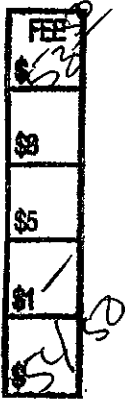




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**COMMUNITY CHARTER**  
**FOR**  
**MESQUITE HILLS**

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# COMMUNITY CHARTER FOR MESQUITE HILLS

## PREAMBLE

*This Community Charter for Mesquite Hills ("Charter") establishes a governance structure and a flexible system of standards and procedures for the development, expansion, administration, maintenance, and preservation of various residential properties and common areas within Mesquite Hills, a master planned community in Yavapai County, Arizona. The Mesquite Hills master plan enhances the overall quality of life for owners and occupants. An integral part of the development plan is the formation of Mesquite Hills Home Owners Association, Inc., an Arizona nonprofit corporation (the "Association"), to own real property within Mesquite Hills and to operate and/or maintain various common areas and community improvements and to administer and enforce this Charter and the other Governing Documents referenced in this Charter.*

## DECLARATION OF COVENANT

The property described in Exhibit "A" and any additional property made subject to this Charter in the future by amendment or supplement, shall constitute "**Mesquite Hills**," or the "**Community**," as referred to in this Charter. This Charter shall run with the title to such property, shall govern the development and use of such property, and shall be binding upon RH Development, LLC, an Arizona limited liability company, its successors and assigns, the "**Founder**" and the future owners of any portion of the property, their respective heirs, successors, successors-in-title, and assigns, and any other person or entity that now or hereafter has any legal, equitable, or beneficial interest in any portion of such property. This Charter shall also be binding upon the Association.





## PART ONE: INTRODUCTION TO THE COMMUNITY

*To accomplish great things, we must not only act, but also dream; not only plan, but also believe.*

*Anatole France*



# Chapter 1

## Governing Documents

*A community is guided and governed by certain principles that each owner and occupant, by choosing to own property or reside in the community, agrees to uphold. Those principles are set forth in the community's governing documents, which bind the community together, give it structure, and provide guidance to all who participate in its growth and evolution.*

### 1.1. Scope and Applicability

The Community has been established and is administered pursuant to various documents that have a legal and binding effect on all owners and occupants of property in the Community, as well as on anyone else that may now or in the future have an interest in any portion of the property

comprising the Community. Such documents, referred to in this Charter as the "Governing Documents," include this Charter and the other documents described in the table below, each as they may be amended. All Owners and occupants of Units, as well as their tenants, guests, and invitees, are required to comply with the Governing Documents.

### 1.2. Additional Covenants and Restrictions

The owner of any property within the Community may impose covenants on such property in addition to those set forth in the Governing Documents, with such approval as may be required pursuant to Chapters 15 and 17. If the

GOVERNING DOCUMENTS	
<b>Community Charter:</b> (recorded)	this Community Charter for Mesquite Hills, which creates obligations that are binding upon the Association and all present and future owners of property in Mesquite Hills
<b>Supplement:</b> (recorded)	a recorded amendment to this Charter, which submits additional property to this Charter, creates easements over such property, imposes additional obligations or restrictions on property described in the Supplement, designates special areas as described in Chapter 3, or any of the foregoing
<b>Articles of Incorporation:</b> (filed with Arizona Corporation Commission)	the Articles of Incorporation of Mesquite Hills Home Owners Association, Inc., as they may be amended, which establish the Association as a non-profit corporation under Arizona law
<b>By-Laws:</b> (attached as Exhibit "D")	the By-Laws of Mesquite Hills Home Owners Association, Inc. adopted by its Board of Directors, as they may be amended, which govern the Association's internal affairs, such as voting, elections, meetings, etc.
<b>Design Guidelines:</b> (Founder adopts)	the design standards and architectural and aesthetics guidelines adopted pursuant to Chapter 5, as they may be amended, which govern new construction and modifications to property in the Community, including structures, landscaping, and other items
<b>Rules:</b> (initial set attached as Exhibit "C")	the rules of the Association adopted pursuant to Chapter 7, which regulate use of property, activities, and conduct within Mesquite Hills
<b>Board Resolutions:</b> (Board adopts)	the resolutions which the Association's Board of Directors adopt to establish rules, policies, and procedures for internal governance and Association activities and to regulate the operation and use of the property which the Association owns or controls



## Governing Documents

provisions of any such additional covenants are more restrictive than the provisions of this Charter, the more restrictive provisions control. The Association shall have standing and the power, but not the obligation, to enforce any such additional covenants.

### 1.3. Conflicts and Ambiguities

If there are conflicts between any of the Governing Documents and Arizona law, Arizona law shall control. If there are conflicts between or among any of the Governing Documents, then the Charter, the Articles, and the By-Laws (in that order) shall control. If there is a conflict between the Governing Documents and any additional covenants recorded on any property within the Community (or the rules or policies adopted pursuant to any such additional covenants), the Governing Documents shall control.

The Governing Documents use diagrams, tables, and keynotes to illustrate concepts and assist the reader. If there is a conflict between any diagram and the text of the Governing Documents, the text shall control.

If any court determines that any provision of this Charter is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision in other instances.

The Board may, by resolution, resolve any ambiguities in the Governing Documents, and any reasonable interpretation of an ambiguous provision shall be determinative.

### 1.4. Definitions

Capitalized terms used in the Governing Documents have the meaning described in the paragraph where they first appear in bold print. An index to defined terms may be found at the beginning of this Charter. All other terms used in the Governing Documents have their usual, commonly accepted definitions.

### 1.5. Interpretation of Certain References

**Consent or Approval.** All references in the Governing Documents to "consent" or "approval" shall refer to permission or approval which, unless otherwise expressly qualified in the specific provision, may be granted or withheld in the discretion of the person whose consent or approval is required.

**Discretion and Determination.** All references in the Governing Documents to "discretion" or to the right to "determine" any matter shall mean the sole and absolute power or right to decide or act. Unless otherwise expressly limited in the Governing Documents or by law, any one authorized in the Governing Documents to exercise its discretion or make a determination may do so without regard to the reasonableness of, and without the necessity of justifying, the decision, determination, action or inaction.

**Person.** References in the Governing Documents to a "Person" or "Persons" shall refer to an individual, a corporation, a partnership, a limited liability company, or any other legal entity.

**Recording.** All references in the Governing Documents to a "recorded" legal instrument, or to "recordation" or the "recording" of a legal instrument, shall refer to an instrument filed or recorded, or the filing or recording of a legal instrument, in the official records of Yavapai County, Arizona, or such other place designated as the official location for filing documents affecting title to real estate in Yavapai County in order to make them a matter of public record.

**Community-Wide Standard.** Where the Governing Documents require compliance with the "Community-Wide Standard," the standard to be applied is the highest of: (a) the standard of use, conduct, architecture, landscaping, or aesthetic matters generally prevailing in the Community; or (b) the minimum standards described in this Charter, the Design Guidelines, the Rules, and Board resolutions. The Community-Wide Standard may contain objective elements, such as specific maintenance requirements, and subject-

## Governing Documents



tive elements, such as matters subject to the discretion of the Board or the Reviewer (as defined in Chapter 5). The Community-Wide Standard may or may not be set out in writing. The Founder initially shall establish such standard; however, the Community-Wide Standard may evolve as development progresses and as Mesquite Hills matures.

*That is the best government which desires to make the people happy, and knows how to make them happy. Thomas McCauley*

### NOTES



## Chapter 2

### Community Administration

*Vibrant communities depend upon all of their stakeholders working together to uphold community standards and achieve the vision and goals for the community. The Founder, the Association, the owners, the builders, and others have a role in the functioning of the community and in helping to fulfill that vision. This chapter identifies these stakeholders and describes their roles in administering the Community.*

#### 2.1. The Founder

The Founder has established the vision for the Community and, through the Governing Documents, has set forth the founding principles that will guide the Community during the initial period of development and sale and thereafter. The Founder's proposed plan for development of the Community is described in the land use plan(s) for Mesquite Hills approved or to be approved by Yavapai County, Arizona, as may be supplemented and amended, which encompass(es) all of the property described in Exhibit "A" and may encompass all or a portion of the property described in Exhibit "B" (the "**Master Plan**"). However, the Founder is not obligated to submit property shown on the Master Plan to this Charter. In addition, the Founder may submit property to this Charter that is not shown on the Master Plan.

The Founder has reserved various rights in the Governing Documents with respect to development and administration of the Community. The Founder may exercise these rights throughout the "**Development and Sale Period**," which is the period of time during which the Founder or any "Founder Affiliate" owns real property in the Community or has an unexpired option to expand the Community pursuant to Chapter 17. A "**Founder Affiliate**" is any Person that controls, is controlled by, or is under common control with the Founder, and any Person that is an owner, a member, a partner, or a shareholder of the Founder.

The Founder also has reserved certain rights that may be exercised only during the "**Founder Control Period**," which is the period of time that the Founder is entitled to appoint a majority of the members of the Association's board of directors ("**Board**"). The Founder Control Period begins on the date of the Association's incorporation and terminates upon the first of the following to occur:

(a) when 95% of the total number of Units (as defined in Section 3.1) permitted by applicable zoning for the property described in the Master Plan have certificates of occupancy issued thereon and have been conveyed to Persons other than builders holding title for purposes of construction and resale;

(b) December 31, 2030; or

(c) when, in its discretion, the Founder so determines and declares in a recorded instrument.

The Founder has certain approval rights for a limited period as provided in the By-Laws after the termination of the Founder Control Period.

The Founder may assign its status and rights as the Founder under the Governing Documents to any Founder Affiliate or any Person who takes title to any portion of the property described in Exhibit "A" or "B" for the purpose of development and/or sale. Such assignment shall be made only in a recorded instrument signed by both parties.

#### 2.2. The Association

The Founder has established the Association as the primary entity responsible for administering Mesquite Hills in accordance with the Governing Documents. On most matters, the Association acts through the Board. However, in some



instances the Governing Documents or applicable laws limit the Board's ability to act without the approval of the Association's members. Unless the Governing Documents or Arizona law specifically provide otherwise, the Board may exercise the Association's rights and powers without a vote of the membership.

The Association may exercise all rights and powers that the Governing Documents and Arizona law expressly grant to it, as well as any rights and powers that may reasonably be implied under the Governing Documents. It may also take any action reasonably necessary to effectuate any such right or privilege.

The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Board has no legal duty to institute litigation or any other proceeding on behalf of or in the name of the Association or its members.

In exercising the Association's rights and powers, making decisions on the Association's behalf (including, without limitation, deciding whether to file a lawsuit or take other legal action under any circumstances) and conducting the Association's affairs, Board members and the Association's officers are required to comply with, and shall be judged by, the standards set forth in the By-Laws.

