

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
TIERRASANTA III

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DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
TIERRASANTA III

THIS DECLARATION made this 17<sup>th</sup> day of September, 1986, by TITLE GUARANTY AGENCY OF ARIZONA, INC., an Arizona corporation, Trustee under Trust No. 1158, hereinafter referred to as "Declarant".

W I T N E S S E T H :

WHEREAS, Declarant is the Owner of Certain real property in the County of Pima, State of Arizona, which is more particularly describes as:

Lots 71-126 and Common Areas A3, B3, C3 and D3  
of TIERRASANTA, a subdivision, as recorded in  
the Office of the Pima County Recorder, in  
Book 40 of Maps and Plats at Page 15  
thereof.

which real property shall hereinafter be referred to as the "Property; and

WHEREAS, Declarant proposes to construct individual residential units upon the Property and other improvements upon the designated Common Area, and to sell and convey the same, subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens hereinafter set forth, each of which is for the benefit of the Property and the subsequent owners thereof.

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NOW, THEREFORE, Declarant hereby declares that the Property is and shall be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. The covenants, conditions, restrictions, uses, limitations, obligations, easements and equitable servitudes, charges and liens, set forth herein shall run with the Property; shall be binding upon all persons having or acquiring any interests in the Property or any part thereof; shall inure to the benefit of and be binding upon Declarant, its successors in interest, each Owner and his/her respective successors in interest, and may be enforced by Declarant or its successors in interest, by any Owner or his/her successors in interest or by any entity having an interest in their enforcement.

No provision contained herein shall be construed to prevent or limit developer's right to complete development of the Property and construction of improvement thereon,

nor Developer's right to maintain model homes, construction, sales or leasing offices or similar facilities on the Property, nor Developer's right to post similar facilities on the Property, nor Developer's right to post signs incidental to construction, sales or leasing, nor Developer's right to do anything that is reasonably necessary and proper for the full development of the Property.

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## ARTICLE I

### DEFINITIONS

Unless the context otherwise specifies or requires, the following words and phrases when used herein shall have the meanings hereinafter assigned.

Section 1.01 "Articles" shall mean the Articles of Incorporation of the Association and amendments thereto which are or shall be filed in the Office of the Arizona Corporation Commission.

Section 1.02 "Association" shall mean and refer to the TIERRASANTA III HOMEOWNERS ASSOCIATION, INC., an Arizona non-profit corporation, which shall be formed prior to the conveyance of the first Lot, its successors and assignees.

Section 1.03 "Board" shall mean the Board of Directors of the Association.

Section 1.04 "By-Laws" shall mean the By-Laws of the Association, together with any amendments thereto.

Section 1.05 "Common Area(s)" or "Common Property" shall mean all real property designated as Common Area, Private Common Area, or C.A. on the Plat as defined in Section 1.15 hereof, whether improved or unimproved, owned by the Association for the common use and enjoyment of the Owners. Common Property shall also include any real or personal property now or hereinafter owned by or leased by the Association.

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Section 1.06 "Declarant" means TITLE GUARANTY AGENCY OF ARIZONA, INC., TRUST NO. 1158, as Trustee only, its nominees, successors or assigns while title holder if any Lot either as the original Owner or Owner by reacquisition.

Section 1.07 "Declaration" or "Restrictions" shall mean this instrument and any amendments thereto.

Section 1.08 "Developer" shall mean CIENEGA, LTD., a Arizona corporation, its successors or assigns.

Section 1.09 "Dwelling Unit" or "Unit" shall mean any improvements placed within the confines of any Lot.

Section 1.10 "Lot" shall mean and refer to any numbered parcel of real property shown on the Plat, together with the Dwelling Unit, if any, thereon.

Section 1.11 "Member" shall mean and refer to every person and/or entity who holds membership in the Association.

Section 1.12 “Mortgage” shall mean any mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered and the term “first mortgagee” shall mean the holder of any mortgage under which the interest of any Owner of a Lot is encumbered and which mortgage has first and paramount priority, subject only to the lien of general or ad valorem taxes and assessments. “Eligible Mortgage Holder” shall mean a holder of the first mortgage on a Lot who has requested notice of certain matters in accordance with Section 7.11K.

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Section 1.13 “Owner(s)” or “Homeowner(s)” shall mean and refer to (1) the record Owner, whether one or more person or entities, of equitable or beneficial title in fee simple (or legal title if same has merged) of any Lot (2) the purchaser of a Lot under a recorded executory contract for the sale of real property. 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 “close” and/or been recorded in the office of the County Recorder of Pima County, Arizona.

Section 1.14 “Person” shall mean a natural individual or any other entity with the legal right to hold title to real property.

Section 1.15 “Plat” shall mean the subdivision plat covering the Property under the name “TIERRASANTA”, recorded in Book 40 of Maps and Plats at Page 15, in the office of the County Recorder of Pima County, Arizona, and any further amendments thereto.

Section 1.16 “Property” or “Subdivision” shall mean all that real property identified in the Plat.

Section 1.17 “Rules” shall mean the rules adopted by the Board pursuant to the By-Laws.

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## ARTICLE II

### USES AND RESTRICTIONS

All property within the subdivision shall be held, used and enjoyed, subject to the following limitations and restrictions:

Section 2.01 Private Residential Purposes. Dwelling Units shall be occupied and used by the respective Owners solely for private residential use of the Homeowner, his/her family, tenants and social guests and for no other purpose. No gainful occupation, professions, trade or other non-residential use shall be conducted on the Property, except that Declarant or Developer may maintain sales offices, construction offices and sales models on the Property. Sales offices, sales models and construction offices utilized by the Declarant or Developer on the Property need not be owned by either Declarant or Developer. Further, sales models and sales offices may be utilized on the property as

sales models and sales offices for the benefit of other subdivisions of either Declarant or Developer.

Section 2.02 Renting. Each owner shall have the right to lease or rent his/her Dwelling Unit; provided, however, that any lease agreement, including any agreement to lease the Dwelling Unit on a month to month basis, must be in writing and must provide that the failure of any lessee or tenant to comply with the Rules, By-Laws, Articles and provisions of this Declaration shall be a default under the lease. Any lease agreement shall be for a period of not less than thirty (30) days.

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Section 2.03 Antennas and Exterior Additions. No exterior antennas or other devices for the transmission or reception of radio and television signals shall be erected or maintained on the Property without prior written authorization of the Board or the Architectural Control Committee. The Developer shall determine standards for exterior television antennas. Further, no exterior devices, additions, structures or accessory building other than initially installed by Developer shall be constructed on the exterior of a Dwelling Unit (including the roof) without the written authorization of the Board or the Architectural Control Committee.

Section 2.04 Solar Devices. No solar devices, of any type, shall be erected or installed on any Lot without the approval of the Board or the Architectural Control Committee as set forth in Section 3.09 herein.

Section 2.05 Insurance Rates. Nothing shall be done or kept on any Lot or Common Area which will increase the rate of insurance on such property nor shall anything be done to kept on any Dwelling Unit or Common Area which will result in the cancellation of insurance on any such property or which would be in violation of any law.

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Section 2.06 Signs. No signs of any kind shall be displayed which are visible from neighboring property without the approval of the Board or the Architectural Control Committee Exempt:

- A. Such signs as may be required by legal proceedings; and,
- B. Such Signs as may be used by Developer or Declarant; and,
- C. Such signs as may be approved by the Board or the Architectural Control Committee indicating a Dwelling Unit is for sale or lease.

Where the Board's or the Architectural Control Committee's approval is required, it shall approve the nature, composition, number, size and location of all signs, unless accepted here-under.

Section 2.07 Animals. No animals of any kind shall be raised, bred, or kept on the Property, except that a reasonable number of generally recognized house or yard pets may be kept provided that they are not kept, bred or maintained for any commercial purpose. No animals shall be allowed to become a nuisance. A "reasonable number" as used in this Section shall ordinarily mean no more than two pets per Dwelling Unit; provided, however, the Board may determine that a reasonable number in any instance may be more or less. Upon the written request

of any Owner, the Board shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet or a nuisance, or whether the number of animals is reasonable.

