to the Community Plan on a specific Parcel, the Owner thereof must comply with such conditions in the development of such Parcel.

F. Vibration. No Owner shall, through any use on its Parcels, cause maximum soil vibration, excluding rail traffic, on that certain Parcel described on Exhibit E to the Declaration of Protective Restrictions for Rita Ranch to be measured in any axis in excess of either 1.6 microns per sec RMS in the frequency range of 2 Hz to 10 Hz or .025 microns RMS in the frequency range of 10 Hz to 50 Hz. Such measurements shall be made in accordance with the standards and procedures set forth on Exhibit F attached to the Declaration of Protective Restrictions for Rita Ranch.



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G. Additional Industrial and Commercial Use Restrictions. All or any portion of Rita Ranch zoned for commercial or industrial use shall be subject to the additional restrictions set forth on Exhibit G to the Declaration of Protective Restrictions for Rita Ranch.

H. Design Guidelines. The Lots shall at all times be subject to the Design Guidelines then in effect for Rita Ranch pursuant to the terms of the Master Documents. The Design Guidelines in effect as of the recording of this Declaration are recorded in Docket 7991 at Page 620 in the Office of the Pima County Recorder.

## ARTICLE V

### ORGANIZATION OF ASSOCIATION

Section 1. Formation of Association. The Association shall be a non-profit Arizona corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, Bylaws, and this Declaration. Neither the Articles nor Bylaws shall, for any reason, be amended or otherwise changed or interpreted so as to be inconsistent with this Declaration.

Section 2. Board of Directors and Officers. The affairs of the Association shall be conducted by the Board and such officers as the Board may elect or appoint in accordance with the Articles and the Bylaws as the same may be amended from time to time. The initial Board shall be composed of three (3) members. The Board may also appoint various committees and appoint a manager who shall, subject to the direction of the Board, be responsible for the day-to-day operation of the Association. The Board shall determine the compensation to be paid to the manager or any other employee of the Association.

Section 3. The Arizona Madera at Rita Ranch 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 rules and regulations to be known as the Arizona Madera at Rita Ranch Rules. The Arizona Madera at Rita Ranch Rules may restrict and govern the use of any Common Area by any Member or Resident, by the family and designees of such Member; provided, however, that the Arizona Madera at Rita Ranch Rules shall not discriminate among Members and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Arizona Madera at Rita Ranch Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

Section 4. Personal Liability. No member of the Board or of any committee of the Association, no officer of the Association, and no manager or other employee of the Association shall be personally liable to any Member, or to any other persons, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error, or negligence of the Association, the Board, the manager, any representative or employee of the Association, or any committee, committee member or

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officer of the Association; provided, however, the limitations set forth in this Section 4 shall not apply to any person who has failed to act in good faith or has engaged in willful or intentional misconduct.

## ARTICLE VI

### MEMBERSHIPS AND VOTING

Section 1. Owners of Lots. Every Owner of a Lot which is subject to Assessment shall be a Member of the Association. Each such Owner shall have one (1) Membership for each Lot owned by the Member. Each such Membership shall be appurtenant to and may not be separated from ownership of the Lot to which the Membership is attributable. There shall be only one (1) Membership for each Lot which Membership shall be shared by any joint Owners of, or Owners of undivided interests in, a Lot.

Section 2. Declarant. The Declarant shall be a Member of the Association for so long as Declarant holds a Class B Membership pursuant to Section 3 below or owns any property in Arizona Madera at Rita Ranch.

Section 3. Voting. The Association shall have two (2) classes of voting Memberships:

Class A. Class A Memberships shall be all Memberships, except the Class B Membership held by the Declarant, and each Owner shall be entitled to one (1) vote for each Class A Membership held by the Owner, subject to the authority of the Board to suspend the voting rights of the Owner for violations of this Declaration in accordance with the provisions hereof.

Class B. There shall be one (1) Class B Membership which shall be held by the Declarant and the class B Membership shall be entitled to three (3) votes for each Membership or Lot owned by the Declarant. The Class B Membership shall cease and be converted to Class A Memberships on the happening of the first of the following events:

- A. Within ninety (90) days after the number of Class A votes exceeds the number of Class B votes;
- B. December 31, 2005; or
- C. When the Declarant notifies the Association in writing that it relinquishes its Class B membership.