### 2.3. The Owners

Each Person that holds record title to a Unit, as defined in Chapter 3, is referred to in the Governing Documents as an "Owner." However, a Person who holds title merely as security for the performance of an obligation (such as a lender holding a mortgage or similar security instrument) is not considered an "Owner." If a Unit is sold under a recorded contract of sale and the contract specifically so states, the purchaser (rather than the holder of fee simple title) will be

considered the Owner. If a Unit has more than one Owner, all Co-Owners are jointly and severally obligated to perform the responsibilities of the Owner under the Governing Documents.

Every Owner has a responsibility to comply with the Governing Documents and uphold the community standards described in Part Two of this Charter. Each Owner also has an opportunity to participate in the administration of the Community through membership in the Association and through service to the Community in various committee and leadership roles, as described in Chapters 3 and 4 and in the By-Laws.

### 2.4. Builders

Much of the responsibility and credit for helping to create Mesquite Hills rests with the "Builders" - those Persons who purchase one or more unimproved Units or parcels of land within Mesquite Hills for further subdivision or development and resale in the ordinary course of their business. The Builders have the same privileges and responsibilities as Owners during the time that they own Units for construction and resale, including the privileges of membership in the Association. In addition, the Founder may extend any of the rights it has reserved under the Governing Documents with respect to development, marketing, and sale of property in the Community to such Builders as it may designate.

### 2.5. Neighborhood Associations

Portions of the Community may be developed under a condominium form of ownership or may have other circumstances that lead to the establishment of a separate homeowners association to administer additional covenants applicable to that particular area ("Neighborhood Association"). However, nothing in this Charter requires the creation of a Neighborhood Association, and the jurisdiction of any Neighborhood Association shall be subordinate to that of the Association.

Neighborhood Associations, if any, are responsible for administering the additional cove-



## Community Administration

nants applicable to the property within their jurisdiction and for maintaining, in accordance with the Community-Wide Standard, any property which they own or which their respective covenants designate as being for the common benefit of their members.

### 2.6. Mortgagees

If a Unit is made subject to a mortgage, deed of trust, or other form of security instrument affecting title to a Unit ("Mortgage"), then the holder or beneficiary of that Mortgage ("Mortgagee") also has an interest in the administration of the Community. The Governing Documents contain various provisions for the protection of Mortgagees, including those set forth in Chapter 15.

*To worship choice and community together is  
to misunderstand what community is all about.  
Alan Ehrenhalt*

### NOTES



## Chapter 3

# Community Structure and Organization

The Community consists of parcels of property, referred to as Units, which are intended for the exclusive use of the Owner and other occupants of such parcel, as well as property that is intended for common use. Units are grouped into Neighborhoods and Election Districts to facilitate voting on Association matters. Units may be assigned to Service Areas to permit the Association to provide special services and benefits to particular areas of the Community.

### 3.1. Designations of Properties Comprising the Community

**Units.** The Governing Documents refer to the homes and home sites in Mesquite Hills as "Units." A Unit is a portion of the Community which is depicted as a separately identified lot or parcel on a recorded subdivision plat or survey which may be independently owned and conveyed and which is zoned or otherwise intended for development, use, and occupancy as a residence for a single family. The term "Unit" refers to the land, if any, which is part of the Unit, as well as to any structures or other improvements on the Unit. In the case of a building within a condominium or other structure containing multiple dwellings, each dwelling shall be deemed to be a separate Unit. A parcel of land under single ownership and intended for construction of more than one residence is considered a single Unit until a subdivision plat, survey, or condominium instrument is recorded subdividing it into more than one Unit. The term does not include Common Areas, as defined below, common property of any Neighborhood Association, or property dedicated to the public.

**Common Area.** Any property and facilities that the Association owns or in which it otherwise holds possessory or use rights for the common use or benefit of more than one Unit is referred to as "Common Area." The Common Area also includes any property that the Associa-

tion holds under a lease and any easements in favor of the Association.

**Limited Common Area.** Certain portions of the Common Area may be designated as "Limited Common Area" and assigned for the exclusive use or primary benefit of less than all Units or Units in specified portions of the Community. Limited Common Areas might include such things as entry features, recreational facilities, lakes, and landscaped medians and cul-de-sacs, among other things.

The Founder may designate property as Limited Common Area and assign it to particular Units on the recorded plat depicting such property, in the deed conveying such property to the Association, or in the Supplement by which the property is submitted to the terms of this Charter. At any time during the Development and Sale Period, the Founder may assign use of the same Limited Common Area to additional Units.

**Area of Common Responsibility.** All of the properties and facilities for which the Association has responsibility under the Governing Documents, or for which the Association otherwise agrees to assume responsibility, are collectively referred to in the Governing Documents as the "Area of Common Responsibility," regardless of who owns them. The Area of Common Responsibility includes all of the Common Area and may also include Units or portions of Units and property dedicated to the public, such as public rights-of-way. The initial Area of Common Responsibility is described in Chapter 9.

### 3.2. Service Areas

Units may also be part of one or more "Service Areas" in which the Units share Limited Common Areas or receive special benefits or services from the Association that it does not provide to all Units within the Community. A Unit





may be assigned to more than one Service Area, depending on the number and types of special benefits or services it receives. A Service Area may be comprised of Units of more than one housing type and may include Units that are not contiguous.

The Founder may initially designate Service Areas (by name or other identifying designation) and assign Units to a particular Service Area either in Exhibit "A" or in a Supplement. During the Development and Sale Period, the Founder may unilaterally amend this Charter or any Supplement to change Service Area boundaries.

In addition, the Board may, by resolution, designate Service Areas and assign Units to them upon petition of Owners of at least 67% of the Units affected by the proposed designation pursuant to Section 10.2.

**3.3. Neighborhoods**

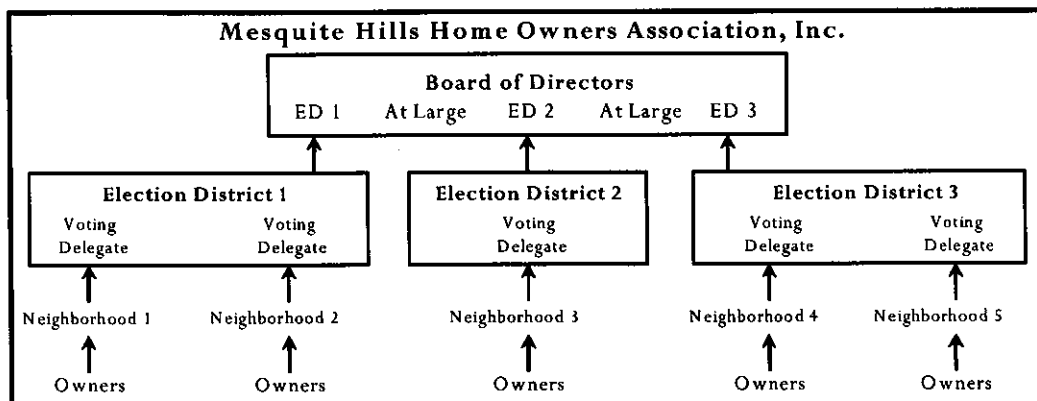
Units are grouped into "Neighborhoods" to facilitate a system of representative voting on matters as to which the Governing Documents require approval of the Association's membership. A Neighborhood may be comprised of any number of Units and may include Units of more than one housing type, as well as Units that are not contiguous to one another. Each Neighborhood will elect one "Voting Delegate" to cast the votes allocated to Units in that Neighborhood on matters requiring a vote of the Owners, as described in Chapter 4.

The Founder initially will assign Units to a specific Neighborhood (by name or other identifying designation) either in Exhibit "A" or in a Supplement. During the Development and Sale Period, the Founder may unilaterally record a Supplement, or an amendment to this Charter or any previously recorded Supplement, to designate or change Neighborhood boundaries. Thereafter, the Board may amend this Charter or any Supplement to re-designate Neighborhood boundaries; however, the Board may not combine two or more existing Neighborhoods without the consent of Owners of a majority of the Units in the affected Neighborhoods.

**3.4. Election Districts**

The Founder or the Board may designate "Election Districts," consisting of the Units within one or more Neighborhoods, for the purpose of electing directors to the Board. The By-Laws set forth the method of establishing Election Districts. The number of Election Districts shall not exceed the total number of directors on the Board. The purpose of Election Districts is to provide for representation on the Board by groups with potentially dissimilar interests and to avoid a situation in which particular groups are able to elect the entire Board due to the number of votes they represent.

The diagram below illustrates the Association's organizational structure and the manner in which each Election District will elect representatives to the Board after the Founder Control Period.





## Chapter 4

### Association Membership and Voting Rights

The Association is a mechanism by which each Owner can participate in the governance and administration of Mesquite Hills. While many powers and responsibilities are vested in the Board in order to facilitate day-to-day management and operation, the membership and voting rights vested in the Owners allow the Owners to participate in administration of the Community and influence the outcome of major decisions.

#### 4.1. Membership

The Association initially has two classes of membership: the Owner membership, which is comprised of all Owners, including Builders, and the Founder membership, which consists solely of the Founder. Any Person holding a membership in the Association is sometimes referred to in this Charter as a "Member."

(a) *Owner Membership.* Every Owner is automatically a member of the Association. However, there shall be only one membership per Unit. Thus, if a Unit has more than one Owner, all co-Owners of the Unit share the privileges of such membership, reasonable Board regulation, and the restrictions on voting set forth below and in the By-Laws. If an Owner is a corporation, a partnership, or other legal entity, its membership rights may, subject to the provisions of Chapter 15, be exercised by any officer, director, partner, or trustee, or by an individual the Owner designates from time to time in writing to the Association's Secretary.

(b) *Founder Membership.* The Founder holds the sole Founder membership. The Founder membership shall terminate two years after expiration of the Founder Control Period, or on such earlier date as the Founder determines and declares in a recorded instrument.

#### 4.2. Voting

Each Unit is assigned one equal vote, subject to the limitations on voting set forth in this Charter and the other Governing Documents. No vote shall be exercised for any property exempt from assessment under Section 12.10. Further, during such time as there is a Founder membership, no vote shall be exercised for Units that the Founder owns; rather, the Founder's consent shall be required for various actions of the Board, the membership, and committees, as specifically provided elsewhere in the Governing Documents.

Due to the number of Units that may be developed in Mesquite Hills, the Governing Documents provide for a representative system of voting. The Owners of Units in each Neighborhood elect a "Voting Delegate" and an alternative Voting Delegate, in the manner provided in the By-Laws, to cast the votes of all Units in the Neighborhood on matters requiring a vote of the membership, except where the governing documents specifically require a vote of the Owners. However, until such time as the Board first calls for election of a Voting Delegate for a particular Neighborhood, each Owner of a Unit in such Neighborhood shall be considered a "Voting Delegate" and may personally cast the vote allocated to such Owner's Unit on any issue requiring a vote of the Voting Delegates under the Governing Documents.