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Section 2.08 Nuisances. After completion of construction of all Dwelling Units and landscaping of Lots by Developer, no rubbish or debris of any kind shall be placed or permitted to accumulate upon any Property within the subdivision, and no odors shall be permitted to arise therefrom so as to render any such Property or any portion thereof unsanitary, unsightly, 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, bells or other sound devices, except security devices used exclusively for security purposes, shall be located, used or placed on any such Property without the prior written approval of the Board. The Board in its sole discretion shall have the right to determine the existence of any such nuisance.

Section 2.09 Native Growth and Plants. Except within the confines of the fenced rear yard of Dwelling Unit, the native growth and plants (i.e., cacti, trees, scrubs, etc.) as may exist on a Lot after completion of construction by Developer shall not be removed or destroyed by an Owner unless written permissions is first obtained from the Board or the Architectural Control Committee. Further, except with said fenced rear yards, Owner must first obtain the Board's or the architectural control committee's written approval before planting any type of growth or plantings on a Lot which is not natural to the surrounding desert areas (i.e., grass, palm trees, citrus trees, etc.).

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Section 2.10 Growth and Planting – Common Area. The growth and planting in the Common area shall not be removed or destroyed unless written permission is first obtained from the Board or the Architectural Control Committee. Owners must obtain the Board's or the Architectural Control Committee's written approval before planting in the Common Areas. No planting of any type (including grass) that will require irrigation shall be placed within five (5') feet of any portion of any building or patio wall which comprises all, or a portion of, a common wall.

Section 2.11 Rear Yard Fence. Each Lot contains a rear yard fence which has been constructed by Developer as a part of the Dwelling Unit, and each Owner shall continuously maintain in good repair said fence and shall not increase or decrease the fenced rear yard area, or modify the materials of the fence without the prior written approval of the Board or the Architectural Control Committee pursuant to Section 3.09.

Section 2.12 Violation of Rules. If any Owner, his/her family or any licensee, tenant or lessee or invitee violates the Board's rules, the Board may, in addition to any other enforcement provisions contained herein, suspend the right of such person to use the common Areas, under such conditions as the Board may specify, for a period not to exceed sixty (60) days for each violation. Before invoking any such suspension, the Board shall give such person notice of hearing before the Board.

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Section 2.13 Exception of Developer and Declarant. As long as the Developer or Declarant follows the development plan approved by the Federal Housing Administration and/or the Veterans Administration, if such approval has been obtained, nothing in this Declaration shall limit the right of Developer or Declarant to complete excavation, grading and construction of improvements to any Property within the subdivision, to resubdivide any Lot or portion of the Property, or to alter the foregoing to construct such additional improvements as Developer or Declarant deems advisable in the course of development of the subdivision so long as any Lot therein remains unsold. Further, nothing in this Declaration shall limit the right of Developer or Declarant to use any structure in the subdivision as a sales model, sales office or construction office, or to place any sign, banner, flag or similar method of advertisement on the Property to promote sales within the Property or other properties or subdivision of Developer or Declarant. The rights of Developer or Declarant hereunder or elsewhere in this Declaration may be assigned by Developer or Declarant.

Section 2.14 Drainage. There shall be no interference with the established drainage pattern over any Property, including any private drainage ways or easements, within the subdivision, unless adequate provision is made for proper drainage conforming to Pima County rules, regulations, ordinances and drainage criteria and is approved by the applicable governing body or its duly appointed representative. For purposes hereof, "established drainage" is defined as the drainage which exists at the time the overall grading of the Property is completed, or which is shown on the Plat or on any plans conforming to applicable rules, regulations, ordinances and drainage criteria approved by the applicable governing body or its duly appointed representative.

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Section 2.15 Unsightly Articles. No unsightly articles shall be permitted to remain so as to be visible from adjoining Dwelling Units or from the street or public way. Grass, shrub or tree clippings and all machinery, storage piles, wood piles, garbage or trash containers shall be kept within an enclosed structure or appropriately screened from view of adjoining property or from streets or public way except when necessary to effect such collection; provide, however, any such structure or screen shall be subject to the Board or the Architectural Control Committee's review and approval pursuant to Section 3.09. The Board or the

Architectural Control Committee shall have sole discretion in determining if any activity by an Owner is in violation of this Section

Section 2.16 Trash Containers. No garbage or trash shall be placed or kept on Property within the subdivision except in covered containers of a type, size and style which have been installed by Developer or have been approved by the Board or the Architectural Control Committee or are required by governmental authorities. All rubbish, trash or garbage shall be removed from the Dwelling Units and shall not be allowed to accumulate thereon. No incinerators shall be allowed. Trash/garbage containers shall be placed at curb side only on days of scheduled collection and shall be removed from view on the same day of collection. Owners of Dwelling Units utilizing common trash/garbage collection areas shall be jointly and severally responsible for keeping said common collection areas in a clean and sanitary condition. The Board or the Architectural Control Committee shall have sole discretion in determining if any activity by an owner is a violation of this Section 2.16.

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Section 2.17 Right of Inspection. During reasonable hours, any member of the Board, or any authorized representative of any of them shall have the right upon reasonable notice to the Owner of a Dwelling Unit to enter upon and inspect any Property within the subdivision (except the interior of Dwelling Units), 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.

Section 2.18 Mail Boxes. Developer or Board shall determine the location, color, size, design, lettering, and all other particulars of all mail and paper delivery boxes, and standards and brackets and name signs for same in order that the area be strictly uniform in appearance with respect thereto.

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Section 2.19 Vehicles/Carports/Garages. The use of all vehicles, including but not limited to trucks, automobiles, bicycles and motorcycles shall be subject to the Rules, which may prohibit or limit the use thereof, provide parking regulation, or generally regulate same. Any and all items stored in a carport/garage area shall be stored so as to conceal same from view from adjoining property, or from the streets or public way, and further, in the case of a garage, garage doors shall be kept closed at all times, except as may be reasonably necessary for ingress, egress and normal day-to-day activities which require the utilization of the garage. At no time shall there be any outside storage of motor vehicles in stages of construction, reconstruction, modification or rebuilding of parts of motor vehicles such as frames, bodies, engines or other parts or accessories. Further, the storage or parking of any recreational vehicle, commercial vehicle or boat, other than completely within Owner's carport/garage is prohibited.

Section 2.20 Clothes Lines. No exterior clothes lines shall be erected or maintained, and there shall be no outside laundering or drying of clothes.

Section 2.21 Diseases and Insects. No owner shall permit anything or any condition to exist upon any Property within the subdivision which shall induce, breed or harbor infectious plant diseases or noxious insects.

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Section 2.22 Natural Open Space. The Natural Open Space, shown on the Plat as Common Area "C3", shall remain in its natural state, and any motor vehicles, with the exception of maintenance vehicles, are prohibited on Common Area "C3". The Homeowners Association shall have the right to construct pedestrian and/or equestrian trails, which trails, if so constructed, shall be maintained by the Homeowners Association.

### ARTICLE III

#### EASEMENTS, ARCHITECTURAL CONTROL, COMMON WALLS

Section 3.01 Easement Encroachments. Each Dwelling Unit and the Common Areas shall be subject to an easement for encroachments created by construction, settling and overhangs, as designed or constructed by the Developer, including footings and walls thereon. A valid easement for said encroachments and for the maintenance of same, so long as it stands, shall and does exist. In the event Dwelling Units are partially or totally destroyed, and then rebuilt, the Owners agree that minor encroachments on parts of the adjacent Lot or Common Area due to construction shall be permitted and that valid easement for said encroachments and the maintenance thereof shall exist.