Section 4. Right to Vote. No change in the ownership of a Membership shall be effective for voting purposes unless and until the Board is given actual written notice of such change and is provided satisfactory proof thereof. The vote for each such Membership must be cast as a unit, and fractional votes shall not be allowed. In the event

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that a Membership is owned by more than one (1) person or entity and such owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Member casts a vote representing a certain Membership, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other owners of the same Membership unless objection thereto is made at the time the vote is cast. In the event more than one (1) vote is cast for a particular Membership, none of the said votes shall be counted and all said votes shall be deemed void.

Section 5. Cumulative Voting for Board Members. In any election of the members of the Board, every owner of a Membership entitled to vote at such an election shall have the number of votes for each Membership equal to the number of directors to be elected, except that the Class B Member shall have the number of votes designated in Section 4 above times the number of directors to be elected. Each Member shall have the right to cumulate his votes for one (1) candidate or to divide such votes among any number of the candidates. The candidates receiving the highest number of votes, up to the number of the Board members to be elected, shall be deemed elected.

Section 6. Membership Rights. Each Member shall have the rights, duties and obligations set forth in this Declaration and such other rights, duties and obligations as are set forth in the Articles and Bylaws, as the same may be amended from time to time.

Section 7. Transfer of Membership. The rights and obligations of the owner of a Class A Membership in the Association shall not be assigned, transferred, pledged, conveyed or alienated in any way except upon transfer of ownership to an Owner's Lot. A transfer of ownership to a Lot may be effected by Deed, intestate succession, testamentary disposition, foreclosure of a mortgage of record, or such other legal process as now in effect or as may hereafter be established under or pursuant to the laws of the State of Arizona. Any attempt to make a prohibited transfer shall be void. Any transfer of ownership to a Lot shall operate to transfer the Membership(s) appurtenant to said Lot to the new Owner thereof.

## ARTICLE VII

### COVENANT FOR ASSESSMENTS AND CREATION OF LIEN

Section 1. Creation of Lien and Personal Obligation of Assessments and Maintenance Charges. Each Owner by acceptance of a Deed therefor (whether or not it shall be so expressed in such Deed) is deemed to covenant and agree, to pay to the Association the following Assessments and charges: (1) Annual Assessments established by this Article VII, (2) Special Assessments for capital improvements or other extraordinary expenses or costs established by this Article VII, (3) Maintenance Charges established by Article X, Sections 2 and 3, and (4) Covenant Charges established and assessed pursuant to the Declaration of Special Maintenance Covenants for Rita Ranch recorded in Docket 9313 at Page 1005, all such Assessments to be established and collected as hereinafter provided. The Annual Assessments, Special Assessments, Maintenance Charges and

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Covenant Charges, together with costs and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing servitude and lien upon the Lot against which each such Assessment is made. The Annual and Special Assessments and Covenant Charges against each Lot shall be based on the number of Memberships appurtenant to the Lot. Each such Annual and Special Assessment, Covenant Charge and Maintenance Charge, together with costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of the Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the successors in title of the Owner unless expressly assumed by time.

Section 2. Annual Assessments. In order to provide for the uses and purposes specified in Article IX hereof, including the establishment of replacement and maintenance reserves, the Board in each year, commencing with the year in which the first Lot is conveyed to an Owner other than Declarant, shall assess against each Lot an Annual Assessment. The amount of the Annual Assessment, subject to the provisions of Section 4 hereof, shall be in the sole discretion of the Board but shall be determined with the objective of fulfilling the Association's obligations under this Declaration and providing for the uses and purposes specified in Article IX.

Section 3. Uniform Rate of Assessment. The amount of an Annual or Special Assessment against each Lot shall be fixed at a uniform rate per Membership. However, as long as there is a Class B Membership, Declarant shall not be subject to Assessments for Lots not sold to purchasers, but instead shall be required to pay the difference between actual operating costs for the Association and all income from Assessments and other sources. When the Class B Membership ceases as prescribed herein, Declarant shall become a Class A Member and will be subject to Assessment for each Lot owned.

Section 4. Maximum Annual Assessment. The Annual Assessment to be established by the Board may not exceed a certain amount, hereinafter referred to as the "Maximum Annual Assessment", which Maximum Annual Assessment shall be determined and shall vary in accordance with the following provisions:

A. Until January 1 of the year following the conveyance of the first Lot by Declarant, the Maximum Annual Assessment against each Owner shall be One Hundred Twenty Dollars (\$120.00) per each Membership.