The Voting Delegate or, in his or her absence, the alternative Voting Delegate, attends Association meetings and casts all votes allocated to Units in the Neighborhood that he or she represents on any matters as to which such Voting Delegate is entitled to vote under the Governing Documents. A Voting Delegate shall vote all votes it is entitled to cast in accordance with the results of a poll of the Owners of Units in the Neighborhood which he or she represents prior



## Association Membership and Voting Rights

to voting. The Voting Delegate shall cast the votes in accordance with the result of the poll. Any votes not accounted for in the poll shall be cast in the same proportion as dictated by the poll (e.g., if 60% of the responses received are in favor of a provision, 60% of the votes not received shall be cast in favor of the provision). The Voting Delegate shall not be entitled to fractionalize any single vote.

Voting Delegates are subordinate to the Board and their responsibility and authority does not extend to policymaking, supervising, or otherwise being involved in Association governance beyond voting on matters put to a vote of the membership.

In any situation in which an Owner is entitled personally to exercise the vote for his or her Unit, if there is more than one Owner of a Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and advise the Association's Secretary in writing prior to the vote being taken. Absent such advice, the Unit's vote shall be suspended if more than one Person seeks to exercise it.

*If you don't like something, change it. If you can't change it, change your attitude. Don't complain. Maya Angelou*

### NOTES



## PART TWO: COMMUNITY STANDARDS

*A people that values its privileges above its principles soon loses both.*

*Dwight D. Eisenhower*



## Chapter 5

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# Architecture, Landscaping, and Aesthetic Standards

*The Community derives its unique character from a mix of compatible architectural styles and from the cooperation of all Builders and Owners in upholding minimum design, landscaping and aesthetic standards. This chapter explains how those standards are established and how they are applied and maintained through a process requiring prior approval for construction on and exterior modifications to improvements on Units.*

### 5.1. General

All site work, landscaping, structures, improvements, and other items placed on a Unit in a manner or location visible from outside of any existing structure on the Unit ("**Improvements**") are subject to standards for design, landscaping and aesthetics adopted pursuant to this chapter ("**Design Guidelines**") and the approval procedures set forth in this chapter, except as this chapter or the Design Guidelines may otherwise specify.

No prior approval is necessary to repaint the exterior of existing structures using the most recently approved color scheme or to rebuild or restore any damaged structures in a manner consistent with the plans and specifications most recently approved for such structures. Generally, no approval is required for work done to the interior of a structure; however, modifications to the interior of screened porches, patios, and any other portions of a structure visible from outside of the structure do require prior approval.


Any dwelling constructed on a Unit shall be designed by and built in accordance with the plans and specifications of a licensed architect unless the Founder or its designee in its sole discretion otherwise approves.

Approval under this chapter is not a substitute for any approvals or reviews required by Yavapai County, Arizona or any municipality or gov-

ernmental agency or entity having jurisdiction over architectural or construction matters.

This chapter shall not apply to the Founder's or any Founder Affiliate's design and construction activities or to the Association's design and construction activities during the Founder Control Period.

### 5.2. Review Authority

 Initially, the Founder reviews applications for proposed Improvements. Thereafter, the Board of Directors will appoint a Design Review Committee to review applications for proposed improvements. The Founder or the Design Review Committee is referred to as the "Reviewer." The Reviewer sets fees for reviewing applications.

(a) **Founder.** The Founder shall have exclusive authority to review and act upon all applications for review of proposed Improvements until the later of: (i) the expiration of the Development and Sale Period; or (ii) such time as all Units planned for the property described in Exhibits "A" and "B" have been improved with dwellings for which a certificate of occupancy has been issued. Without delegating or assigning its rights under this chapter, the Founder may designate one or more Persons to act on its behalf in reviewing any application. In reviewing and acting upon any request for approval, the Founder and its designee act solely in the Founder's interest and owe no duty to any other Person.

From time to time, the Founder may delegate any or all of its rights under this chapter to other Persons or committees, including the committee appointed pursuant to Section 5.2(b). Any such delegation shall be in writing, shall specify the scope of responsibilities delegated, and shall be subject to: (i) the Founder's right to revoke such delegation at any time and reassume its prior control; and (ii) the Founder's right to veto any deci-



## Architecture, Landscaping, and Aesthetic Standards

sion which it determines, in its discretion, to be inappropriate or inadvisable. So long as the Founder has any rights under this chapter, the jurisdiction of others shall be limited to such matters as the Founder specifically delegates.

(b) *Design Review Committee.* Upon the Founder's delegation of authority pursuant to Section 5.2(a), or upon expiration or termination of the Founder's rights under this chapter, the Board shall appoint a Design Review Committee ("Design Review Committee" or "DRC") to assume jurisdiction over matters within the scope of the delegated authority or this chapter, respectively. The DRC shall consist of at least three, but not more than seven, persons, who shall serve and may be removed and replaced in the Board's discretion. DRC members need not be Owners or representatives of Owners. The DRC may, but need not, include architects, engineers, or similar professionals. The Association may compensate DRC members in such manner and amount, if any, as the Board may determine appropriate.

Until expiration of the Founder's rights under this chapter, the DRC shall notify the Founder in writing within three business days of any action (*i.e.*, approval, partial approval, or disapproval) it takes under this chapter. A copy of the application and any additional information the Founder may require shall accompany the notice. The Founder shall have 10 business days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the DRC.

Unless and until such time as the Founder delegates all or a portion of its reserved rights to the DRC or the Founder's rights under this chapter terminate, the Association shall have no jurisdiction over architectural matters. However, the Association may enforce the provisions of this chapter and the Design Guidelines.

(c) *Reviewer.* For purposes of this chapter, the entity having jurisdiction in a particular case shall be referred to as the "Reviewer."

(d) *Fees; Assistance.* The Reviewer may establish and charge reasonable fees for its review of applications and may require that such fees be paid in advance. Such fees may also include reasonable costs incurred in having professionals review any application. The Board may include the compensation of such Persons in the Association's annual operating budget.

### 5.3. Guidelines and Procedures

(a) *Design Guidelines.* The Founder may prepare the initial Design Guidelines, which may contain general provisions applicable to all of Mesquite Hills as well as specific provisions that vary among uses, housing types, or locations within the Community. The Design Guidelines are intended to provide guidance to Owners and contractors regarding matters of particular concern to the Reviewer. The Design Guidelines are not the exclusive basis for the Reviewer's decisions, and compliance with the Design Guidelines does not guarantee approval.

The Founder shall have sole and full authority to amend the Design Guidelines for so long as it has review authority under Section 5.2(a). The Founder's right to amend the Design Guidelines shall continue even if it delegates reviewing authority to the DRC, unless the Founder also delegates the power to amend to the DRC. Upon termination or delegation of the Founder's right to amend, the DRC may amend the Design Guidelines with the Board's consent.

Amendments to the Design Guidelines shall apply prospectively only. They shall not require modifications to or removal of any structures previously approved even though work on the approved construction or modification has not begun. However, any new work on such structures requiring further approval must comply with the Design Guidelines as amended. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may eliminate requirements previously imposed or otherwise make the Design Guidelines less restrictive.



## Architecture, Landscaping, and Aesthetic Standards

The Reviewer shall make the Design Guidelines available to Owners, Builders, and their contractors upon request and may charge a reasonable fee to cover costs of printing or reproduction. In the Founder's discretion, such Design Guidelines may be recorded, in which event the recorded version, as it may be amended from time to time, shall control in the event of any dispute as to which version of the Design Guidelines was in effect at any particular time.

(b) *Procedures.* Unless the Design Guidelines provide otherwise, no activities within the scope of this chapter (as described in Section 5.1) may begin on any portion of Mesquite Hills until a written application is submitted to and approved by the Reviewer. The application must be accompanied by plans and specifications and such other information as the Reviewer or the Design Guidelines require.

In reviewing each application, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of the proposed external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that such determinations are purely subjective and that opinions may vary as to the desirability and/or attractiveness of particular improvements.

The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment, and such determinations shall not be subject to the procedures in Chapter 18 or judicial review so long as they are made in good faith and in accordance with required procedures.

The Reviewer shall make a determination on each application after receipt of a completed application with all required information. The Reviewer may permit or require that an application be submitted or considered in stages, in which case a final decision shall not be required until after the final, required submission. The Reviewer may: (i) approve the application with or

without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application.

The Reviewer shall notify the applicant in writing of the final determination on any application no later than 30 business days after its receipt of a completed application and all required submissions; however, with respect to any DRC determination subject to the Founder's veto right under Section 5.2(b), the Reviewer shall notify the applicant of the final determination within 40 business days after its receipt of the final determination and all required submissions. Notice shall be deemed given at the time the envelope containing the response is deposited in the U.S. mail. Hand delivery, facsimile, electronic mail, or similar delivery of such written notice also shall be sufficient and shall be deemed given at the time of confirmed delivery to the applicant.

If the Reviewer fails to respond in a timely manner, approval shall be deemed given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to Section 5.5.

As part of any approval, the Reviewer may require that construction commence within a specified time period; provided, if no time period is specified in the approval, construction shall commence within 12 months of the date of the approval. If construction does not commence within the required period, the approval shall expire, and the Owner must reapply for approval before commencing any activities unless the Reviewer, in its discretion, grants an extension in writing. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within 12 months of commencement unless otherwise specified in the notice of approval or unless the Reviewer, in its discretion, grants an extension in writing. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by



## Architecture, Landscaping, and Aesthetic Standards


the Association, the Founder, or any aggrieved Owner.

The Reviewer may exempt certain activities from the application and approval requirements of this chapter, if such activities are undertaken in compliance with the Design Guidelines and the Community-Wide Standard.

### 5.4. No Waiver of Future Approvals

The people reviewing applications under this chapter will change from time to time, and opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. The Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans shall not constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

### 5.5. Variances

 When unusual circumstances exist that make it difficult to comply with a particular requirement of the Design Guidelines, the Owner may file a request with the Reviewer to be excused from complying with such requirement. The Reviewer has the discretion to determine when a variance is appropriate.

The Reviewer may authorize variances from compliance with any of the Design Guidelines and any procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules. No variance shall: (a) be effective unless in writing; (b) be contrary to this Charter; or (c) prevent the Reviewer from denying a variance in other circumstances. A variance requires the Founder's written consent during the Development and Sale Period and, thereafter, requires the Board's written consent.

### 5.6. Limitation of Liability

This chapter establishes standards and procedures as a mechanism for maintaining and enhancing the overall aesthetics of Mesquite Hills; they do not create any duty to any Person. Review and approval of any application pursuant to this chapter may be based purely on aesthetic considerations. The Reviewer is not responsible for the structural integrity or soundness of approved construction or modifications, for compliance with building codes and other governmental requirements, or for ensuring that all dwellings are of comparable quality, value, size, or design, or are aesthetically pleasing or otherwise acceptable to other Owners.

The Founder, Founder Affiliates, the Association, its officers, the Board, any committee, and any member of any of the foregoing, shall not be liable for (a) soil conditions, drainage, or other general site work; (b) any defects in plans revised or approved hereunder; (c) any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees, or agents, whether or not the Founder has approved or featured such contractor as a Builder; or (d) any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Association shall defend and indemnify the Board, the DRC, and the members of each, as provided in the By-Laws.

