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**DECLARATION OF COVENANTS, CONDITIONS,
RESTRICTIONS AND EASEMENTS FOR
EL RANCHO MERLITA**

This Declaration is made this 16th day of October, 2006 by Title Security Agency of Arizona, under Trust No. 875, and not otherwise, hereinafter referred to as "Declarant".

RECITALS:

A. Declarant is the owner of certain real property in the County of Pima, State of Arizona, which is more particularly described as:

All of the real property which is the subject of the plat of subdivision for EL RANCHO MERLITA, Lots 1 Thru 16, Common Area "A", and Common Area "B", and Common Area "C" recorded in the Office of the County Recorder, Pima County, Arizona, in Book 61 of Maps and Plats, Page 18-1,

which real property shall hereinafter be referred to as the "Properties".

B. Declarant and/or the Developer (as hereinafter defined) proposes to construct improvements upon the Properties and to sell and convey the same, subject to the covenants, restrictions, uses, limitations, obligations, easements, equitable servitude's, charges and liens hereafter set forth, each of which is for the benefit of the Properties and the subsequent owners thereof.

WITNESSETH:

NOW, THEREFORE, Declarant hereby declares that the Properties are and shall be held, conveyed, encumbered, leased and used subject to the following covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitude's, charges and liens (hereinafter collectively referred to as the "Restrictions"), all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Properties. The Restrictions set forth herein shall run with the Properties, shall be binding upon all persons having or acquiring any interest therein, and shall inure to the benefit of, be binding upon and enforceable by all Owners, Declarant, the Association and their successors in interest.

No provision contained herein shall be construed to prevent or limit Declarant's or Developer's right to complete development of the Properties and construction of improvements thereon, nor Declarant's or Developer's right to maintain model homes, construction, sales or leasing offices, nearby parking areas or similar facilities on the Properties, nor Declarant's or Developer's right to post signs incidental to construction, sales or leasing, nor Declarant's or Developer's right to do anything that is reasonably necessary and proper for the full development of the Properties.

ARTICLE I

DEFINITIONS

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

1.1 **"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.

1.2 **"Association"** shall mean and refer to El Rancho Merlita Homeowners Association, Inc., its successors and assigns.

1.3 **"Board"** shall mean the Board of Directors of the Association.

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

1.5 **"Common Area"** or **"Common Areas"** shall mean all real property and improvements thereon designated as Common Area on the Plat, owned and controlled by the Association for the common use and enjoyment of the Owners.

1.6 **"Declarant"** shall mean Title Security Agency of Arizona, as Trustee under Trust No. 875, and not otherwise, and its successors or assigns who have been designated in writing by Declarant as the successor to all or a portion of Declarant's rights hereunder and who own one or more Lots in the Properties.

1.7 **"Declaration"** shall mean and refer to this instrument and any amendment thereto or restatement thereof.

1.8 **"Developer"** shall mean Oberon Development, Ltd., an Arizona corporation. An assignment by recorded instrument of all of Developer's rights shall vest in the assignee all of Developer's rights hereunder on the same terms that they were held by Developer hereunder. A recorded assignment of part of Developer's rights shall vest in the assignee the specific Developer's right(s) named in the instrument of assignment on the same terms they were held by Developer. Notwithstanding anything to the contrary herein, an assignment of all or any portion of Developer's rights shall not deprive the assignor of any protection, indemnity or freedom from liability which would otherwise exist under this Declaration if the assignor had retained all of Developer's rights hereunder.

1.9 **"Drainage Easement"** shall mean the drainage easements shown on the Plat or by separate recorded instruments.

1.10 **"Dwelling Unit"** or **"Unit"** shall mean any improvements placed within the confines of any Lot.

1.11 **"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 (referred to herein as a "First Mortgage"), subject only to the lien of general or ad valorem taxes and assessments and such other matters as are recognized in such First Mortgage as permitted exceptions.

1.12 **"Lot"**, unless otherwise indicated by the context, shall first mean and refer to any numbered parcel of real property within the Properties shown on the Plat, as may be amended, together with the Dwelling Unit, if any, thereon, and in the event of annexation shall include all additional lots annexed and shown on a plat for the annexed land. The term Lot shall also include any Lots combined to become a single lot, in which case the Lots so combined shall be considered one lot for all purposes, including voting and assessments.

1.13 **"Member"** shall mean and refer to every person and/or entity who holds membership in the Association ("Membership") pursuant to Section 2.1 hereof.

1.14 **"Mortgage"** shall mean any mortgage, deed of trust or other security instrument by which a Lot or any part thereof is encumbered.