B. From and after January 1 of the year immediately following the conveyance of the first Lot by Declarant, and during such year, the Maximum Annual Assessment shall be increased effective January 1 of each year without a vote of the Membership by a maximum of five percent (5%) of the Maximum Annual Assessment for the previous year or in conformance with the percentage rise, if any, of the Consumer Price Index as hereinafter defined, whichever is greater. The Maximum Annual Assessment attributable to the Consumer Price Index for each such period shall be computed by reference to the statistics published in the Monthly Labor Review by the United States Department of Labor, Bureau of Labor Statistics, designated "Consumer Price Index for all Urban Consumers, 1967 Equals

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100, All Items", hereinafter called the "Consumer Price Index". For purposes of identification, the Consumer Price Index for June, 1980 was 247.8. The Maximum Annual Assessment shall be computed by the following formula:

X = Consumer Price Index for September of the calendar year immediately preceding the year of the first Annual Assessment.

Y = Consumer Price Index for September of the year immediately preceding the calendar year for which the Maximum Annual Assessment is to be determined.

$$\frac{Y-X}{X} + 1$$

Multiplied by the initial Maximum Annual Assessment figure equals the Maximum Annual Assessment for the year in question.

If the Bureau of Labor Statistics shall change the method of determining the Consumer Price Index, the formula for determining the Maximum Annual Assessment shall be altered or amended, if possible, so as to continue the base period and base figure, but in the event it shall be impossible to do so, or in the event the Bureau of Labor Statistics shall cease to publish the said statistical information and such information is not available from any other source, public or private, then and in any such events a new formula for determining the Maximum Annual Assessment shall be adopted by the board.

C. The Maximum Annual Assessment may be increased above the Maximum Annual Assessment otherwise determined under Subsection (B) above by a vote of two-thirds (2/3) of each class of Members who are voting in person or by proxy at a meeting duly called for such purpose.

Section 5. Special Assessments for Capital Improvements and Extraordinary Expenses. In addition to the Annual Assessments authorized above, the Association may levy, in any Assessment Period, one (1) or more Special Assessments applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Association Land, including fixtures and personal property related thereto, or for the purpose of defraying other extraordinary expenses, provided that any such Assessment shall have the assent of two-third (2/3) of the votes of each class of Members who are voting in person or by proxy duly called for such purpose. The provisions of this Section are not intended to preclude or limit the assessment, collection or use of Annual Assessments for the aforesaid purposes.

Section 6. Notice and Quorum for Any Action Authorized Under Sections 4 and 5. Written notice of any meeting called for the purpose of taking any action authorized under Sections 4 or 5 of this Article shall be sent to all Members no less than fifteen (15) days nor



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Section 10. Evidence of Payment of Annual and Special Assessments and Maintenance Charges. Upon receipt of a written request by a Member or any other person, the Association within a reasonable period of time thereafter shall issue to such Member or other person a written certificate stating (a) that all Annual and Special Assessments, Covenant Charges and Maintenance Charges (including costs and attorney's fees, if any, as provided in Section 9 above) have been paid with respect to any specified Lot as of the date of such certificate, or (b) if all Annual and Special Assessments, Covenant Charges and Maintenance Charges have not been paid, the amount of such Annual and Special Assessments, Covenant Charges and Maintenance Charges (including interest, costs and attorney's fees, if any) due and payable as of such date. The Association may make a reasonable charge for the issuance of such certificates, which charges must be paid at the time the request for any such certificate is made. any such certificate, when duly issued as herein provided, shall be conclusive and binding with respect to any matter therein stated as against any bona fide purchaser of, or lender on, the Lot or Rental Apartment in question.

Section 11. Property Exempted from the Annual and Special Assessments and Assessment Lien. Exempt Property shall be exempted from the assessment of the Annual and Special Assessments, Covenant Charges and, except as provided in Article X, Section 3, from Maintenance Charges and the Assessment Lien; provided, however, that in the event any change of ownership of Exempt Property results in all or any part thereof becoming Assessable Property in any year, the same thereupon shall be subject to the assessment of the Annual and Special Assessments, Covenant Charges and, if exempt therefrom, Maintenance Charges (prorated as of the date it became Assessable Property) and the Assessment Lien.

Section 12. Covenant Charges. The Board in each year shall assess against each Lot a Covenant Charge equal to the amounts due by such Lot and the Owner thereof pursuant to the Declaration of Special Maintenance Covenants for Rita Ranch recorded in Docket 9313 at Page 1005 in the Office of the Pima County Recorder. Such Covenant Charge shall be added to, and become a part of, the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Assessment Lien.