Section 3.02 Private Drainage Easements. Private drainage easements may have been established as shown on the Plat or by separate instrument duly recorded over and across certain Lots for the exclusive use and benefit of other Lot Owners. Each Owner of a Lot on which a private drainage easement is located shall be responsible for maintaining that easement and keeping it free and clear from all debris, refuse and any other foreign matter which shall in any way interfere with or hinder the free flow of water in the easement as originally constructed. In the event of the failure of any Lot Owner to so maintain an easement, other Lot Owners benefited by such easements shall have no cause of action against the Association, but shall proceed solely against that Lot Owner.

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Section 3.03 Utility Easements. In addition to those specific easements shown on the Plat, there is hereby created a blanket easement upon, across, over and under the Common Areas for ingress, egress, installation, replacing, repairing and maintaining all utility and service lines and systems, including, but not limited to, water, sewers, gas, telephones, electricity, television cable or

communications lines and systems, etc. By virtue of this easement, it shall be expressly permissible for the providing utility or service company to install and maintain facilities and equipment on the Common Areas and to affix and maintain wire, circuits and conduits on, in, and under the roofs and walls of Common Areas. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utilities or service lines may be installed or relocated on the Property except as initially designed and installed by Developer or thereafter approved by the Board. This easement shall in no way affect any other recorded easements on the Property. In no event shall any portion of the above mentioned easements for utilities be constructed to authorize the placing or installing of sewers, electrical lines, water lines or other utilities under any permanent building structure constructed on the Property. This easement shall be limited to improvements as originally constructed. There shall be an access easement for the delivery and collection of the U.S. Mail.

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Section 3.04 6' Utility Easement and 10' Utility and Pedestrian Easement. Shown on the Plat are 6-foot wide Utility Easements and 10-foot wide Utility and Pedestrian Easements which encumber portions of Lots. In addition to the use as Utility Easements and Utility and Pedestrian Easements, said 6-foot and 10-foot areas shall also be used for the collection and delivery of U.S. mail.

Section 3.05 Private Drainage Area – Common Area. The Homeowners Association shall maintain the Private Drainage Areas which are located on the Common Area in a manner consistent with all applicable governmental ordinances.

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Section 3.06 Easement for Perimeter Walls and Other Improvements. Developer may construct perimeter walls and other improvements, including but not limited to, driveways, walkways, exterior lighting (metered to a particular Dwelling Unit), drainage structures, etc., as a part of, or for the use of, a particular Dwelling Unit which may encroach upon or encompass portions of the Common Area or Adjacent Lots should occur, the Owner to the Dwelling unit involved shall have, subject to the conditions hereinafter set forth, a perpetual permanent right for such perimeter walls to encompass portions of the Common Area or adjacent lots and for such other improvements to encroach upon portions of the Common Area or adjacent lots. In consideration thereof, such Owners agree to maintain and keep in repair any improvements encroaching upon the Common Area or adjacent lots which were constructed for the use the their Lot, unless such maintenance and repairs are the responsibility of the Association as set forth in Section 4.04B of this Declaration. In the event any such Owners should make demand upon the Association to maintain any Common Area within the confines of such perimeter wall, or to maintain and keep in repair any improvements encroaching upon the common area or adjacent lots which is the responsibility of

the Owner to repair as set forth in Section 4.04A of this Declaration, then the Association or adjacent lot Owner, as the case may be, shall have the absolute right, and may cause the Owner making such demand to remove at his/her expense, any improvement, including the perimeter wall, encroaching upon the Common Area or adjacent lot, and to replace and rebuild such improvement or perimeter wall as to be within such Owner's Lot. Declarant hereby acknowledges that the right granted Owners under this section is a property right of the Owner, and such property right may not be revoked or rescinded by Declarant, its successors or assigns, or by the Association, once such right has vested in an Owner, except upon an Owner's breach of the conditions set forth in the preceding sentence.

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Section 3.07 Electrical Service and Telephone Lines. All electrical service and telephone lines shall be placed underground and no outside electrical lines shall be placed overhead, except existing overhead lines; provided that no provisions hereof shall prohibit the erection of temporary power or telephone structures incident to construction.

Section 3.08 Common Walls. The rights and duties of Owners with respect to common walls or fences shall be as follows:

A. Each wall, including partition walls and fences, which is constructed as a part of the original construction of the Dwelling Unit, any part of which is placed on or over the dividing line between separate Dwelling Units, shall constitute a common wall. With respect to any such walls, each of the adjoining Unit Owners shall assume the burden and be entitled to the benefits recited in this Section 3.08 and to the extent not inconsistent herewith, the general rules of law regarding common walls shall be applied thereto.

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- B. The Owners of contiguous Dwelling Units who have a common wall shall have reciprocal easements for support and an equal right to use such wall provided that such use by one Owner does not interfere with the use and enjoyment of same by the other Owner.
- C. Unless other provisions of this Section 3.08 are applicable, the costs of reasonable repair and maintenance of a common wall shall be shared equally by the Owners who make use of the common wall in proportion to such use.
- D. In the event any common wall is damaged or destroyed through the act of one adjoining Owner, or any of his/her guests or agents or members of his/her family so as to deprive the other Owner of the full use and enjoyment of such wall, then the first of such Owners, if required under local law, shall forthwith proceed to rebuild and

repair the same to as good condition as formerly without cost to the other Owner.

- E. In the event any common wall is damaged or destroyed by some cause other than the act of one of the adjoining owners, his/her agents, guests or family (including ordinary wear and tear and deterioration from lapse of time), then in such event, both such adjoining Owners shall, if required under local law, proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense.

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- F. Notwithstanding anything to the contrary herein contained, There shall be no impairment of the structural integrity of any common wall without prior consent of the Board. In addition to meeting the other requirements of these Restrictions and of any building code or similar regulation or ordinances, any Owner proposing to modify, make additions to or rebuild his/her Dwelling Unit in any manner which required the extension or other alteration of any common wall shall first obtain the written consent of the Board which shall determine the adjoining Owner's preference concerning the proposed modification, extension or alteration of the common wall prior to giving any written consent thereto.
- G. In the event of a dispute between Owners with respect to the repair or rebuilding of a common wall or with respect to the sharing of cost thereof, then upon written request of one of such Owners delivered to the Association, the matter shall be heard and determined by the Board.

Section 3.09 Architectural Control Committee. Subsequent to the closing of the sale of a Lot by Declarant to an Owner, no building, fence, wall, or other structure shall be commenced, created, erected or maintained upon said Owner's Lot, nor shall any exterior addition to, or change in, or alteration of, said Owner's Dwelling Unit, or any common wall, or the exterior color scheme thereof, be made until the plans and specifications showing the nature, kind, shape, height, materials, color and location shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the board, or by an Architectural Control Committee composed of three (3) or more representatives appointed by the Board. In the event the Board or its designated Committee fails to approve or disapprove such design and location within (30) days after said plans and specifications have been submitted to it, approval will not be required and this Section will be deemed to have been fully complied with. Notwithstanding anything contained to the contrary in the Section, no additions or modifications to any improvement or structure shall be made by an Owner subsequent to the closing of a sale of a Lot to an Owner unless such addition or modification has been first reviewed and approved by the applicable governing body.

ARTICLE IV

THE ASSOCIATION, MEMBERSHIP, MAINTENANCE

Section 4.01 Organization.

- A. Association. The Association is or shall be an Arizona non0profit corporation charged with the duties and vested with the powers prescribed by law and set forth in the Articles, By-Laws, and this Declaration. The Association shall be legally constituted and in existence prior to the conveyance of the first Lot by Declarant.

- B. Board of Directors and Officers. The affairs of the Association shall be conducted by a Board of Directors and such officers as the Board may elect or appoint, in accordance with the Articles and By-Laws, as the same may be amended from time to time. The composition of the Board shall be defined in the By-Laws.
- C. Personal Liability. No member of the Board or any Committee of the Association or any officer or employee of the Association, the Declarant or Developer shall be personally liable to any Owner, or to any other party, 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, or any representative or employee of the Association or any Committee, or any officer of the Association, provided that such person has, upon the basis of such information as may be possessed by him/her, acted in good faith, without willful or intentional misconduct.