### 5.7. Certificate of Compliance

Any Owner may request in writing that the Reviewer issue a certificate of compliance certifying that there are no known violations of this chapter or the Design Guidelines. The Association shall either grant or deny such written request within 30 days after receipt and may charge a reasonable administrative fee. Issuance of such a certificate shall prevent the Association from taking enforcement action against an Owner for any condition known to the Association on the date of such certificate.





## Chapter 6

### Maintenance, Repair, and Replacement

*One of the benefits of owning property in a planned community is the commitment among neighbors to maintain their property in a neat, attractive and well-landscaped condition to enhance the overall beauty and aesthetic appeal of the Community. This chapter describes the Owners' responsibilities for maintenance and repair of their Units and for insuring their Units against property damage so that funds will be available for repair and restoration if needed.*

#### 6.1. Maintenance of Units

Each Owner shall maintain his or her Unit, including all structures, landscaping, and other improvements comprising the Unit, in a manner consistent with the Governing Documents and the Community-Wide Standard, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood Association pursuant to this Charter, any Supplement, or by law. In the event such entity fails to maintain a Unit, the Owner of the Unit shall be responsible for such maintenance.

#### 6.2. Maintenance by Neighborhood Associations

A Neighborhood Association shall maintain its common property and any other property for which it has maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants.

The Association may assume maintenance responsibility for property which is the responsibility of a Neighborhood Association, either upon designation of such property as a Service Area pursuant to Section 3.2 or upon the Board's determination, that the level and quality of maintenance then being provided is not consistent with the Community-Wide Standard. Such maintenance shall be assessable against all Units in the benefited Neighborhood Association as a Service

Area Assessment, as provided in Section 12.2. The Association need not treat all similarly situated Neighborhood Associations the same.

#### 6.3. Responsibility for Repair and Replacement

Unless otherwise specifically provided in the Governing Documents or in other instruments creating and assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard.

Each Owner shall carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible, unless either a Neighborhood Association (if any) or the Association carries such insurance (which they may but are not obligated to do). If the Association assumes responsibility for insuring a Unit, the premiums for such insurance shall be levied as a Specific Assessment against the benefited Unit and the Owner.

Within 90 days after any damage to or destruction of a structure on a Unit, the Owner shall promptly repair or reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved pursuant to Chapter 5 unless the Board, in its discretion, agrees to extend such period. Alternatively, the Owner shall clear the Unit of debris and maintain it in a neat and attractive landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs that insurance proceeds do not cover.

Additional recorded covenants applicable to any Neighborhood Association or Service Area may establish additional insurance requirements and more stringent standards for rebuilding or reconstructing structures on Units and for clear-



## Maintenance, Repair, and Replacement

ing and maintaining the Units in the event the structures are not rebuilt or reconstructed.

This section shall apply to a Neighborhood Association with respect to common property maintained by the Neighborhood Association in the same manner as if the Neighborhood Association was an Owner and the common property was a Unit.

### 6.4. Maintenance and Repair of Party Walls and Similar Structures

Each wall, fence, driveway, or similar structure that serves and/or separates any two adjoining Units shall be considered a party structure. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who use the party structure.

If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner of a Unit served by the structure may restore it. If any other Unit is served by the structure, the Owner of such Unit shall also contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

Any Owner's right to contribution from any other Owner under this section shall be appurtenant to the land and shall pass to such Owner's successors-in-title.

*Nothing can be done at once hastily and prudently. Publius Syrus-Maxim 557*

## NOTES



## Chapter 7

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### Use and Conduct

In order to maintain a residential environment that encourages respect for and courtesy among neighbors and minimizes the potential for disputes, this chapter sets forth basic standards regarding use, occupancy and transfer of interests in Units. In addition, it provides a procedure by which the Board and the membership can adopt and change rules regulating use, conduct and activities within the Community to address particular needs and desires of the Community over time.

#### 7.1. Use, Occupancy, and Transfer of Interests in Units

(a) *Residential and Related Uses.* Units may be used only for residential and related purposes, except as the Founder may otherwise authorize with respect to construction, marketing and sales activities of the Founder and Builders it designates. A business activity shall be considered "related" to a residential use and thus permitted under this section only if conducted by a person or persons residing in the Unit and only if the business activity:

(i) is not apparent or detectable by sight, sound, or smell from outside of a permitted structure;

(ii) complies with applicable zoning requirements;

(iii) does not involve regular visitation of the Unit by employees who do not reside in the Unit, clients, customers, suppliers, or other business invitees, or door-to-door solicitation within the Community; and

(iv) is consistent with the residential character of the Community in which the Unit is located and does not constitute a nuisance or a hazardous or offensive use, or threaten the security or safety of others, as the Board determines in its discretion.

"Business" shall have its ordinary, generally accepted meaning and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis that involves providing goods or services to Persons other than the family of the producer and for which the producer receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required.

Leasing a Unit for residential purposes shall not be considered a "business" within the meaning of this subsection, provided that the Owner and any other Owners with whom such Owner is affiliated do not collectively lease or offer for lease more than one Unit at any time. This provision shall not preclude an institutional lender from leasing a Unit upon taking title following foreclosure of its security interest in the Unit or upon acceptance of a deed in lieu of foreclosure. For purposes of this Charter, the terms "Lease" and "Leasing" shall refer to the regular, exclusive occupancy of a Unit by any Person other than the Owner, for which the Owner receives any consideration or benefit.

(b) *Leasing.* Any dwelling that is leased shall be leased only in its entirety; separate rooms, floors, or other areas within a dwelling may not be separately leased; however, any garage apartment, "in-law suite," "guest house," or similar structure approved pursuant to Chapter 5 may be leased separate from the main dwelling so long as such lease is consistent with applicable zoning restrictions and requirements.

All leases shall be in writing and shall disclose that the tenants and all occupants of the leased Unit are bound by and obligated to comply with the Governing Documents. However, the Governing Documents shall apply regardless of



## Use and Conduct

whether such a provision is specifically set forth in the lease.

Within 10 days of a lease being signed, the Owner of the leased Unit shall notify the Board or the Association's managing agent of the lease and provide any additional information the Board may reasonably require. The Owner must give the tenant copies of the Governing Documents. In addition to, but consistent with this subsection, the Association or the Board may adopt Rules governing leasing and subleasing.

(c) *Transfer of Title.* Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least 10 days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The Person transferring title shall continue to be jointly and severally responsible with the Person accepting title for all obligations of the Owner, including assessment obligations, until the date upon which the Board receives such notice, notwithstanding the transfer of title.

(d) *Subdivision and Combination of Units.* Units may not be subdivided. No Person other than the Founder, Founder Affiliates, or Builders designated by Founder shall change the boundary lines of any Unit or combine Units without the Board's prior written approval. With the prior written consent of the Founder during the Founder Control Period, and the Board thereafter, the Owner of two or more contiguous Units may consolidate the Units for the sole purpose of constructing one single family dwelling thereon, subject to any and all requirements of any governmental entity. In the event of such consolidation, and notwithstanding anything to the contrary in this Charter or elsewhere, such consolidated Units shall continue to be treated as separate Units for the purpose of voting and assessment, even though subsequently such Units may be replatted to create one Unit for all other legal purposes. The Person seeking to combine Units

shall be responsible for all costs, including attorneys fees, to effectuate such combination.

(e) *Timesharing.* No Unit shall be used for operation of a timesharing, fraction-sharing, residence club, or similar program whereby the right to exclusive use of the Unit rotates among participants in the program on a fixed or floating time schedule over a period of years, unless such program is established by Founder or with Founder's prior written approval.

### 7.2. Rulemaking Authority and Procedures



Since it is impossible to foresee all potential situations and problems that may arise within the Community, the Board and the Association membership have the authority to adopt and modify rules as needed to address these changing circumstances.

The Governing Documents establish a framework of covenants and conditions that govern the Community. The initial Rules attached as Exhibit "C" are a part of that framework. However, within that framework, the Association must be able to respond to unforeseen issues and changes affecting the Community. Therefore, the Board and the Voting Delegates are authorized to change the Rules in accordance with the following procedures, subject to the limitations set forth in Section 7.3.

(a) *Board Authority.* Subject to the notice requirements in subsection (c) and the Board's duty to exercise judgment and reasonableness on behalf of the Association and its members, the Board may adopt new Rules and modify or rescind existing Rules by majority vote of the directors at any Board meeting. During the Development and Sale Period, any such action shall also be subject to the Founder's approval.

(b) *Membership Authority.* Subject to the notice requirements in subsection (c), Voting Delegates representing at least a majority of the total votes in the Association may also adopt new Rules and modify or rescind existing Rules at any



## Use and Conduct

meeting of the Association duly called for such purpose, regardless of the manner in which the original Rule was adopted. During the Development and Sale Period, any such action shall also be subject to the Founder's approval.

(c) *Notice.* The Board shall send notice to all Owners concerning any proposed Rule change at least five business days prior to the meeting of the Board or the Voting Delegates at which such action is to be considered. At any such meeting, the Voting Delegates shall have a reasonable opportunity to be heard before the proposed action is put to a vote.

This notice requirement does not apply to administrative and operating policies that the Board may adopt relating to the Common Areas, such as hours of operation of any recreational facilities, speed limits on private roads, and the method of allocating or reserving use of a facility (if permitted) by particular individuals at particular times, notwithstanding that such policies may be published as part of the Rules.

(d) *Effective Date.* A Rules change adopted under this section shall take effect 30 days after the date on which written notice of the Rules change is given to the Owners.

(e) *Conflicts.* No action taken under this section shall have the effect of modifying or repealing the Design Guidelines or any provision of this Charter other than the Rules. In the event of a conflict between the Design Guidelines and the Rules, the Design Guidelines shall control. In the event of a conflict between the Rules and any provision of this Charter (exclusive of the Rules), the Charter shall control.

### 7.3. Protection of Owners and Others

Except as may be set forth in this Charter (either initially or by amendment) or in the initial Rules set forth in Exhibit "C," all Rules shall comply with the following provisions:

(a) *Similar Treatment.* Similarly situated Units shall be treated similarly; however, the

Rules may vary by Neighborhood Association or Service Area.

(b) *Displays.* No Rule shall abridge an Owner's right to display political, religious or holiday symbols and decorations on his or her Unit of the kinds normally displayed in single-family residential neighborhoods, nor shall any Rule regulate the content of political signs except content or graphics which the Board deems to be obscene, vulgar, or similarly disturbing to the average person. However, the Association may adopt time, place, and manner restrictions with respect to signs, symbols, and displays visible from outside structures on the Unit, including reasonable limitations on size and number.

(c) *Household Composition.* No Rule shall interfere with an Owner's freedom to determine household composition, except that the Association may impose and enforce reasonable occupancy limitations and conditions based on Unit size and facilities and its fair share use of the Common Area.