#### ARTICLE VIII

#### ENFORCEMENT OF PAYMENT OF ANNUAL AND SPECIAL ASSESSMENTS AND MAINTENANCE CHARGES AND OF ASSESSMENT LIEN

Section 1. Association as Enforcing Body. The Association, as the agent and representative of the Members, shall have the exclusive right to enforce the provisions of this Declaration. However, if the Association shall fail or refuse to enforce this Declaration or any provision hereof for an unreasonable period of time after written request to do so, then any Member may enforce them on behalf of the Association, but not at the expense of the Association, by any appropriate action, whether in law or in equity.

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Section 2. Association's Remedies to Enforce Payment of Annual and Special Assessments, Covenant Charges and Maintenance Charges. If any Member fails to pay the Annual or Special Assessments, Covenant Charges or installments when due, or to pay Maintenance charges assessed pursuant to Article X, Sections 2 and 3, the Association may enforce the payment of the Annual or Special Assessments, Covenant Charges, Maintenance Charges and/or this Assessment Lien by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies hereinafter set forth, the Association does not prejudice or waive its right to exercise the other remedy):

A. Bring an action at law and recover judgment against the Member personally obligated to pay the Annual or Special Assessments or the Maintenance Charges.

B. Foreclose the Assessment Lien against the Lot in accordance with the then prevailing Arizona law relating to the foreclosure of realty mortgages (including the right to recover any deficiency), and the Lot may be redeemed after foreclosure sale as provided by law.

Section 3. Subordination of Assessment Lien to First Mortgage or Deed of Trust; Priority of Lien. The Assessment Lien provided for herein shall be subordinate to any first mortgage lien held by, or deed of trust of which the beneficiary is, a lender who has lent funds with the Lot as security, or held by the lender's successors and assigns, and shall also be subject and subordinate to liens for taxes and other public charges which by applicable law are expressly made superior. Except as above provided, the Assessment Lien shall be superior to any and all charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon each Lot. Sale or transfer of any Lot shall not affect the Assessment Lien; provided, however, that if the sale or transfer is pursuant to foreclosure of a mortgage or deed of trust to which the Assessment Lien is subordinate, or pursuant to any sale or proceeding in lieu thereof, the purchaser at the mortgage foreclosure or deed of trust sale, or any grantee taking by deed in lieu of foreclosure, shall take the Lot free of the Assessment Lien for all Annual and Special Assessments, Covenant Charges and Maintenance Charges that have accrued up to the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure; but upon the date of issuance of a sheriff's or trustee's deed or deed in lieu of foreclosure, the Assessment Lien immediately shall become and remain superior to any and all other charges, liens or encumbrances (except liens for taxes or other public charges which by applicable law are expressly made superior), and such mortgage or deed of trust foreclosure sale purchaser or grantee shall take subject to all Annual and Special Assessments, Covenant Charges, Maintenance Charges and the Assessment Lien thereof according subsequent to the date of issuance of a sheriff's or trustee's deed or deed given in lieu of foreclosure.

Section 4. Costs to be Borne by Member in Connection with Enforcement of Payment of Annual and Special Assessments, Covenant Charges and Maintenance Charges. In any action taken pursuant to Section 2 of this Article, the Member shall be personally liable for, and the Assessment Lien shall be deemed to secure the amount of,





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Section 4: Administration of Special Use Fees. The Association is authorized to bill for, sue for, collect, administer and disburse all Special Use Fees and the payment thereof shall be secured by the Assessment Lien; provided, however, that all Special Use Fees collected shall, if imposed in connection with a particular improvement, be separately accounted for as to each separate improvement pertaining to which they are collected and shall be expended on the particular improvement to which they pertain.

Section 5. Insurance. The Association shall maintain insurance against liability incurred as a result of death or injury to persons or damage to property on the Common Areas. The Board in its discretion, may determine additional insurance needs for the Association.

## ARTICLE X

### MAINTENANCE

Section 1. Common Areas and Public Right of Way. The Association, or its duly delegated representative, shall maintain and otherwise manage all Common Areas, including, but not limited to, the landscaping, walkways, paths, parking areas, drives, recreational facilities; provided however, the Association shall not be responsible for providing or maintaining the landscaping or structures on any Common Areas which are part of Lots unless (i) such landscaping or structures are available for use by all Owners and Residents or are within easements intended for the general benefit of Arizona Madera at Rita Ranch and (ii) the Association assumes in writing the responsibility for such maintenance or such responsibility is set forth in a Recorded instrument as hereinafter provided. The Association shall also maintain any landscaping and other improvements not on Lots which are within the exterior boundaries of Arizona Madera at Rita Ranch, but which are within areas shown on a subdivision plat or other plat of dedication for Arizona Madera at Rita Ranch and which is intended for the general benefit of the Owners and Residents of Arizona Madera at Rita Ranch, except the Association shall not maintain areas which (i) the City of Tucson or other governmental entity is maintaining or (ii) are to be maintained by the Owners of a Lot pursuant to Article IV, Section 1(D), of this Declaration, unless the Association elects to maintain such areas and as to which the Association has made such an election to maintain. Specific areas to be maintained by the Association may be identified on a subdivision plat Recorded or approved by the Declarant and in Deeds from the Declarant to a transferee of a Lot, but the failure to so identify such areas shall not affect the Association's rights or responsibilities with respect to such common Areas and other areas intended for the general benefit of Arizona Madera at Rita Ranch.