Section 4.02 Membership.

- A. Qualifications. Each Owner (including Declarant) of a Lot, by virtue of being such an Owner and for so long as he/she is such an Owner, shall be deemed a Member of the Association. No Owner shall have more than one membership for each Lot owned.

- B. Transfer of Membership. Membership of each Owner (including Declarant) in the Association shall be appurtenant to the Lot owned and shall not be transferred, pledged, or alienated in any way except upon the transfer of ownership to said Lot, and then only to the transferee thereof. Any attempt to make a prohibited transfer shall be

void. Any transfer of ownership of a Lot shall operate automatically to transfer said membership to the new Owner thereof.

Section 4.03 Voting Rights. The Association shall have two classes of voting membership.

Class A: Class A Members shall be all Owners, with the exception of Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any Lot.

Class B: The Class B Member shall be Declarant, and shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership on the happening of either of one of the following events, whichever occurs earlier:

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- (a) When the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or
- (b) Three years following the conveyance of the first Lot to an Owner other than the Declarant.

Section 4.04 Exterior Maintenance, Repair, Up-Keep and Repainting.

A. Maintenance, repair, upkeep and repainting of Dwelling Units, including all other improvements on a Lot, shall be the Sole Responsibility of each Owner. Except to the extent of the Association's obligations under Section 4.04B, each Owner shall also maintain, repair and repaint (if applicable), the interior sides of the perimeter yard walls or fences appurtenant to his or her Lot, Except that if such a wall or fence is a common wall or fence, an Owner shall be required to repair and repaint only the portion of the wall or fence exclusively used by that Owner. Further, each Owner shall be responsible for sewer blockage, repair, etc. of all Dwelling Unit plumbing as well as the house connection line from the Dwelling Unit to its connection point in the main collection sewer line in the street. Such maintenance, repair and repainting of a Dwelling unit and other improvements on a Lot shall be undertaken in a manner and with such frequency as shall keep each Owner's Lot in an attractive, well-kept and maintained condition in conformity with all other Lots in the Subdivision. In the event any Owner fails to fulfill his or her obligations under this Section, the Association, after approval by two-thirds (2/3) vote of the Board of Directors, shall have the right through its agents and employees, to enter upon the subject property, and to repair, maintain, and restore the Lot, including the perimeter yard walls or

fences, and any other improvements. The cost of such exterior maintenance shall be added to and become part of the assessment to which such Lot is subject. The Board shall have the right to determine whether or not a Lot is in need of maintenance, repair and upkeep, in order to conform to the standards of the general neighborhood of TIERRASANTA III, and the Board shall use a reasonably high standard to determine whether such maintenance, repair and upkeep is required so that the Lots as a whole will reflect a high pride of ownership. Each Owner of his/her authorized agent or the Association, as the case may be, in order to conduct such maintenance, repair or repainting, shall have the right of entry at reasonable times upon Lots adjacent to such Owner's Lot, provided reasonable notice of such entry is first given by such Owner to the Owner of the involved adjacent Lot.

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- B. The Association shall be responsible for maintenance, repair and upkeep of any Common Area improvements including, but not limited to, non-public streets, recreation facilities, including the pool, if any, landscaping, common trash/garbage collection areas, drainage ways, and parking areas constructed on the Common Areas. In addition, the Association shall be responsible for maintaining and repainting the exterior perimeter walls or fences constructed along the boundaries of the Property

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- C. Each Owner shall be responsible for the maintenance and repair, including replacement of light bulbs, of all exterior lighting fixtures located within the Owner's Dwelling Unit, or in the Common Area, provided such lighting in the Common Area is metered to the owner's Dwelling unit.

Section 4.05 Conveyance of Common Area. Declarant shall grant and convey to the Association and the Association shall receive ownership of the Common Area prior to the closing of sale of a Lot by Declarant to the Owner. Upon such conveyance and grant, the Association shall succeed to all right, duties and powers with respect to the common area as prescribed by law, and set forth in the Articles, By-Laws and this Declaration.

Section 4.06 By-Laws. The By-Laws shall among other things, establish the procedure for electing members of the Board and officers of the Association, the duties of the Association, the procedure for regular and special meetings, the disposition of hazard insurance proceeds and amendments to the By-Laws.

## ARTICLE V

### INSURANCE

Section 5.01 Insurance Requirements. The association shall be responsible and obligated to purchase and maintain at all times the following types of insurance:

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- A. Comprehensive General Liability and Property Insurance. Comprehensive general liability and property damage insurance covering all Common Areas and all other areas under the jurisdiction or control of the Association shall be purchased by the Association and shall be maintained in full force and effect at all times. Such insurance policy or policies shall contain, if available, a “severability of interest” clause or endorsement which shall preclude the insurer from denying the claim of a Owner because of negligent acts of the Association or of any other Owners. The scope of coverage of cash policy or policies must include all other coverage in the kinds and amounts commonly required by private institutional mortgage investors for projects similar in construction, location and use as TIERRASANTA III. Coverage shall be for at least one million dollars (\$1,000,000.00) per occurrence for personal and/or property damage.
- B. Fire Hazard Insurance –Common Areas. Fire and other hazard insurance covering improvements constructed on the Common Areas, including but not limited to armadas or recreation buildings. Such policy or policies shall consist, at a minimum, of a multi-peril type policy covering the subject improvements, providing, as a minimum, fire and extended coverage and all other coverage in the kinds and amounts commonly required by private institutional mortgage lenders Tucson, Arizona, on a replacement cost improvements and any policy requirement that the mortgagee or beneficiary pay the premium thereon.

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- C. Workmen’s Compensation Insurance. Workmen’s Compensation insurance to the extent necessary to comply with any applicable laws.
- D. Fidelity Insurance. The Association shall purchase and maintain in force, fidelity coverage against dishonest acts

on the part of directors, officers, managers, trustees, employees, or volunteers responsible for handling funds belonging to or administered by the Association. Such fidelity bonds or insurance shall name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is, in no event, less than 1-1/2 times the insured's estimated annual operating expenses and reserves, and provide for at least ten (10) days notice to the association and first mortgagees servicing FNMA owned Mortgages before cancellation or substantial modification of the bond. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added, if the policy would not otherwise cover volunteers.

- E. Minimum Financing Rating Carrier. Each hazard insurance policy obtained by the Association pursuant to the foregoing shall be written by a hazard insurance carrier which has a financial rating by Best's Insurance Reports of Class VI or better and a general policy holder's rating of at Least B. Hazard insurance policies shall also be acceptable from an insurance carrier which has a financial rating by Best's Insurance Reports of Class V, provided that such insurance carrier has a general policyholder's rating of at least A. Each such carrier shall be specifically licensed or authorized by law to transact business in the Stat of Arizona.

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Policies shall be unacceptable where:

- (1) Under the terms of the carrier's charter, by-laws, or policy, contributions or assessments may be made against a Lot Owner or the designee of the Federal Home Loan Mortgage Corporation, or the Federal Housing Authority or the Veterans Administration; or
- (2) By the terms of the carrier's charter, by-laws, or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members; or
- (3) The Policy includes any limiting clauses (other than insurance conditions) which could prevent the Federal Home Loan Mortgage Corporation, Federal Housing Administration or the Veterans Administration or any Dwelling unit Owner from collecting insurance proceeds.