(d) *Activities Within Dwellings.* No Rule shall interfere with the activities carried on within a dwelling, except that the Association may prohibit activities not normally associated with residential property. It may also restrict or prohibit activities that create monetary costs for the Association or other Owners, that create a danger to anyone's health or safety, that generate excessive noise or traffic, that create unsightly conditions visible from outside the dwelling, or that are an unreasonable source of annoyance.

(e) *Allocation of Burdens and Benefits.* No Rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Com-



mon Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in Chapter 12.

(f) *Leasing and Transfer of Units.* No Rule shall prohibit leasing or transfer of any Unit or require approval prior to leasing or transferring a Unit; however, the Rules may require a minimum lease term. Minimum lease terms may vary by product type or areas throughout the Community. The Rules may also require that Owners use Board-approved lease forms (or include specific lease terms), and may impose a reasonable review or administrative fee in connection with the Board's review of a lease.

(g) *Abridging Existing Rights.* No Rule shall require that an Owner dispose of personal property kept in or on a Unit in compliance with the Rules in effect at the time such personal property was brought onto the Unit. This exemption shall apply only during the period of such Owner's ownership of the Unit and shall not apply to subsequent Owners who take title to the Unit after adoption of the Rule.

(h) *Reasonable Rights to Develop.* No Rule may unreasonably interfere with the ability of the Founder or Founder Affiliates to develop, market, and sell property in Mesquite Hills.

(i) *Interference with Easements.* No Rule may unreasonably interfere with the exercise of any easement.

The limitations in Sections 7.3 (a) through (i) shall only limit rulemaking authority exercised under Section 7.2; they shall not apply to amendments to this Charter adopted in accordance with Chapter 20.

**7.4. Owners' Acknowledgment and Notice to Purchasers**

By accepting a deed, each Owner acknowledges and agrees that the use, enjoyment, and marketability of his or her Unit is limited and affected by the Rules, which may change from

time to time. All Unit purchasers are hereby notified that the Association may have adopted changes to the Rules and that such changes may not be set forth in a recorded document. A copy of the current Rules and all administrative policies are available from the Association upon request. The Association may charge a reasonable fee to cover its reproduction cost.

*Peace rules the day when reason rules the mind.*  
*Wilkie Collins*

**NOTES**



## Chapter 8

### Compliance and Enforcement

The covenants, standards and rules set forth in the Governing Documents are for the benefit of all Owners and occupants of the Community. However, if they are to have any real meaning, there must be a commitment by the stakeholders in the Community to comply with them and there must be a mechanism in place to enforce that compliance in the event that someone fails or refuses to do so. This chapter sets forth the obligation to comply and the remedies available to the Association for noncompliance.

#### 8.1. Compliance

Every Owner, occupant and visitor to a Unit must comply with the Governing Documents and shall be subject to sanctions for violations as described in this chapter. In addition, each Owner shall be responsible for, and may be sanctioned for, all violations of the Governing Documents by the occupants of or visitors to their Units, and for any damage to the Area of Common Responsibility that such occupants or visitors cause.

#### 8.2. Remedies for Non-Compliance



All Owners are required to abide by the Governing Documents. If an Owner fails or refuses to obey the Governing Documents the Owner may be subject to various penalties including fines and the loss of the right to use the Common Areas.

The Association, the Founder, any Founder Affiliate, and every affected Owner shall have the right to file suit at law or in equity to enforce the Governing Documents. In addition, the Board may impose sanctions for violation of the Governing Documents, including those sanctions listed below and any others described elsewhere in the Governing Documents.

(a) *Sanctions Requiring Prior Notice and Hearing.* After written notice and an opportu-

nity for a hearing in accordance with the By-Laws, the Board may:

(i) impose reasonable monetary fines, which shall constitute a lien upon the violator's Unit. In the event that any occupant, guest, or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine may, but need not, first be assessed against the violator; however, if the fine is not paid by the violator within the time period set by the Board, the Owner shall pay the fine upon notice from the Board;

(ii) suspend an Owner's right to vote (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any Base or Special Assessment);

(iii) suspend any Person's right to use any Common Area facilities: (A) for any period during which any charge against such Owner's Unit remains delinquent; and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation (except that no hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed the Association); provided, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iv) suspend services the Association provides (except that no notice or hearing is required if the Owner is more than 60 days delinquent in paying any assessment or other charge owed to the Association);

(v) without liability to any Person, preclude any contractor, subcontractor, agent, employee or other invitee of an Owner who fails to comply with the terms and provisions of Chapter



## Compliance and Enforcement

5 and the Design Guidelines from continuing or performing any further activities in Mesquite Hills;

(vi) levy Specific Assessments to cover costs the Association incurs in bringing a Unit into compliance with the Community-Wide Standard or other requirements under the Governing Documents; and

(vii) record a notice of violation with respect to any Unit on which a violation exists.

(b) *Other Sanctions.* The Board may take the following actions to obtain compliance with the Governing Documents without prior notice or a hearing:

(i) exercise self-help or take action to abate a violation on a Unit in any situation that is a violation of the Governing Documents or requires prompt action to avoid potential injury or damage or unreasonable inconvenience to other Persons or their property;

(ii) exercise self-help or take action to abate a violation on the Common Area under any circumstances (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations);

(iii) require an Owner or a Neighborhood Association, at its own expense, to perform maintenance or to remove any structure or improvement on such Owner's Unit or on the Neighborhood Association's property, respectively, that is in violation of the Community-Wide Standard or other requirements under the Governing Documents and to restore the property to its previous condition;

(iv) enter the property and exercise self-help to remove or cure a violating condition if an Owner or Neighborhood Association fails to take action as required pursuant to subsection (iii) above within 10 days after receipt of written notice to do so, and any such entry shall not be deemed a trespass; or

(v) bringing suit at law for monetary damages or in equity to stop or prevent any violation, or both.

(c) *Additional Powers Relating to Neighborhood Associations.* In addition to the foregoing sanctions, the Association shall have the power to veto any action that a Neighborhood Association proposes to take if the Board reasonably determines the proposed action to be adverse to the interests of the Association or its members or inconsistent with the Community-Wide Standard. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefor.

A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions.

### 8.3. Board Decision to Pursue Enforcement Action

The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. For example, the Board may determine that, in a particular case:

(a) the Association's position is not strong enough to justify taking any or further action;

(b) the covenant, restriction or rule being enforced is, or is likely to be construed as, inconsistent with applicable law;





## Compliance and Enforcement

(c) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or

(d) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

A decision not to enforce a particular provision shall not prevent the Association from enforcing the same provision at a later time or prevent the enforcement of any other covenant, restriction, or rule.

### 8.4. Attorneys Fees and Costs

In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

### 8.5. Enforcement of Ordinances

The Association, by contract or other agreement, may enforce applicable city and county ordinances. In addition, the County of Yavapai, Arizona may enforce their ordinances within Mesquite Hills.

*People need to be reminded more often than they need to be instructed. Samuel Johnson*

## NOTES



## PART THREE: ASSOCIATION OPERATIONS

*Do what you can, with what you have, where you are.*

*Theodore Roosevelt*



## Chapter 9

### Property Management

One of the Association's primary functions is maintaining and operating property and facilities for the common benefit of the Owners and occupants of Mesquite Hills. This chapter establishes the Association's obligation to accept property that the Founder designates as Common Area or Limited Common Area and to maintain, operate, and insure it, along with certain other properties, for the benefit of the Community.

#### 9.1. Acceptance and Control of Association Property

(a) *Transfers and Conveyances by Founder.* The Founder, its designees, or any Founder Affiliate may transfer or convey to the Association interests in real or personal property within or for the benefit of the Community, and the Association shall accept such transfers and conveyances. Such property may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests.

Upon the Founder's written request, the Association shall reconvey to the Founder, or any Founder Affiliate, any real property that the Founder originally conveyed to the Association for no payment, to the extent conveyed in error or needed to make minor adjustments in property lines or accommodate changes in the development plan.

(b) *Management and Control.* The Association is responsible for management, operation, and control of the Common Area, subject to any covenants set forth in the deed or other instrument transferring the property to the Association. The Association may enter into leases, licenses, or operating agreements with respect to portions of the Common Area, for payment or no payment, as the Board deems appropriate. The Association may permit use of Common Area facilities, including any recreational amenities, by Persons other than Owners and occupants of Units and

may charge use fees, in such amount as the Board may establish, for such use.

#### 9.2. Maintenance of Area of Common Responsibility

The Association shall maintain the Area of Common Responsibility in accordance with the Community-Wide Standard. The Area of Common Responsibility includes, but is not limited to:

(a) the Common Area, including, but not limited to, any recreational amenities or playgrounds, all landscaping and other flora, natural formations, fences, if any, parks, lakes, structures, entry gates and other improvements, any streets shown as such on a recorded plat within Mesquite Hills, biking, walking, and hiking pathways/trails, situated upon the Common Area, a Unit, or abutting the Community;

(b) landscaping or improvements within public rights-of-way within or abutting Mesquite Hills, to the extent not maintained to the Community-Wide Standard by a unit of local government;

(c) such portions of any additional property as may be dictated by the Founder, this Charter, any Supplement, or any covenant or agreement for maintenance entered into by, or otherwise binding on the Association; and

(d) any property and facilities that the Founder owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. The Founder shall identify any such property and facilities by written notice to the Association, and they shall remain part of the Area of Common Responsibility until the Founder revokes such privilege of use and enjoyment by written notice to the Association.



## Property Management

The Association shall also be responsible for proper functioning of the storm water drainage system serving the Community, including maintenance, repair and replacement, as needed, of pipes, culverts, and other structures and equipment comprising the system. It shall have no responsibility for landscaping or other maintenance of Units burdened by storm water drainage easements unless otherwise specifically set forth in a Supplement or in a recorded agreement or plat.

The Association may maintain other property it does not own, including, without limitation, Units, property dedicated to the public, or property owned or maintained by a Neighborhood Association, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on, or arising out of the condition of, property it does not own except to the extent that it has been negligent in performing its maintenance responsibilities.

### 9.3. Discontinuation of Operation

The Association shall maintain the Common Area facilities in operation unless the Founder, during the Development and Sale Period, and Voting Delegates representing 75% of the total votes in the Association, consent in writing to discontinue such operation. If the property is Limited Common Area, any discontinuation shall also require the approval in writing of at least 75% (or such higher percentage as a Supplement may require) of the Owners to whom such Limited Common Area is assigned. This section shall not apply to restrict the Board's ability to establish reasonable operating hours, which may vary by season, or to restrict temporary closures or interruptions in operation as the Board may determine appropriate to perform maintenance or repairs.