The Association, in accordance with the City of Tucson requirements, shall assume sole responsibility for the operation, maintenance, annual inspection and liability, specifically for Common Area "B" Drainage. The Association shall have an Arizona Registered Professional Engineer prepare a certified inspection report of the drainage 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 subject to

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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 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 facilities in the event that it determines that the Association has been deficient in its obligation to adequately maintain such facilities.

The Board shall use a reasonably high standard of care in providing for the repair, management and maintenance of said property so that the Arizona Madera at Rita Ranch development will reflect a high pride of ownership. In this connection the Association may, in the discretion of the Board:

A. Reconstruct, repair, replace or refinish any improvement or portion thereof upon Association Land except that no permanent improvements shall be made by the Association on any Common Area that is not Association Land and the Association shall provide only maintenance on Common Areas which are not Association Land.

B. Replace injured and diseased trees and other vegetation in any Common Area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil for aesthetic purposes.

C. Place and maintain upon any Common Area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof.

D. Do all such other and further acts which the Board deems necessary to preserve and protect the Common Area and the beauty thereof, in accordance with the general purposes specified in this Declaration.

The Board shall be the sole judge as to the appropriate maintenance of all Common Areas and other properties maintained by the Association. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of said properties shall be taken by the Board or by its duly delegated representative.

In the event any subdivision plat, deed restriction or this Declaration permits the Board to determine whether or not Owners of certain Lots will be responsible for maintenance of certain Common Areas or public right-of-way areas, the Board shall have the sole discretion to determine whether or not it would be in the best interest of the Owners, and Residents of Arizona Madera at Rita Ranch for the Association or an individual Owner to be responsible for such maintenance, considering cost, uniformity of appearance, location and other factors deemed relevant by the Board. The Board may cause the Association to contract with others for the performance of the maintenance and other obligations of the Association under this Article X and, in order to promote uniformity and harmony of appearance, the Board may also cause the Association to contract to

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provide maintenance services to Owners of Lots having such responsibilities in exchange for the payment of such fees as the Association and Owner may agree upon.

Section 2. Assessment of Certain Costs of Maintenance and Repair of Common Areas and Public Areas. In the event that the need for maintenance or repair of Common Areas and other areas maintained by the Association is caused through the willful or negligent act of any Member, his family, guests, invitees or designees, the cost of such maintenance or repairs shall be added to, and become a part of, the Assessment to which such Member and the Member's Lot is subject and shall be secured by the Assessment Lien. Any charges or fee to be paid by the Owner of a Lot pursuant to Section 1 of this Article X in connection with a contract entered into by the Association with an Owner for the performance of an Owner's maintenance responsibilities shall also become a part of such Assessment and shall be secured by the Assessment Lien.

Section 3. Improper Maintenance and Use of Lots. In the event any portion of any Lot is so maintained as to present a public or private nuisance, or as to substantially detract from the appearance or quality of the surrounding Lots or other areas of Arizona Madera at Rita Ranch which are substantially affected thereby or related thereto, or in the event any portion of a Lot is being used in a manner which violates this Declaration, or in the event the Owner of any Lot is failing to perform any of its obligations under this Declaration or the architectural guidelines and standards of the Architectural Committee, the Board may make a finding to such effect, specifying the particular condition or conditions which exist, and pursuant thereto give notice thereof to the offending Owner that unless corrective action is taken within fourteen (14) days, the Board may cause such action to be taken at said Owner's cost. If at the expiration of said fourteen (14) day period of time the requisite corrective action has not been taken, the Board shall be authorized and empowered to cause such action to be taken and the costs thereof shall be added to, and become a part of, the Assessment to which the offending Owner and the Owner's Lot is subject and shall be secured by the Assessment Lien.