F. In General. Every policy of insurance obtained by the Association shall contain an express waiver, if available, of any and all rights of subrogation against Declarant, Developer, the Board, and such other persons or entities affiliated with the Association such as a manager and their representatives, members and employees and a

provision, if available, preventing any cancellation or modification thereof except upon at least ten (10) days' written notice to the insureds and their mortgagees. Every policy of insurance obtained by the Association shall provide, if available, for the payment of assessments which the insured property is obligated for under this Declaration until the insured property is repaired and made habitable. The liability insurance hereinabove specified shall name as separately protected insureds Declarant, Developer, the

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Association, The Board, and such other persons or entities affiliated with the Association such as a manager and their representatives, members and employees as their interest may appear with respect to any liability arising out of the maintenance or use of any insured property. As to each such policy, which will not be voided or impaired thereby, the Association hereby waives and releases all claims against the Declarant, the Board, the Developer and such other persons or entities named in said insurance, and agents and employees of each of the foregoing, with respect to any loss covered by such insurance, whether or not caused by negligence of or breach of any agreement by said persons, but only to the extent that insurance proceeds are received in compensation for such loss. An "Agreed amount and inflation guard endorsement" should be included in the policies, and if the construction or building code may require changes to undamaged portions of the property even when only part of the project is damaged or destroyed, an endorsement covering same must be included in the insurance policies.

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G. Insurance Premiums. Premiums for insurance purchased or obtained by the Association shall be a common expense payable through assessments of Lots and all such insurance coverage obtained by the Board shall be written in the name of the Association.

H. Additional Optional Insurance by Owner. In addition to the aforesaid insurance required to be carried by the Association, any Owner may, if he/she wishes, at his/her own expense, carry any and all other insurance he/she deems advisable; however, if available, said policy or policies shall provide that there shall be no contribution or offset between policies of the Association and policies an individual Owner may have in effect. It shall be the individual responsibility of each Owner at his/her own expense, to provide as he/she sees fit, Owner's liability insurance, theft and other insurance covering personal and real property damages and loss.

I. Destruction/Insurance Proceeds. In the event of substantial damage or destruction of any Lot or any part of the Common Area, any first Mortgage on a Lot will be entitled to timely written notice of any such damage or destruction and no Owner of a Lot or other party shall have priority over such first mortgage with respect to the distribution to such unit Owner of any insurance proceeds.

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## Section 5.02 Condemnation Destruction.

### A. Condemnation.

1. Taking. The term “taking”, as used in this Section, shall mean either (a) condemnation by eminent domain or (b) sale under threat of condemnation.
2. Authority of Board. In the event of a threatened taking of all or any portion of the Common Area, the Members hereby appoint the Board of the Association and such persons as the Board or the Association may delegate to represent all of the members in connection with the taking. The Board shall act in its sole discretion with respect to any awards being made in connection with the taking and shall be entitled to make a voluntary sale to the condemner in lieu of engaging in a condemnation action.
3. Partial Taking. In the event of a taking of less than all of the Common Area, the rules as to restoration and replacement of the Common Area and the improvements thereon shall apply as in the case of destruction of improvements upon the Common Area.
4. Distribution of Proceeds. Any awards received on account of the taking shall be paid to the Association. In the event of a total taking, the Board shall retain any award in the general funds of the association. Notwithstanding anything to the contrary in this Section, the distribution of any award or awards for a taking of all or any portion of the Common Area shall be subject to the prior rights of Mortgagees.

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B. Destruction.

1. Duty of Association. In the event of a partial or total destruction of the Common Area, Common Property or improvements thereon, it shall be the duty of the Association to restore and repair the same to their former condition as promptly as is practicable and in a lawful and workmanlike manner. The proceeds of any insurance maintained pursuant hereto shall be used for such purpose, subject to the prior rights of Mortgagees whose interests may be protected by said policies.
2. Destruction; Proceeds Exceed 80% of Reconstruction Costs. If the amount available from the proceeds of such insurance policies for such restoration and repair is at least eighty percent (80%) of the estimated costs of restoration and repair, a Reconstruction Assessment, with each Owner contributing a like sum, may be levied by the Association to provide the necessary funds for such reconstruction and repair, over and above the amount of any insurance proceeds available for such purpose.
3. Destruction; Proceeds Less Than 80% of Reconstruction Costs. If the amount available from the proceeds of such insurance policies for such restoration and repair is less than eighty percent (80%) of the estimated cost of restoration and repair, the improvements shall not be replaced or restored unless approved by the vote or written consent of Members entitled to exercise two-thirds (2/3) of the voting power of the membership of the Association.

- a. Rebuilding not Authorized; First Mortgagee Approval. Notwithstanding the foregoing, unless at least fifty-one (51%) of the Eligible Mortgage Holders, based on one (1) vote for each Mortgage held, have given their prior written approval, the Association shall not be entitled to use hazards proceeds for losses to any Common Area for other than the repair, replacement or reconstruction of such improvements.
- b. Open Common Area; First Mortgagee Approval. In the event of a determination not to replace or restore the improvements on the Common Area, and provided that in the event of such determination the Association shall obtain the additional written consent of fifty-one (51%) of such Eligible Mortgage Holders, based on one vote for each Mortgage held, the Common Area shall be cleared and landscaped for open Common Area to be used by the Owners pursuant to Article VI hereof, and the costs thereof shall be paid for with the insurance proceeds, and any deficiency may be raised by the levy of uniform Reconstruction Assessments in an amount determined by the Board.

4. Distribution of Proceeds; Excess Proceeds. In the event any excess insurance proceeds remain, the Board shall retain such sums in the general funds of the Association. Notwithstanding anything to the contrary contained in this Section 5.02 the distribution of any insurance proceeds for any damage or destruction to the Common Area shall be subject to the prior rights of Mortgages.

## ARTICLE VI

### OWNERSHIP, USE AND MANAGEMENT

#### OF THE COMMON PROPERTY

Section 6.01 Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with title to every Lot subject to Section 6.02.

Section 6.02 Conditional Use of Common Area. Each Owner, his/her family, licensees, invitees and tenants or lessees, or contract purchasers of a Lot shall be entitled to use the Common Area subject to:

- A. The provisions of the Articles, By-Laws, these Restrictions, and the Rules. Each Owner agrees that in using the Common Area he/she will comply with the provisions of such Articles, By-Laws, these Restrictions, and the Rules.

- B. The right of the Association to charge a reasonable security deposit and clean-up fee for the use of any recreational facility situated upon the Common Area.

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- C. The right of the Association to suspend the right of an Owner to use recreational facilities of the Common Area for period not to exceed sixty (60) days for any infraction of its published Rules.

Section 6.03 Delegation of Use. Any Owner may delegate his/her right of enjoyment in the Common Area and facilities to the members of his/her family, his her tenants or lessees or contract purchasers who reside in the Dwelling unit, subject to such rules, regulations and limitations as the Association may, from time to time, establish. Such delegation shall not relieve said Owner of his/her obligations and responsibilities as a Member under the By-Laws, Rules and this Declaration.

Section 6.04 Management. The Board shall control, maintain, manage and improve the Common Area as provided in this Declaration the Articles and By0Laws. Such right and power of control and management shall be exclusive. In managing the Common Area, the Association hereby accepts all responsibility for the control, maintenance, safety and liability of such Common Area including but not limited to collecting and paying taxes on the Common Area, which shall be approved by the County Assessor. Any agreement for professional management of the subdivision, or any other contract providing for services of the Developer, shall not exceed one (1) year, but may be renewable for successive one (1) year periods upon agreement of the parties. Any such agreement shall provide for termination by either party without cause and without payment of termination fee on ninety (90) days (or less, if agreed to) written notice and for termination with cause and without payment of termination fee upon thirty (30) days written notice.

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Section 6.05 Damage or Destruction of Property. In the event any Common Property is damaged or destroyed by an Owner of any of his/her guests, tenants, licensees, agents, or members of his/her family, such Owner shall be liable therefore to the extent of liability imposed by local law and such Owner does hereby irrevocably authorize the Association to repair the damaged property, and the Association shall so repair the damaged property in good workmanlike manner in substantial conformance with the original plans and specifications. The Owner shall then repay the Association in the amount actually expended for such repairs. Each Owner further agrees that these charges for repairs, if not paid within ten (10) days after completion of the work, shall be delinquent and shall become a lien upon Owner's Lot and shall continue to be such lien until fully paid. The Lien shall be subordinate to any first mortgage or encumbrance on the subject Property. Said charges shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum. The Amount of principal and interest owed by the Owner to the Association shall be a debt, and shall be colle3ctible by any lawful procedure allowed by the laws of the State of Arizona.