### 9.4. Restoring Damaged Improvements

In the event of damage to or destruction of portions of the Area of Common Responsibility

for which the Association has insurance responsibility, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repairing or restoring the property to substantially its condition prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

The Association shall repair or reconstruct damaged Common Area improvements unless the Founder, during the Development and Sale Period, and Voting Delegates representing at least 75% of the total votes in the Association, decide within 60 days after the loss not to repair or reconstruct. If either the insurance proceeds or estimates of the loss, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. No Mortgagee shall have the right to participate in determining whether the damage or destruction to the Common Area shall be repaired or reconstructed.

If a decision is made not to restore the damaged improvements and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.

The Association shall retain and place in a capital improvements account for the benefit of all Owners, or the Owners of Units within the affected Service Area, as appropriate, any insurance proceeds remaining after paying the costs of repair or reconstruction or after such settlement as is necessary and appropriate. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee(s) of any affected Unit.

If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board may, without a vote of the Voting Delegates, levy Special Assessments to cover the shortfall against those Owners responsible for the premiums for

## Property Management



the applicable insurance coverage under Section 11.4.

### 9.5. Relationships with Other Properties

The Association may contract with the owner of any neighboring property to provide for sharing of costs associated with: (a) maintenance and operation of mutually beneficial properties or facilities; or (b) provision of mutually beneficial services.

*We cannot escape the responsibility of tomorrow  
by evading it today. Abraham Lincoln*

### NOTES



## Chapter 10

### Provision of Services

In addition to its property management role, the Association is a vehicle for providing a variety of services for the benefit of the Community at large and individual Units. This chapter describes some of the services the Association may provide and the mechanism by which it may provide varying levels and types of services to different areas of the Community.

#### 10.1. Provision of Services to Units

The Association may arrange for or provide services to Owners and their Units, directly or through contracts with the Founder or other third parties. The Association may enter into bulk service agreements by which a particular service is provided to all Units, or it may offer various services at the option of each Owner, or both. By way of example and not limitation, such services might include such things as cable television, utilities, fire protection, security, trash collection, landscape maintenance, pest control, caretaker services and technology services.

The Association may charge use fees for any such services or the Board may include the cost of services in the Association's Common Expense budget and assess it as part of the Base Assessment, if provided to all Units. If services are provided to less than all Units, the Association may assess such costs as a Service Area Assessment or a Specific Assessment, as appropriate, against only those Units being provided such service.

Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the Persons providing components or services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the Owner or occupant of a Unit, may result in termination of services provided to such Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay assessments for any por-

tion of the charges for such service that are assessed against the Unit as a Common Expense or Service Area Expense pursuant to Chapter 12.

In its discretion, the Board may discontinue offering particular services and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the Governing Documents requiring the Association to provide such services.

#### 10.2. Provision of Services to Service Areas

(a) *Service Areas Designated by Founder.* The Association shall provide services to Units within any Service Area designated by the Founder pursuant to Section 3.2 as required by the terms of any Supplement applicable to the Service Area.

(b) *Service Areas Designated by Board.* In addition to Service Areas which the Founder may designate pursuant to Section 3.2, any group of Owners may petition the Board to designate their Units as a Service Area for the purpose of receiving from the Association: (i) special benefits or services which are not provided to all Units; or (ii) a higher level of service than the Association otherwise provides. Any such petition shall be signed by Owners of a majority of the Units within the proposed Service Area. Upon receipt of such petition, the Board shall investigate the terms upon which the requested benefits or services might be provided and notify the Owners in the proposed Service Area of such terms and the initial fees for providing the requested service, which may include a reasonable administrative charge. If Owners of at least 67% of the Units within the proposed Service Area approve the proposal in writing, the Board shall designate the Units as a Service Area and include the fees for such service as a line item in the Service Area budget pursuant to Section 12.2(c).



10.3. Community Technology

(a) *Community Systems.* The Founder may provide, or may enter into and assign to the Association or cause the Association to enter into contracts with other Persons to provide central telecommunication receiving and distribution systems (e.g., cable television, high speed data/Internet/intranet services, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software, to serve the Community ("Community Systems"). Any such contracts may provide for installation, operation, management, maintenance and upgrades or modifications to the Community Systems as the Founder determines appropriate.

The Association or Founder may provide for access to any such Community System for all Units as a Common Expense. If particular services or benefits are provided to particular Owners or Units at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the charges as a Service Area Assessment or Specific Assessment and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

(b) *Opportunities for Community Interaction.* The Association may make use of computers, the Internet, and expanding technology to facilitate community interaction and encourage participation in Association activities. For example, the Association may sponsor a community cable television channel, create and maintain a community intranet or Internet home page, maintain an "online" newsletter or bulletin board, and offer other technology-related services and opportunities for Owners and occupants to interact and participate in Association-sponsored activities. To the extent Arizona law permits, and unless otherwise specifically prohibited in the Governing Documents, the Association may send notices by electronic means, hold Board or Association meetings and permit attendance and voting by electronic means, and send and collect

assessment and other invoices by electronic means.

*I think there is a world market for maybe five computers.*  
*Thomas Watson, Chairman of IBM, 1943*

NOTES



## Chapter 11

### Association Insurance

*The Association is responsible for insuring against various types of risks, including property damage, personal injury, and liability. This chapter describes the minimum types and amounts of coverage that the Association must obtain, the specific requirements for such policies, and the handling of deductibles and premiums for such insurance.*

#### 11.1. Required Coverage

The Association shall obtain and maintain in effect the following insurance coverage, if reasonably available, or if not reasonably available, the most nearly equivalent coverage as is reasonably available:

(a) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on:

(i) the Common Area;

(ii) other portions of the Area of Common Responsibility, to the extent that the Association has responsibility for repair or replacement in the event of a casualty; and

(iii) any Service Area, to the extent specified or authorized by any applicable Supplement.

If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The limits of Association property insurance policies shall be sufficient to cover the full replacement cost of the insured improvements under current building ordinances and codes.

In addition, if a Supplement so specifies, the Association shall obtain and maintain property insurance on the insurable improvements within

a Service Area, which insurance shall comply with the above requirements.

(b) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, such coverage shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage. Such coverage may be provided through a combination of primary and umbrella policies. However, if additional coverage and higher limits are available at reasonable cost that a reasonably prudent person would obtain, the Association shall obtain such additional coverage or limits;

(c) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(d) Directors and officers liability coverage; and

(e) Commercial crime insurance, including fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's business judgment but not less than an amount equal to one-fourth of the annual Base Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation.


The Association shall arrange for an annual review of the sufficiency of its insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs in the Yavapai County, Arizona area.





In the exercise of its business judgment, the Board may obtain additional insurance coverage and higher limits than this section requires.

11.2. Deductibles

 Persons who cause damage in Mesquite Hills may be held responsible for the insurance deductible payable on any insurance claim related to such damage.

The Association's policies may contain a reasonable deductible, which shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 11.1. In the event of an insured loss, the deductible shall be treated as a Common Expense or a Service Area Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may assess the full amount of such deductible against such Owner(s) and their Units as a Specific Assessment.

11.3. Policy Requirements

All Association policies shall provide for a certificate of insurance to be furnished to the Association and, upon request, to each Owner.

To the extent available at reasonable cost and terms, all Association insurance shall:

(a) be written with a company authorized to do business in Arizona which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

(b) be written in the name of the Association as trustee for the benefited parties. All policies shall be for the benefit of the Association and its members, except that policies on Limited Com-

mon Area shall be for the benefit of the Owners of Units within the Service Area to which the Limited Common Area is assigned and their Mortgagees, as their interests may appear;

(c) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(d) contain an inflation guard endorsement;

(e) include an agreed amount endorsement, if the policy contains a co-insurance clause;

(f) provide that each Owner is an insured person with respect to liability arising out of such Owner's status as a member of the Association;

(g) provide a waiver of subrogation against any Owner or household member of an Owner; and

(h) include an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any act or omission of one or more Owners, unless acting on the Association's behalf within the scope of their authority, or on account of any curable defect or violation, without prior written demand to the Association and allowance of a reasonable time to cure the defect or violation.

In addition, the Board shall use reasonable efforts to secure insurance policies that list the Owners as additional insureds and provide:

(a) a waiver of subrogation as to any claims against the Association's directors, officers, employees, and manager;

(b) a waiver of the insurer's right to repair and reconstruct instead of paying cash;

(c) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(d) an endorsement requiring at least 30 days' prior written notice to the Association of



## Association Insurance

any cancellation, substantial modification, or non-renewal;

(e) a cross liability provision; and

(f) a provision vesting in the Board exclusive authority to adjust losses. However, Mortgagees having an interest in such losses may not be precluded from participating in the settlement negotiations, if any, related to the loss.

### 11.4. Insurance Premiums

Premiums for all Association insurance shall be a Common Expense, except that premiums for property insurance on Units within, or Limited Common Areas assigned to, a particular Service Area shall be a Service Area Expense, unless the Board reasonably determines that other treatment of the premiums is more appropriate.

## NOTES



## Chapter 12

### Association Finances

This chapter provides for various types of funding to cover expenses that the Association incurs or expects to incur in exercising its authority and performing its responsibilities under the Governing Documents. The primary source of funding is the assessments that this chapter authorizes the Association to levy against the Units and collect from the Owner of each Unit. Assessments are secured by a lien on each Unit as described in this chapter.

#### 12.1. Association Expenses

(a) **Common Expenses.** Except as the Governing Documents otherwise specifically provide, all of the expenses that the Association incurs, or expects to incur, in connection with the ownership, maintenance, and operation of the Area of Common Responsibility, and otherwise for the general benefit of the Owners, are considered "Common Expenses." Common Expenses include such operating reserves and reserves for repair and replacement of capital items within the Area of Common Responsibility as the Board finds necessary or appropriate.

Common Expenses shall not include any expenses incurred during the Founder Control Period for initial development or original construction costs unless Voting Delegates representing a majority of the total vote in the Association approve such expenditure.

The characterization of a particular expense as a "Common Expense" shall not preclude the Association from seeking reimbursement for, or a contribution toward, such expenses from other Persons who may be responsible for the expenses incurred or for sharing such expenses pursuant to this Charter, any Supplement, or any other recorded covenants or agreements.

(b) **Service Area Expenses.** All expenses that the Association incurs or expects to incur in connection with the ownership, maintenance and

operation of Limited Common Areas, or in providing other benefits and services to a Service Area, including any operating reserve or reserve for repair and replacement of capital items maintained for the benefit of the Service Area, are considered "Service Area Expenses." Service Area Expenses may include a reasonable administrative charge in such amount as the Board deems appropriate, provided that any such administrative charge is applied at a uniform rate per Unit among all Service Areas receiving the same service.

#### 12.2. Budgeting for and Allocating Association Expenses

(a) **Preparation of Budget.** At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year. In addition, the Board shall prepare a separate budget for each Service Area reflecting the estimated Service Area Expenses that the Association expects to incur for the benefit of such Service Area in the coming year.

The estimated expenses in each budget shall include, in addition to any operating reserves, a reasonable contribution to a reserve fund for repair and replacement of any capital items to be maintained as a Common Expense or as a Service Area Expense of the Service Area for whom the budget is prepared, as applicable. In determining the amount of such reserve contribution, the Board shall take into account the number and nature of replaceable assets, the expected useful life of each, the expected repair or replacement cost, and the contribution required to fund the projected needs by annual contributions over the useful life of the asset.