Section 4. Native Plant Preservation. The Association is required to comply with the Native Plant Preservation Ordinance of the City of Tucson during the initial development of Arizona Madera at Rita Ranch by transplanting certain existing trees and plants and providing certain new trees and plants. The City of Tucson approved Native Preservation Plan requires forty (40) plants to be preserved in place or transplanted on site, and nine (9) existing plants to be preserved in place within the non-graded areas of the site. The remainder of the site will be graded wherein one hundred six (106) existing plants (1 hackberry, 3 foothills palo verde, 84 barrel cacti, 16 ocotillos and 2 mesquites) are to be transplanted to the landscape areas of the project. Other native plants, as specified in the City of Tucson Preservation Plan, will be planted in the front yards of lots and Common Areas and will be watered by an underground automatic irrigation system installed to each such lot and Common Area. From and after the acquisition of a Lot containing any tree or plant subject to the Preservation Plan, the Owner of such Lot shall be responsible thereafter for maintaining such tree or plant in a viable and healthy condition; if any Owner fails to maintain any tree or plant on his Lot which is subject to the Preservation Plan in a viable, healthy condition, then the Board shall be authorized and empowered to take such action as is action necessary, desirable or convenient to so

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maintain such tree or plant and the cost thereof shall be added to, and become a part of, the Assessment to which such Owner and such Owner's Lot is subject and shall be secured by the Assessment Lien. One (1) year after the final inspection has been performed by the City of Tucson on the Covered Property, the Association shall make an evaluation of all of the trees and plants subject to the Preservation Plan and shall provide the City of Tucson with a copy of that evaluation report.

## ARTICLE XI

### ARCHITECTURAL CONTROL COMMITTEE

Section 1. Establishment. The Declarant shall establish an Architectural Committee to perform the functions of the Architectural Committee set forth in this Declaration and shall adopt the procedural rules and regulations for the performance of such duties by the Architectural Committee, including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration. The Architectural Committee shall consist of such number of regular members and alternate members as the Declarant may designate and such members shall be appointed by the Declarant. The appointees need not be architects, Owners, or Residents and do not need to possess any special qualifications of any type except such as the Declarant may, in its discretion, require. The Architectural Committee shall hold regular meetings, a quorum for such meeting shall consist of a quorum of the regular members, and the concurrence of a majority of the regular members shall be necessary for any decision of the Architectural Committee. An alternate member, approved by the Declarant, may participate at any meeting at which there is not a quorum of regular members present, may constitute a quorum by his (their) presence and shall have all of the authority of a regular member while so participating. The Architectural Committee shall promulgate architectural guidelines and standards to be used in rendering its decisions. Subject to the provisions of Section 2 of this Article, the decision of the Architectural Committee shall be final on all matters submitted to it pursuant to this Declaration.

Section 2. Appeal. Any Owner or other Resident aggrieved by a decision of the Architectural Committee may appeal the decision to the Architectural Committee in accordance with procedures to be established by the Architectural Committee. Such procedures would include the requirement that the appellant has modified the requested action or has new information which would in the Architectural Committee's opinion warrant a reconsideration. If the Architectural Committee fails to allow an appeal or if the Architectural Committee, after appeal, again rules in a manner aggrieving the appellant, the decision of the Architectural committee is final.

Section 3. Fee. The Board may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

Section 4. Appointment of Architectural Committee Members. Architectural Committee members are appointed by the Declarant and may be replaced at the discretion

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of the Declarant. Declarant's right to appoint Architectural Committee members shall cease and the Board shall be vested with that right and all other rights of the Declarant pertaining to the Architectural Committee as stated in Article XI, five (5) years after the date on which Class B vote expires, or when such right is expressly relinquished by Declarant to Board in writing, whichever condition occurs first.

Section 5. Limited Liability of Architectural Committee Approval. Approval by the Architectural Committee shall relate only to the conformity of plans and specifications to general architectural and landscaping plans for the area covered by these restrictions, and such plans, drawings, and specifications are not approved for engineering design or architectural competence. By approving such plans, drawings, and specifications, the Architectural Committee does not assume liability or responsibility therefore, or for any defect in any structure constructed from such plans, drawings and specification. Members of the Board shall have absolutely no personal responsibility to any person with regard to any actions taken by them in their capacity as such members.