Section 6.06 Restriction on Conveyance of Common Areas and Facilities. The Common Areas and facilities owned by the Association, may not, by act or omission, be abandoned, partitioned, subdivided, encumbered, sold or transferred without the prior written approval of seventy-five percent (75%) of the first mortgagees ( based upon one vote for each mortgage owned) and at least two thirds vote (2/3rds) of the Owners (other than Developer or Declarant) except that the Association shall at all times have the right, without Owner of first mortgagee approval, to grant and convey to any person or entity easements, or rights of way, in, on, over, or under any Common Areas for the purpose of constructing, erecting, operating or maintaining thereon, therein and thereunder (1) roads, streets, walks, pathways, and driveways; (2) temporary overhead or permanent underground lines, cables, wires, conduits, or other devices for the transmission of electricity for lighting, heating, power, telephone, cable T.V., and other purposes; (3) sewers, storm drains and pipes, drainage easements, water systems, water, heating and gas lines or pipes; (4) such improvements as may be permitted under Article III of this Declaration

## ARTICLE VII

### COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 7.01 Creation of the Lien and Personal Obligation to Pay Assessments. Each Owner, by acceptance of a deed to any lot, whether or not it shall be so expressed in such deed is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges, and (2) special assessments for capital improvements, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorney's fees, shall be a charge on the Lot and shall be a continuing lien upon the Property against which each assessment is made. Delinquent assessments, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot at the time when the assessment was levied. The personal obligation for delinquent assessments shall not pass to his/her successors in title unless expressly assumed by them.

Section 7.02 Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the Members and their guests, for the improvement and maintenance of the Common Area and for all purposes set forth in the Articles, By-Lays and this Declaration. The Board of Directors of the Association shall provide that Association dues, charges or assessments shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area owned by the Association that must be replaced on a periodic basis. All such dues, charges and

assessments imposed by the Association shall be paid on a periodic basis in regular installments rather than by special assessments, unless so determined by the Board as provided herein.

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Section 7.03 Maximum Annual Assessment.

- (a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the Maximum annual assessment shall be Thirty and No/100 DOLLARS, (\$30.00) Dollars. Within thirty (30) days prior to the end of each calendar year ( January 1 through December 31) and subject to the provisions of Section 7.03 (b) hereof, the Board of Directors shall estimate the total charges to be paid during the forthcoming year to determine the annual assessment (including a reasonable reserve for contingencies and less any expected surplus from the prior year)/
- (b) Subject to Section 7.03 (c) hereof, the Board of Directors shall not increase the annual assessment by an amount greater than either (i) five percent (5%) of the amount of the preceding annual assessment; or (ii) the percentage increase in the cost of living as reflected by the column entitled "all items" in the Consumer Price Index on a national basis published by the Bureau of Labor Statistics of the United States Department of Labor (hereinafter called the "Cost of Living Index Number"). In the event that the Bureau of Labor Statistics shall fail to publish a comparable Cost of Living Index Number during any such years, but a comparable cost of Living Index Number shall be published by any Governing Agency of the United States in place thereof, then such comparable index number shall be used for the purpose of adjusting the assessment under the provisions of this Section 7.03 with force and effect as the Cost of Living Index Number of the Bureau of Labor Statistics.

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- (c) Any increase by the Board of Directors in the Annual Assessment which is greater than the amount permitted under Section 7.03 (b) hereof must be first approved by two-thirds (2/3) vote of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose before such increase may be placed in effect and bind the members of the Association.

- (d) At the time the full assessments commence as to each individual Lot, the owner thereof shall pay the equivalent of two months assessments applicable to that Lot into the working capital fund of the Association. Said working capital fund shall be used by the Association to meet unforeseen expenditures, or to acquire additional equipment or services deemed necessary or desirable by the Board. Amounts paid into the working capital fund are not to be considered as advance payment of assessments.

Section 7.04 Special Assessment for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures and personal property related thereto, provided that such assessment shall have the assent of two-thirds (2/3) of the votes of each Class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

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Section 7.05 Notice and Quorum for an Action Authorized under Section 7.03© and Section 7.04. Written notice of any meeting called for the purpose of taking action authorized under Section 7.03(c) and Section 7.04 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 7.06 Uniform Rate of Assessment. Both annual and special assessments must be fixed at a uniform rate for all Lots and may be collected on a monthly basis. However, and subject to the limitations set fourth in Section 7.03(b) hereof, said uniform rate may be revised periodically to reflect revisions in the annual assessments based on actual operating cost of the Association.

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Section 7.07 Date of Commencement of Annual Assessments; Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first day of the month following the Conveyance of a Lot to an Owner. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto in the event of its increase

or decrease from the last annual assessment. The due dates shall be established by the Board of Directors. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of the assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 7.08 Effect of Non-Payment of Assessments; Remedies of the Association. Each Owner shall be deemed to covenant and agree to pay to the Association the assessment provided for herein, and agrees to the enforcement of the assessment in the manner herein specified. All delinquent assessments shall bear interest at an interest rate not to exceed twelve percent (12%) per annum, and late payments shall first be credited toward interest due, then towards assessments first due. In the event the Association employs an attorney for collection of any assessments, whether by suit or otherwise, or to enforce compliance with or specific performance of the terms and conditions of this Declaration, or for any other purpose in connection with the breach of this Declaration, each owner agrees to pay reasonable attorney's fees and costs thereby incurred, in addition to any other amounts due or any other relief or remedy obtained against said Owner. In the event of a default in payment of any such assessment when due, in which case the assessment shall be deemed delinquent, and in addition to any other remedies herein or by law provided, the Association may enforce each such obligation in the manner provided by law or in equity, or without any limitation to the foregoing, by either or both of the following procedures.

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- A. Enforcement by Suit. The Board may cause a suit at law to be commenced and maintained in the name of the Association against an Owner to enforce each such assessment obligation. Any judgment rendered in any such action shall include the amount of the delinquency, together with interest thereon from the date of delinquency until paid, court costs, and reasonable attorney's fees in such amount as the Court may adjudge against the delinquent Owner or Member.

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- B. Enforcement by Lien. There is hereby created a right of claim of lien on each and every Lot to secure payment to the Association of any and all assessments levied against any and all Owners together with interest thereon from the date of delinquency until paid, and all costs of collection which may be paid or incurred by the Association in connection therewith, including reasonable attorney's fees. At any time within one hundred twenty (129) days after occurrence of any default in the payment of any such assessment, the Association, or any authorized representative may, but shall not be required to, make a written demand for payment to the defaulting Owner, on behalf of the Association against the Lot of the defaulting Owner. Such a claim of lien

shall be executed and acknowledged by any officer of the Association, and shall contain substantially the following information:

1. The name of the delinquent Owner;
2. The legal description of the Lot against which claim of lien is made;

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3. the total amount claimed to be due and owing for amount of the delinquency, interest thereon, collection costs, and reasonable attorney's fees (with any proper offset allowed);
4. that the claim of lien is made by the Association pursuant to this Declaration; and
5. That a lien is claimed against said Lot in an amount equal to the amount stated.
6. That the claim of lien will also extend to all assessments which became due but are not paid from the date of the filing of the claim of lien to the date of payment of all amounts set forth therein (including interest thereon, reasonable attorney's fees, costs and collection), and that the claim of lien will only be deemed satisfied and released when the Owner is current in the payment of all such amounts.