Each budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be ap-



plied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Service Area Assessments pursuant to subsections (b) and (c).

(b) *Calculation of Base Assessments.* The total budgeted Common Expenses, less any surplus in the Common Expense budget from prior years and any income anticipated from sources other than assessments against the Units, shall be allocated among all Units subject to assessment under Section 12.5 and levied as a "Base Assessment." Base Assessments shall be levied at a uniform rate per Unit.

The Founder may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by the Founder under Section 12.6(b)). Any such subsidy may be treated as a contribution, an advance against future assessments due from the Founder, or a loan, in the Founder's discretion. Any such subsidy and the characterization thereof shall be conspicuously disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate the Founder to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Founder.

(c) *Calculation of Service Area Assessments.* The total Service Area Expenses budgeted for each Service Area, less any surplus in such Service Area budget from prior years, shall be allocated among all Units in the Service Area that are subject to assessment under Section 12.5 and levied as a "Service Area Assessment." Unless otherwise specified in any Supplement applicable to a Service Area, Service Area Assessments shall be set at a uniform rate per Unit in the Service Area, except that any portion of the assessment intended for exterior maintenance of structures, insurance on structures, or replacement reserves which pertain to particular structures may be levied on each of the benefited Units in proportion

to the benefit received, as the Board may reasonably determine.

All amounts the Association collects as Service Area Assessments shall be held in trust for and expended solely for the benefit of the Service Area for which they were collected and shall be accounted for separately from the Association's general funds.

(d) *Notice of Budget and Assessment; Right to Disapprove.* The Board shall send a copy of each applicable budget, together with notice of the amount of the Base Assessment and any Service Area Assessment to be levied pursuant to such budgets, to each Owner at least 30 days prior to the due date of the assessments to be levied pursuant to such budget. After termination of the Founder Control Period, the Common Expense budget shall be subject to disapproval at a meeting by Voting Delegates representing at least 75% of the total votes in the Association. After termination of the Founder Control Period, each Service Area budget shall be subject to disapproval at a meeting by Owners of at least 75% of the Units within the Service Area, except that the right to disapprove a Service Area budget shall apply only to those line items which are attributable to services or benefits requested by the Service Area and shall not apply to any item which the Governing Documents require to be assessed as a Service Area Expense.

There shall be no obligation to call a meeting for the purpose of considering any budget except, in the case of the Common Expense budget, on petition of the Voting Delegates representing at least 67% of the total votes in the Association and, in the case of a Service Area budget, on petition of Owners representing at least 67% of the Units within the Service Area. Any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment.

If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most re-



cently in effect, increased by 10%, shall continue in effect until a new budget is determined.

(e) *Budget Revisions.* The Board may revise the budget and adjust the Base Assessment or Service Area Assessments any time during the year, subject to the same notice requirements and rights to disapprove set forth in subsection (d) above.

(f) *Limitation on Assessment Increases.* Notwithstanding any provision to the contrary, the Board may not impose a Base Assessment which exceeds the Base Assessment for the immediately preceding fiscal year by greater than the percentage set forth in Section 33-1803.A. of the Arizona Planned Communities Act, as amended from time to time, without the prior approval of a majority of the Owners.

12.3. Special Assessments

The Association may levy "Special Assessments" to cover Common Expenses or Service Area Expenses that are non-routine, unanticipated, or in excess of those anticipated in the applicable budget. Except as otherwise specifically provided in this Charter, any Special Assessment for Common Expenses shall require the affirmative vote or written consent of Voting Delegates representing more than 50% of the votes attributable to Units subject to assessment under Section 12.5 and shall be allocated equally among all such Units.. Any Special Assessment for Service Area Expenses shall require the affirmative vote or written consent of Owners representing more than 50% of the total votes allocated to Units in the benefited Service Area and shall be allocated in the same manner as Service Area Assessments under Section 12.2(c). In addition, as long as the Founder membership exists, any Special Assessment shall also be subject to the Founder's written consent. Special Assessments shall be payable in such manner and at such times as the Board determines and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

12.4. Specific Assessments

The Association may levy Specific Assessments against a particular Unit as follows:

(a) to cover the costs, including overhead and administrative costs, of providing services to the Unit upon request of the Owner pursuant to any menu of optional services which the Association may offer (which might include the items identified in Section 10.1). Specific Assessments for optional services may be levied in advance of the provision of the requested service; and

(b) to cover costs incurred in bringing the Unit into compliance with the Governing Documents or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; however, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing in accordance with the By-Laws before levying any Specific Assessment under this subsection (b).


12.5. Authority to Assess Owners; Time of Payment

The Founder hereby establishes and the Association is hereby authorized to levy assessments as provided for in this chapter and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the date on which the Unit is made subject to this Charter; or (b) the month in which the Board first determines a budget and levies assessments pursuant to this chapter, whichever is later, except that any portion of a Service Area assessment allocated to maintenance, repair or replacement of structures on or comprising Units shall not commence until substantial completion of the structure. The first annual Base Assessment and Service Area Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.



Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Service Area Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

12.6. Obligation for Assessments

 By buying a Unit in Mesquite Hills each Owner agrees to pay all assessments levied against his or her Unit. If the Owner does not pay on time, the Owner will be charged late fees and interest on all past due amounts. Owners may not reduce their assessments because of any action or inaction by the Association.

(a) *Personal Obligation.* By accepting a deed or entering into a recorded contract to purchase any Unit, each Owner covenants and agrees to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish, subject to the limitations of Arizona law), late charges as determined by Board resolution, costs, and reasonable attorneys fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance.

The Board's failure to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event,

each Owner shall continue to pay Base Assessments and Service Area Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfall.

No Owner may exempt himself or herself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or non-use of services provided to all Units or to all Units within the Service Area to which the Unit is assigned. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate. Such statement shall be binding upon the Association as to Persons who rely thereon in good faith. Provided such request is made in writing, if the request for a statement of account is not processed within 14 days of receipt of the request, all unpaid assessments that become due before the date of such request shall be subordinate to the lien of a Mortgagee that acquired its interest after requesting such statement.

(b) *Founder's Financial Obligations to Association.* The Founder shall be liable for assessments on any Units it owns that are subject to assessment under this section, except that during the Founder Control Period, the Founder may satisfy its obligation to pay Base Assessments, Service Area Assessments, and Special Assessments



for Common Expenses on Units it owns either by paying such assessments in the same manner as any other Owner, or by paying: (i) any shortfall under the Common Expense budget resulting from events other than failure of other Owners to pay their assessments; and (ii) any budgeted contributions to reserves in accordance with the Common Expense budget. Unless the Founder otherwise notifies the Board in writing at least 30 days before the beginning of each fiscal year, the Founder shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. After termination of the Founder Control Period, the Founder shall pay Base Assessments on any Units it owns that are subject to assessment under Section 12.5 in the same manner as any other Owner liable for such assessments.

Regardless of the Founder's election under this section, any of the Founder's financial obligations to the Association may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

**12.7. Lien for Assessments**

(a) *Existence of Lien.* The Association shall have a lien against each Unit to secure payment of assessments, as well as interest, late charges (subject to the limitations of Arizona law), and costs of collection (including attorneys fees and expenses). Such lien shall be superior to all other liens, except: (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior; (b) the lien or charge of any recorded Mortgage made in good faith and for value having first priority over any other Mortgages on the Unit; and (c) any liens recorded prior to the recording of this Charter.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Unit the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the

Association to execute and record any such document shall not affect the validity, enforceability, or priority of the lien.

(b) *Enforcement of Lien.* The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Unit shall be charged, in addition to its usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same, in addition to pursuing any and all remedies allowed by law to enforce the lien.

(c) *Effect of Sale or Transfer.* Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner of the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under Section 12.5, including such acquirer, its successors and assigns.

**12.8. Capitalization of Association**

The first Owner of each Unit other than the Founder or a Founder Affiliate shall make a contribution to the working capital of the Association in an amount equal to one-fourth of the annual Base Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual Base Assessment levied on the Unit and shall not be considered an advance payment of such assessments. This amount shall be due and payable to the Association immedi-



ately upon transfer of title, for its use in covering initial start-up expenses, operating expenses and other expenses which it incurs pursuant to this Charter and the By-Laws.

12.9. Use and Consumption Fees

The Board may charge use and consumption fees to any Person using Association services or facilities and may determine the amount and method of determining such fees.

12.10. Exempt Property

The following property shall be exempt from payment of Base Assessments, Service Area Assessments, Specific Assessments, and Special Assessments:

(a) All Common Area and such portions of the property owned by the Founder or a Founder Affiliate as are included in the Area of Common Responsibility;

(b) Any property dedicated to and accepted by any governmental authority; and

(c) Property owned by any Neighborhood Association for the common use and enjoyment of its members, or owned by the members of a Neighborhood Association as tenants-in-common.

In addition, the Association may, by resolution, grant exemptions to certain Persons qualifying for tax-exempt status under Section 501(c) of the Internal Revenue Code so long as such Persons own property subject to this Charter for purposes listed in Section 501(c) of the Internal Revenue Code.

12.11. Community Enhancement Fee

[FOR DISCUSSION PURPOSES]

(a) *Authority.* As an additional funding source, the Board may establish and collect a Community Enhancement Fee upon each transfer of title to a Unit. The fee shall be charged to the seller of the Unit, shall be payable to the Association at the closing of the transfer, and shall

be secured by the Association's lien under Section 12.7. Each Owner shall notify the Association's Secretary or designee at least 10 days prior to the scheduled closing and provide the name of the buyer, the date of title transfer, and other information the Board may reasonably require.

(b) *Fee Limit.* The Board shall have the sole discretion to determine the amount of and method of calculating the Community Enhancement Fee. The fee may be based upon a sliding scale that varies in accordance with the "gross selling price" of the property or any other factor the Board deems appropriate. However, the Community Enhancement Fee may not exceed 0.25% of the Unit's gross selling price. The gross selling price is the total cost to the purchaser of the Unit, excluding transfer taxes, title fees, and recording fees, if any, imposed by Yavapai County, and/or the State of Arizona.

(c) *Purpose.* The Community Enhancement Fee shall be used to provide funding for activities and such other purposes as the Board deems beneficial to the general good and welfare of Mesquite Hills. For example, Community Enhancement Fees might be used to assist one or more tax-exempt entities in funding:

(i) programs and activities which enhance the welfare, benefit, and lifestyle of residents within and outside Mesquite Hills;

(ii) the preservation and maintenance of natural areas, wildlife preserves, and similar conservation areas and sponsorship of educational programs and activities that contribute to the overall understanding, appreciation, and preservation of the natural environment within and surrounding Mesquite Hills;

(iii) programs, services, and activities which serve to promote a sense of community within Mesquite Hills, such as recreational leagues, cultural programs, educational programs, festivals and holiday celebrations and activities, a community computer network, and recycling programs; and





(iv) social services, educational programs, community outreach programs, and other charitable causes.

not required to be, deemed exempt from payment of the Community Enhancement Fee).