## ARTICLE XII

### RIGHTS AND POWERS OF ASSOCIATION

Section 1. Association's Rights and Powers as Set Forth in Articles and Bylaws. In addition to the rights and powers of the Association set forth in this Declaration, the Association shall have such rights and powers as are sets forth in its Articles and Bylaws. Such rights and powers, subject to the approval thereof by any agencies or institutions deemed necessary by Declarant, may encompass any and all things which a natural person could do or which now or hereafter may be authorized by law, provided such Articles and Bylaws are not inconsistent with the provisions of this Declaration and are necessary, desirable or convenient for effectuating the purposes set forth in this Declaration. After incorporation of the Association, a copy of the Articles and Bylaws of the Association shall be available for inspection at the office of the Association during reasonable business hours.

Section 2. Association's Rights of Enforcement of Provisions of this and Other Instruments. The Association, as the agent and representative of the Owners, shall have the right to enforce the Covenants set forth in this Declaration and/or any and all covenants, restrictions, reservations, charges, servitudes, assessments, conditions, liens or easements provided for in any contract, Deed, declaration or other instrument which (a) shall have been executed pursuant to, or subject to, the provisions of this Declaration, or (b) otherwise shall indicate that the provisions of such instrument were intended to be enforced by the Association or by Declarant.

Section 3. Contracts with Others for Performance of Association's Duties. Subject to the restrictions and limitations contained herein, the Association may enter into contracts and transactions with others, including Declarant and its affiliated companies, and such contracts or transactions shall not be invalidated or in any way affected by the fact that one

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or more directors or officers of the Association or members of any committee is employed by or otherwise connected with Declarant or its affiliates, provided that the fact of such interest shall be disclosed or known to the other directors acting upon such contract or transaction, and provided further that the transaction or contract is fair and reasonable.

Any such director, officer or committee member may be counted in determining the existence of a quorum at any meeting of the Board or committee of which he is a member which shall authorize any contract or transaction described above or grant or deny any approval sought by the Declarant, its affiliated companies or any competitor thereof and may vote thereat to authorize any such contract, transaction or approval with like force and effect as if he were not so interested.

Section 4. Change of Use of Association Land. Upon (a) adoption of a resolution by the Board stating that in the Board's opinion the then present use of a designated part of the Association Land or of the Association's interest in other Common Areas is no longer in the best interests of the Owners and Residents and (b) the approval of such resolution by a majority of the votes of Members who are voting in person or by proxy at a meeting duly called for such purpose, the Board shall have the power and right to change the use thereof (and in connection therewith, construct, reconstruct, alter or change the improvements thereon in any manner deemed necessary by the Board to accommodate the new use), provided such new use (i) shall be for the benefit of the Owners and Residents, and (ii) shall be consistent with any deed restrictions (or zoning regulations) restricting or limiting the use of the Association Land.

### ARTICLE XIII

#### TERM; AMENDMENTS; TERMINATION

Section 1. Term; Method of Termination. This Declaration shall be effective upon the date of its Recording hereof and, as amended from time to time, shall continue in full force and effect for a term of twenty (20) years from the date this Declaration is Recorded.

From and after said date, this Declaration, as amended, shall be automatically extended for successive periods of ten (10) years each, unless there is an affirmative vote to terminate this Declaration by the then Members casting seventy-five percent (75%) of the total votes cast at an election held for such purpose within six (6) months prior to the expiration of the initial effective period hereof or any ten (10) year extension. The Declaration may be terminated at any time if seventy-five percent (75%) of the votes cast by each class of Members shall be cast in favor of termination at an election held for such purpose. Anything in the foregoing to the contrary notwithstanding, no vote to terminate this Declaration shall be effective unless and until the written consent to such termination has been obtained, within a period from six (6) months prior to such vote to six (6) months after such vote, from the holders of Recorded first mortgages or deeds of trust to which the Assessment Lien is subordinate pursuant to Article VIII, Section 3 above, on seventy-five percent (75%) of the Lots upon which there are such Recorded first mortgages and deeds of trust. If the necessary votes and consents are obtained, the Board shall cause to be Recorded with the County Recorder of Pima County, Arizona, a Certificate of Termination, duly signed by the President or Vice President and attested by the Secretary or Assistant

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Secretary of the Association, with their signatures acknowledged. Thereupon these Covenants shall have no further force and effect, and the Association shall be dissolved pursuant to the terms set forth in its Articles.

Section 2. Amendments. This Declaration may be amended by Recording with the County Recorder of Pima County, Arizona, a Certificate of Amendment, duly signed by the President or Vice President and attested by the Secretary or Assistant Secretary of the Association, with their signatures acknowledged. The Certificate of Amendment shall set forth in full the amendment adopted, and, except as provided in Section 3 of this Article, shall certify that at an election duly called and held pursuant to the provisions of the Articles and Bylaws the Members casting two-thirds (2/3) of the votes at the election voted affirmatively for the adoption of the amendment. Any amendment requires the approval of Rita Management Association.