Upon recordation of a duly executed original or copy of such a claim of lien, and the mailing of a copy thereof to said Owner, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot. Such a lien shall have priority over all claims of lien created subsequent to the recordation of the claim of lien thereof, except only tax liens for real property taxes on any Lot, assessments on any Lot in favor of any municipal or other governmental assessing unit, and the lien of any first mortgage. Any such lien may be foreclosed by appropriate action in Court or in the manner provided by law for the foreclosure of a realty mortgage or trust deed as set forth by the laws of the State of Arizona, as the same may be changed or amended. The lien provided for herein shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in at any stage of the sale and to purchase, acquire, hold, lease, mortgage, convey any Lot. In the event such foreclosure is by action in court, reasonable attorney's fees, court costs, title search fees, interest and all other costs and expenses shall be allowed to the extent permitted by law. Each Owner hereby expressly waives any objection to the enforcement and foreclosure of this lien in this manner.

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Section 7.09 No exemption of Owner. No Owner is exempt from liability for payment of assessments by waiver of the use of enjoyment of Common Area, or by abandonment of his/her Lot except as specifically provided in Section 8.06.

Section 7.10 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien.

However, the sale or transfer of any Lot pursuant to mortgage foreclosure of the first mortgage, or a trustee's sale pursuant to power of sale or a foreclosure of a first deed of trust, or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which become due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

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Section 7.11 Mortgage Protection and Additional Assessment as Common Expense. Notwithstanding and prevailing over any other provisions of this Declaration, or the Association's Articles or By-Laws, or the Rules, the following provisions shall apply to and benefit each holder of a first mortgage upon a Lot (called the first mortgage).

- A. The first mortgagee shall not in any case or manner be personally liable for the payment of any assessment of charge, nor for the observance or performance of any covenant, restriction, regulation, rule, Article or By-Law, except for those matters which are enforceable by injunctive or other equitable actions, not requiring the payment of money, except as hereinafter provided.
- B. During the pendency of any proceeding to foreclose the first mortgage, including any period of redemption, the first mortgagee (or receiver appointed in such action) may, but need not, exercise any or all of the rights and privileges of the Owner of the mortgaged Lot, including but not limited to, the right to vote as a member of the Association to the exclusion of the Owner's exercise of such rights and privileges.

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- C. At such time as the first mortgagee shall become record Owner of a Lot, said first mortgagee shall be subject to all of the terms and conditions of these Restrictions, including but not limited to the obligation to pay for all assessments and charges accruing, thereafter, in the same manner as any Owner.
- D. The first mortgagee, or any other party acquiring title to a mortgaged Lot through foreclosure suit or through any equivalent proceeding arising from said first mortgage, such as, but not limited to, the taking of a deed in lieu of foreclosure, shall acquire title to the mortgaged Lot free and clear of any lien authorized by or arising out of any of the provisions of this Declaration or By-Laws which secured the payment of any assessment of charges accrued prior to the final conclusion of any such foreclosure suit or equivalent proceeding, including the expiration date of any period of redemption.

Any such unpaid assessment shall nevertheless continue to exist as the personal obligation of the defaulting Owner of the respective Lot to the Association, and the Board shall use reasonable efforts to collect the same from the Owner even after he/she is no longer a member of the Association. There shall be a lien upon the interest of the first mortgagee or other party which acquired title to a mortgaged Lot by foreclosure suit or by equivalent procedures for all assessments authorized by this Declaration or the By0Laws which accrue and are assessed after the date the acquirer has acquired title to the Lot free and clear of any right of redemption.

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- E. Any provisions contained in this Declaration to the contrary notwithstanding, unless at least seventy-five percent (75%) of the Lot Owners (other than the Declarant or Developer) or seventy-five percent (75%) of the first mortgagees (based upon one vote for each mortgage held) have given their prior written approval, the Association shall not be empowered or entitled to: (a) change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner; (b) by act or omission, change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Dwelling Units, the exterior maintenance of Dwelling Units, the maintenance of Common Property, walkways or perimeter walls and driveways or the upkeep of lawns and planting areas in the Subdivision; (c) fail to maintain fire and extended coverage insurance on the Common Areas and Common Property on a current replacement cost basis in an amount of not less than one hundred percent (100%) of the insurable value (based on current replacement costs); and (d) use hazard insurance other than the repair, replacement or reconstruction of such Common Property.

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- F. First Mortgagees are hereby granted the right to jointly or singly pay taxes or other charges which are in default and which may or have become a charge against any Common Areas or other Common Property owned by the Association, and such first mortgagees may, jointly or singly, pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Areas or Common Property and any first mortgagees making such payments may be owed immediate reimbursement therefore from the Association.
- G. Noting in this Declaration shall in any manner be deemed to give a Lot Owner, or any other party, priority over any rights of a first

mortgagee of a Lot pursuant to the terms of such first mortgagee's mortgage in the case of a distribution to the Lot Owner of insurance proceeds or condemnation awards for losses to or a taking of any Lot or any part of the Common Area owned by the Association. Each first mortgagee shall be entitled to timely written notice of such loss or taking.

- H. Each first mortgagee shall, upon notice to the Association, be entitled to a written notification from the Association of any default in the performance by the Owner of a Lot encumbered by the mortgage in favor of such mortgagee of any obligation under this Declaration or under the Articles of Incorporation, By-Laws, or Rules of the Association which is not cured within sixty (60) days.

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- I. Each first mortgagee shall, upon written notice to the Association, be entitled to (i) inspect the books and records of the Association during normal business hours; (ii) receive an annual financial statement of the Association within ninety (90) days following the end of any fiscal year of the Association; and (iii) receive written notice of all meetings of the Association, and designate a representative to attend such meetings.
- J. Each first mortgagee shall, upon written notice to the Association, be entitled to written notice from the Association at least thirty (30) days prior to (i) abandonment or termination of the Association; (ii) any material amendment to the Declaration, Articles or By-Laws; and, (iii) the effectuation of any decision by the Association to terminate professional management and assume self-management of the Association.
- K. Upon written request to the Association, identifying the name and address of the holder, insurer or guarantor of a first mortgage and the Lot number or address, an Eligible Mortgage Holder, insurer or guarantor of a first mortgage and the Lot number or address, an Eligible Mortgage Holder, insurer or guarantor shall be entitled to written notice of:
  - (1) Any condemnation loss or casualty as provided in Paragraph G above;
  - (2) Any sixty (60) day delinquency in the payment of assessments as provided in Paragraph H above;

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- (3) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained pursuant to article V/ and

- (4) Any proposed action that requires the consent of a specified percentage of Eligible Mortgage Holders.

ARTICLE VIII  
GENERAL PROVISIONS

Section 8.01 Term. The covenants, conditions and restrictions of this Declaration shall remain in full force and effect for a period of fifty (50) years from the date this Declaration is recorded. Thereafter, they shall be deemed to have been renewed and automatically extended for successive periods of ten (10) years each.

Section 8.02 Amendments. This Declaration may be amended by an instrument in writing, signed and acknowledged by the President and Secretary of the Association, certifying that such Amendment has been approved by the vote or written consent (with or without an Association meeting; subject, however, to the voting rights set forth in Section 4.03) of the then Owners of not less than seventy-five percent (75%) of the Lots, and such amendment shall be effective upon its recordation with the Pima County Recorder.

In addition to the requirements set forth elsewhere in this Declaration, the consent of fifty-one (51%) percent of the Eligible Mortgage Holder, based on one vote for each mortgage held, shall be required to add or amend any provisions of this Declaration which establish, provide for, govern or regulate any of the following:

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- a) Voting rights;
- b) Assessments, assessment liens or subordination of assessment liens;
- c) Reserves for maintenance, repair and replacement of common areas;
- d) Responsibility for maintenance and repairs;
- e) Reallocation of interests in the common areas, or rights to their use;
- f) Boundaries of an Lot;
- g) Convertibility of Lots into common areas or vice versa;
- h) Expansion or contra of TIERRASANTA III, or the addition, annexation or withdrawal of property to or from TIERRASANTA III;
- i) Insurance or fidelity bonds;
- j) Leasing of units;
- k) Imposition of any restriction of a Lot Owner's right to sell or transfer his or her Lot;
- l) Restoration or repair of TIERRASANTA III (after a hazard damage or partial condemnation) in a manner other than that specified herein;
- m) Any action to terminate the legal status of TIERRASANTA III after substantial destruction or condemnation occurs; or
- n) Any provisions which are for the express benefit of mortgagees, Eligible Mortgage Holders, insurers or guarantors of first mortgages on the Lots.