1.15 **"Owner"** or **"Homeowner"** shall mean and refer to (1) the record owner, whether one or more persons or entities, of equitable or beneficial title in fee simple (or legal title if same has merged) of any Lot, or (2) the purchaser of a Lot under a recorded contract for the sale of real property as set forth in Arizona Revised Statutes Section 33-741 et seq. The foregoing does not include persons or entities who hold an interest in any Lot merely as security for the performance of an obligation, or a tenant of an owner as defined above, or a purchaser or vend under any executory contract of sale which has not been fully consummated with a deed to the purchaser recorded in the office of the County Recorder of Pima County, Arizona.

1.16 **"Person"** shall mean a natural individual, corporation or other entity with the legal right to hold title to real property.

1.17 **"Plat"** shall mean the plat of the real estate that is subject to this Declaration recorded in the office of the County Recorder of Pima County, Arizona, and any amendment thereto or resubdivision thereof.

1.18 **"Properties"** shall mean and refer to the real estate described herein defined as such above.

1.19 **"Restrictions"** shall mean the covenants, conditions, restrictions, uses, limitations, obligations, easements, equitable servitudes, charges and liens set forth in this Declaration.

1.20 "Rules" shall mean any and all rules adopted by the Board pursuant to the By-Laws.

ARTICLE II

ASSOCIATION

2.1 Membership in the Association. Each Owner (including Declarant) of a Lot, by virtue of being an Owner, shall automatically be a Member of the Association. Membership in the Association shall be appurtenant to each Lot owned and shall not be transferred, pledged, or alienated in any way, except upon the transfer of ownership to a Lot, and then only to the transferee thereof. Any transfer of ownership of a Lot shall operate automatically to transfer said membership to the new Owner thereof. Any attempted transfer of membership separate from the appurtenant Lot or Lots shall be void.

2.2 Voting Rights and Classes of Membership. The Association shall have two classes of voting membership.

(a) **Class A.** Class A Members shall be all Owners other than Declarant and each such Owner 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 the Owners may determine, but in no event shall more than one (1) vote be cast with respect to any Lot owned by a Class A Member.

(b) **Class B.** The Class B Members shall be Declarant, who 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 the earlier of the following events:

(1) One Hundred Twenty (120) days after such time as the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, or

(2) Ten (10) years following the date on which this Declaration is recorded with the Office of the Pima County, Arizona Recorder.

2.3 Purpose of Association. The Association is a non-profit corporation which will serve as the governing body for all Owners and Members for the protection, improvement, alteration, maintenance, repair, replacement, administration and operation of the Common Area, the assessment of expenses, payment of losses, disposition of casualty insurance proceeds, and other matters as provided in this Declaration, the Articles, the By-Laws, and the Rules.

2.4 Rights and Responsibilities of Association. The Association, through the Board of Directors, unless specifically provided otherwise, shall have the right of enforcement of all of the provisions hereof. The Association shall be responsible for the proper and efficient management and operation of the Common Area and any other areas for which it is responsible

under the terms of this Declaration or for which it has assumed responsibility (which shall be carried out in its sole and absolute discretion), which shall include, without limitation:

- (a) Maintaining, operating, and rebuilding improvements on the Common Areas;
- (b) Maintaining and landscaping property owned or controlled by the Association, including landscape easements and other easement rights, if any;
- (c) Operating, maintaining, rebuilding and insuring improvements originally constructed by Declarant or Developer or later constructed by the Association on the Common Area;
- (d) Paying real estate taxes, assessments and other charges on the Common Area;
- (e) Insuring all improvements which the Association is obligated to maintain against damage by casualty with such companies and in such limits as provided herein and as the Association deems appropriate;
- (f) Hiring, firing, supervising and paying employees and independent contractors including, but not limited to, workmen, landscapers, attorneys, accountants, architects and contractors to carry out the obligations set forth herein;
- (g) Maintaining such liability insurance as the Association deems necessary from time to time to protect the Members and the Board of Directors of the Association from any liability caused by occurrences or happenings on or about the Common Area;
- (h) Maintaining workmen's compensation insurance for the employees of the Association, if any;
- (i) Purchasing all goods, supplies, labor and services reasonably necessary for the performance of the obligations set forth herein;
- (j) Establishing and maintaining such adequate cash reserves as the Association may, in its sole and absolute discretion, deem reasonably necessary for the periodic maintenance, repair and replacement of the Common Areas and improvements which it is responsible to maintain;
- (k) Providing for and payment of all utility services for the Common Area if deemed appropriate by the Board;
- (l) Entering into such agreements and taking such actions as are reasonably necessary and convenient for the accomplishment of the obligations set