Section 3. Right of Amendment if Requested by Governmental Agency or Federally Chartered Lending Institutions. Anything in this Article to the contrary notwithstanding, Declarant reserves the right to amend all or any part of this Declaration to such an extent and with such language as may be requested by the Federal Housing Administration ("FHA") or the Veterans Administration ("VA") and to further amend to the extent requested by any other federal, state or local governmental agency which requests such an amendment as a condition precedent to such agency's approval of this Declaration, or by any federally chartered lending institution as a condition precedent to lending funds upon the security of any Lot(s) or any portions thereof. Any such amendment shall be effected by the Recording, by Declarant, of a Certificate of Amendment duly signed by or on behalf of the partners, authorized agents, or authorized officers of Declarant, as applicable, with their signatures acknowledged, specifying the federal, state or local governmental agency or the federally chartered lending institution requesting the amendment and setting forth the amendatory language requested by such agency or institution. The Recording of such a Certificate shall be deemed conclusive proof of the agency's or institution's request for such an amendment, and such Certificate, when Recorded, shall be binding upon all of Arizona Madera at Rita Ranch and all persons having an interest therein. It is the desire of Declarant to retain control of the Association and its activities during the anticipated period of planning and development. If any amendment requested pursuant to the provisions of this Section deletes, diminishes or alters such control, Declarant shall have the right to prepare, provide for and adopt as an amendment hereto, other and different control provisions. Except as provided in this Section 3, Declarant shall not have any right to amend this Declaration otherwise than in accordance with an pursuant to the provisions of Section 2 of this Article.

#### ARTICLE XIV

#### MISCELLANEOUS

Section 1. Interpretation of the Covenants. Except for judicial construction, the Association, by its Board, shall have the exclusive right to construe and interpret the provisions of this Declaration. In the absence of any adjudication to the contrary by a court





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Section 8. Gender and Number. Wherever the context of this Declaration so requires, words used in the masculine gender shall include the feminine and neuter genders; words used in the neuter gender shall include the masculine and feminine genders; words in the singular shall include the plural; and words in the plural shall include the singular.

Section 9. Captions and Titles. All captions, titles or headings of the Articles and Sections in this Declaration are for the purpose of reference and convenience only and are not to be deemed to limit, modify or otherwise affect any of the provisions hereof or to be used in determining the intent or context thereof.


Section 10. Notices. If notice of any action or proposed action by the Board or any committee or of any meeting is required by applicable law, this Declaration or resolution of the Board to be given to any Owner or Resident then, unless otherwise specified herein or in the resolution of the Board, such notice requirement shall be deemed satisfied if notice of such action or meeting is published once in any newspaper in general circulation within the City of Tucson or Arizona Madera at Rita Ranch. This Section shall not be construed to require that any notice be given if not otherwise required and shall not prohibit satisfaction of any notice requirement in any other manner.

Section 11. FHAVA Approval. If this Declaration has been initially approved by the FHA or the VA in connection with any loan programs made available by FHA or VA and any loans have been made which are insured or guaranteed by FHA or VA, then as long as there is a Class B Membership, the following actions will require the prior approval of the FHA or the VA, as applicable, unless the need for such approval has been waived by FHA or VA: Dedications of Common Areas (except where such dedication is required as of the date hereof to the City of Tucson); and amendment of this Declaration.

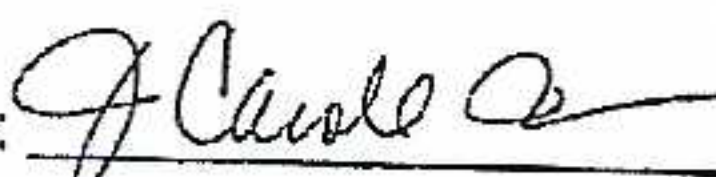
IN WITNESS WHEREOF, Kaufman and Broad of Tucson, Inc, an Arizona corporation, has hereunto caused its name to be signed by the signature of its duly authorized official as of the day and year first above written.

BENEFICIARY APPROVAL:

KAUFMAN AND BROAD OF  
TUCSON, INC., an Arizona  
corporation

By:   
Its Assistant Secretary

FIRST AMERICAN TITLE INSURANCE  
COMPANY, a California corporation, as  
Trustee only and not otherwise under Trust  
No. 4846

By:   
Its: Assistant Vice President

10/2/00 10:00 AM