The consent of sixty-seven (67%) percent of the Eligible Mortgage Holders; based on one vote for each mortgage held, shall be required for the termination of the

legal status of TIERRASANTA III for reasons other than the substantial destruction or condemnation of the property.

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Section 8.03 Enforcement and Non-Waiver.

- A. Enforcement. Except as otherwise provided herein, the Association, or any Owner shall have the right to enforce by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by provision of this Declaration.
- B. Violation of Law. Each and every provision of this Declaration and any amendment hereto shall be subject to all applicable governmental ordinances and subdivision regulations and any future amendments thereto. Any violation of any state, municipal or local law, ordinance or regulation pertaining to the ownership, occupation or use of any property within the subdivision is hereby declared to be a violation of these Restrictions and subject to any or all of the enforcement procedures set forth herein or in the By-Laws.
- C. Remedies Cumulative. Each remedy provided by these Restrictions is cumulative and not exclusive.
- D. Non-Waiver. Failure by the Board, the Association or by any Owner to enforce any of the provisions of these Restrictions at any time shall not constitute a waiver of the right thereafter to enforce any of such provisions or any other provisions of these Restrictions.

Section 8.04 Mortgage Protection. Notwithstanding any other provisions of this Declaration, no amendment of this Declaration shall operate to defeat and render invalid the rights of a mortgagee or a beneficiary under a Deed of Trust upon a Lot made in good faith and for value, and recorded prior to the recordation of such amendment, provided that after the foreclosure of any such Deed of Trust or mortgage such Lot shall remain subject to this Declaration, as amended.

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Section 8.05 Construction.

- A. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform plan for the development and operation of the subdivision. This Declaration shall be construed and governed by the laws of the State of Arizona. If there is any conflict among or between this Declaration, the Articles of Incorporation of the Association, the By-Laws, or the Rules, the provisions of this Declaration shall prevail; thereafter, priority shall be given first to such Articles of Incorporation, then to such By-Laws, and then to such Rules.
- B. Restrictions Severable. Notwithstanding the provisions of the foregoing subsection 8.05(A), each of the provisions of this Declaration shall be deemed independent and severable, and the

invalidity or partial invalidity of any provision or portion thereof shall not affect the validity of enforceability of any other provision.

- C. Rule Against Perpetuities. In the event the provisions hereunder are declared void by a Court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event said periods of time shall be reduced to a period of time which shall not violate the rules against perpetuities as set forth in the laws of the State of Arizona.

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- D. Singular Includes Plural. Unless the context requires a contrary construction, the singular shall include the plural and the plural the singular; and the masculine, feminine or neuter shall each include the masculine, feminine and neuter.
- E. Captions. All captions and titles used in this Declaration are intended solely for convenience or reference purposes only and in no way define, limit or describe the true intent and meaning of the provisions hereof.

Section 8.06 Savings Clause and Obligation of Declarant to Pay Assessments. Declarant shall be responsible for payment of any assessments established pursuant to this Declaration or the By-Laws on Lots owned by Declarant; subject, however, to the following modifications:

- A. A Lot owned by Declarant which is still an "Empty Lot" with no construction of any onsite improvements commenced thereon or upon which onsite construction has been commenced, or which is a completed Dwelling Unit shall be assessed twenty-five percent (25%) of the maximum annual assessment established per Section 7.03. For so long as Declarant is paying a reduced assessment under this Subsection, Declarant shall be responsible for payment of funds necessary to cover any deficit in the Association's annual operating budget, and such funds shall not be reimbursed by the Association.

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- B. For purposes of this Section 8.06, "completed Dwelling Unit" shall mean any Dwelling Unit ready for occupancy as a home that is in the condition of any other Dwelling Unit sold to persons living in the Subdivision (e.g., carpet, kitchen countertops and cabinets, plumbing and light fixtures, etc. installed).
- C. A Dwelling Unit owned by Declarant which is rented or otherwise occupied shall be liable for the maximum annual assessment established per Section 7.03. Although Declarant may voluntarily contribute additional funds for the maintenance of the Common Areas, or for the benefit of the Association, it is understood that

Declarant is not and shall not be liable for the payment of any contribution or assessment in excess of the maximum assessment established per Section 7.03.

- D. Notwithstanding anything to the contrary contained herein, beginning with the first month following the third anniversary of the conveyance of the first Lot, Declarant shall be liable to pay full assessments on all incomplete Dwelling Units and complete but unoccupied Dwelling Units owned by it and unsold Lots. Upon the sale of each Lot for which the Declarant has paid the required sum into the working capital fund under Section 7.03., such sum shall be reimbursed to the Declarant.

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Section 8.07 Delivery of Notices and Documents. Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Association, at 5151 East Broadway, Suite 900, Tucson, Arizona, 85711; if to an Owner, to the address of the Owner within the subdivision; and if to the Declarant, 930 N. Finance Center Drive, Tucson, Arizona, 85711, with a copy to the Association; provided, however, that any such address may be changed at any time by the party concerned by delivering written notice of change of address to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

Section 8.08 Binding Effect. By acceptance of a deed or acquiring any ownership interest in any of the Property included within this Declaration, each person or entity, for himself/herself, or itself, his/her heirs, personal representatives, successors, transferees and assigns, binds himself/herself, his/her heirs, personal representatives, successors, transferees to all of the provisions, restrictions, covenants, conditions, rules and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the Property and hereby evidences his/her interest that all the restrictions, conditions, covenants, rules and regulations contained herein shall run with the land and be binding on all subsequent and future owners, grantees, purchasers, assignees, and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future owners.

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Section 8.09 Annexation.

- A. Annexation of Lots 21-70 of TierraSanta. In addition to the Property as same is described in Section 1.16, Declarant is the owner of Lots 21-70, inclusive, of TierraSanta, a Subdivision in Pima County, Arizona, as recorded in Book

40 of Maps and Plats at Page 15 thereof (hereinafter referred to as Lots 21-70), which Lots are adjacent to the Property. Declarant shall have the right to annex Lots 21-70 to TierraSanta III, however, neither Declarant nor any other person shall have the obligation to annex said Lots 21-70 to TierraSanta III. In the event Declarant should determine to annex Lots 21-70, said annexation shall be accomplished by Declarant recording a Declaration of Annexation in the office of the Pima County Recorder, which Declaration shall provide that this Declaration shall apply to Lots 21-70 in the same manner as if said Lots had been originally set forth in and covered by this Declaration; whether or not said Annexation has been approved by FHA or VA; and, pursuant to Section 8.10 of the Declaration of Covenants, Conditions and Restrictions of TierraSanta II, said Declaration of Annexation shall automatically revoke and terminate the Declaration of Covenants, Conditions and Restrictions of TierraSanta II presently recorded on Lots 21-70.

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- B. Additional Annexation. Additional residential property and Common Area may be annexed by the Declarant to the Property with the consent of two-thirds (2/3) of each class of Members and the recording of a Declaration of Annexation.

Section 8.10 FHA/VA Approval. As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, mergers and consolidations, mortgaging of Common Area, public dedication of Common Area, and amendment of this Declaration of Covenants, Conditions and Restrictions.

IN WITNESS WHEREOF, Declarant has executed this Declaration the day, month and year first above written.

TITLE GUARANTY AGENCY OF  
Arizona, INC., TRUST #1158, an  
Arizona corporation, as Trustee  
only, and not in its corporate capacity

By

\_\_\_\_\_  
Trust Officer

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