NOTES

(d) *Exempt Transfers.* Notwithstanding the above, no Community Enhancement Fee shall be levied upon transfer of title to a Unit:

(i) by or to the Founder;

(ii) by a Builder designated by the Founder who held title solely for purposes of development and resale;

(iii) by an Owner who conveys a Unit that is the personal residence of such Owner, if such Owner acquires another Unit within Mesquite Hills within 30 days thereafter for use as such Owner's personal residence;

(iv) by a co-owner to any Person who was a co-owner immediately prior to such transfer;

(v) to the Owner's estate, surviving spouse, or heirs at law upon the death of the Owner;

(vi) to an entity wholly owned by the grantor or to a family trust created by the grantor for the benefit of grantor, his or her spouse, and/or heirs at law; provided, upon any subsequent transfer of an ownership interest in such entity, the Community Enhancement Fee shall become due;

(vii) to an institutional lender pursuant to a Mortgage or upon foreclosure of a Mortgage, or to an institutional lender who takes a deed in lieu of foreclosure;

(viii) to a Person who takes title to a Unit under a beneficiary deed; or

(ix) under circumstances which the Board, in its discretion, deems to warrant classification as an exempt transfer (e.g., a transfer made solely for estate planning purposes may be, but is



## PART FOUR: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY

*You don't get harmony when everybody sings the same note.*

*Doug Floyd*



## Chapter 13

### Easements

The easements created in this chapter establish the rights of Owners to use the Common Area and create various rights for the benefit of Owners, the Founder, the Association, and others over property within the Community. Some of these rights are related to development and construction within the Community and on adjacent property, while others relate to the rights of the Association to come upon property of others to fulfill its responsibilities and the interrelationships between the Community and the owners of adjacent property.

#### 13.1. Easements in Common Area



An easement is one person's right to go onto the property of another.

The Founder grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any plat or deed conveying such property to the Association; and
- (c) The Board's right to:
  - (i) adopt rules regulating Common Area use and enjoyment, including rules limiting the number of guests who may use the Common Area, and to charge use fees for such use;
  - (ii) suspend an Owner's right to use Common Area facilities, including, but not limited to, recreational amenities;
  - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Charter;
  - (iv) impose reasonable membership requirements and charge reasonable admission or

other use fees for the use of any recreational facility situated upon the Common Area;

(v) rent any portion of any clubhouse or other Common Area recreational facilities on an exclusive or non-exclusive, short-term basis to any Person;

(vi) permit use of any recreational facilities situated on the Common Area by the general public, which may be subject to admission charges, membership fees, or other user fees established by the Board;

(vii) permit use of any Common Area facilities, at such charge or no charge as the Board may determine appropriate, for the purpose of offering and conducting classes or other activities for interested Owners and occupants, whether offered on a for-profit or nonprofit basis;

(viii) mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the limitations on borrowing set forth in the By-Laws and the approval requirements set forth in this Charter; and

(d) Certain Owners' rights to the exclusive use of those portions of the Common Area designated "Limited Common Area," if any.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation. An Owner who leases his or her entire Unit (as opposed to leasing only a garage apartment or in-law suite, or guest house authorized pursuant to Section 7.1(b)) shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.



13.2. Easements of Encroachment



An encroachment occurs when a person's home, fence, or other structure extends onto his or her neighbor's property. This section permits minor, unintentional encroachments to remain.

The Founder grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area and between adjacent Units. A permitted encroachment is a structure or fixture that extends unintentionally from one person's property onto another's a distance of not more than one foot, as measured from any point on the common boundary along a line perpendicular to such boundary. An encroachment easement shall not exist if the encroachment results from willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

13.3. Easements for Utilities, Etc

(a) *Installation and Maintenance.* The Founder reserves for itself, its successors, assigns, and designees, perpetual exclusive easements throughout Mesquite Hills (but not through a structure) for the purpose of:

(i) installing utilities and infrastructure, Community Systems, security and similar systems, and drainage systems to serve Mesquite Hills;

(ii) installing walkways, pathways and trails, street lights, and signage on property the Founder or the Association owns or within public rights-of-way or easements reserved for such purpose on a recorded plat;

(iii) inspecting, maintaining, repairing, and replace the utilities, infrastructure, and other improvements described above; and

(iv) access to read, maintain, and repair utility meters.

Notwithstanding the above, the Founder reserves the right to deny access to any utility or service provider, to the extent permitted by law, or to condition such access on negotiated terms.

(b) *Specific Easements.* The Founder also reserves the non-exclusive right and power to grant and record such specific easements, consistent with Section 13.3(a), as it deems necessary or appropriate to develop the property described in Exhibits "A" and "B." The location of the specific easement shall be subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) *Minimal Interference.* All work associated with the exercise of the easements described in subsections (a) and (b) of this section shall be performed so as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to the condition existing prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

13.4. Easements to Serve Additional Property

The Founder hereby reserves for itself and its duly authorized agents, successors, assigns, and Mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit "B," whether or not such property is made subject to this Charter. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. The Person exercising such easement rights shall be responsible for any damage caused to the Common Area as a result of their actions




## Easements

in connection with development of such property.


If the above easement grants permanent access to any property which is not submitted to this Charter, the Founder, or its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance that the Association provides for the benefit of the easement holder. The shared maintenance costs may include maintenance to or along any roadway providing access to the benefited property.

### 13.5. Easements for Maintenance, Emergency, and Enforcement

 The Association may come onto the exterior portions of a Unit to perform maintenance or to address violations of the covenants, but will give prior notice unless there is an urgent need to enter the property before notice can be given.

By this Charter, the Founder grants to the Association easements over Mesquite Hills as necessary to enable the Association to fulfill its maintenance responsibilities under Section 6.2 and its enforcement rights under Section 8.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance, to inspect for compliance with the Governing Documents, and to enforce the Governing Documents. Any member of the Board and its duly authorized agents and assignees and all emergency personnel in the performance of their duties may exercise such right. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

### 13.6. Easements for Lake and Pond Maintenance and Flood Water

 The Founder has the right to access property adjacent to lakes, ponds, ditches, streams and wetlands for maintenance and irrigation purposes.

The Founder reserves for itself and its successors, assigns, and designees, the nonexclusive right and easement, but not the obligation, to enter upon bodies of water and wetlands located within the Area of Common Responsibility to (a) install, operate, maintain, and replace pumps to supply irrigation water to the Area of Common Responsibility; (b) construct, maintain, and repair structures and equipment used for retaining water; and (c) maintain such areas in a manner consistent with the Community-Wide Standard. The Founder and its successors, assigns, and designees shall have an access easement over and across any of Mesquite Hills abutting or containing bodies of water or wetlands to the extent reasonably necessary to exercise their rights under this section.

The Founder further reserves for itself and its successors, assigns, and designees, a perpetual, nonexclusive right and easement of access and encroachment over the Common Area and Units (but not the dwellings thereon) adjacent to or within 50 feet of bodies of water and wetlands within Mesquite Hills, in order to: (a) temporarily flood and back water upon and maintain water over such portions of Mesquite Hills; (b) alter in any manner and generally maintain the bodies of water and wetlands within the Area of Common Responsibility; and (c) maintain and landscape the slopes and banks pertaining to such areas. All persons entitled to exercise these easements shall use reasonable care in and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make the Founder or any other Person liable for damage resulting from flooding due to weather events or other natural occurrences.



13.7. Easements Over Private Roadways

(a) Founder hereby grants to the Association and to the Owner of each Unit a non-exclusive right and easement of use and access over the private roadways within the Community ("Roadways"). Any Owner may extend his or her right of use and access over the Roadways to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable Board regulation.

(b) Not later than the expiration of the Development and Sale Period, the Founder will transfer the Roadways to the Association as Common Area, subject to the easements for access described in this Charter, easements previously created for the benefit of property adjacent to the property described on Exhibits "A" and "B," and such additional easements as the Founder deems appropriate. Use of such Roadways shall be subject to and in accordance with any rights and easements shown on any plat of the Community and such reasonable Use Restrictions and Rules as the Association may adopt from time to time consistent with this Charter and any law, ordinance, or regulation governing the Community.

(c) The Founder hereby reserves for itself, its agents, employees, successors, assigns, and other Persons it may designate, an easement over the Roadways for the purpose of constructing, maintaining, repairing, or rebuilding any subdivision improvements installed or to be installed in the Community and for performing any other work within the Community which the Founder deems reasonably necessary, in its discretion, or which the Founder is required to perform pursuant to a contract with any Owner or pursuant to the requirements of any government agency having jurisdiction over the Community. The Founder hereby authorizes the contractors, subcontractors, laborers, materialmen, and other Persons providing construction services and materials to any Unit to exercise this easement for access to such Unit, subject to such rules as the Association may adopt; however, during the Development and Sale Period, the Founder shall have the right to

restrict use of all or portions of the Roadways and designate alternate access for such Persons, and to revoke such authorization and prohibit the use of the Roadways by Persons who violate the Governing Documents or any agreement with the Founder.

(d) The Founder hereby creates a perpetual, nonexclusive easement for access, ingress, and egress over the Roadways for law enforcement, fire fighting, paramedic, rescue, and other emergency vehicles, equipment, and personnel; for school buses; for U.S. Postal Service delivery vehicles and personnel; utility providers, and for vehicles, equipment, and personnel providing garbage collection service to the Community; however, such easement shall not authorize any such Persons to enter the Community except while acting in their official capacities. The Association shall have the right to limit access for garbage collection purposes to such days of the week as the Board may specify.

(e) Founder reserves for itself and Founder Affiliates a perpetual, non-exclusive easement of access to and use of the Roadways and Common Areas in connection with the marketing and sale of other communities which Founder or any Founder Affiliate may be developing and marketing, in order to show the Community as an example of the Founder's developments.

(f) The existence of the easements described in this section shall not preclude the Association from maintaining gates or other devices or systems designed to limit general vehicular access to the Community, provided that the Association at all times maintains systems and/or procedures to permit entry of Persons authorized to exercise the easements granted in this subsection without unreasonable interference or delay.

NOTES



## Chapter 14

### Disclosures and Waivers

*This chapter discloses some important information about the Community for the benefit of prospective purchasers of property in the Community. Each Owner, by accepting a deed to property in the Community, also accepts and agrees to the matters set forth in this chapter.*

#### 14.1. Facilities and Services Open to the Public

Certain facilities and areas within Mesquite Hills may be open for use and enjoyment of the public. Such facilities and areas may include, by way of example, by not limitation: greenbelts, trails and paths, and parks. The Founder may designate such facilities and areas as open to the public at the time the Founder makes them a part of the Area of Common Responsibility, or the Board may so designate at any time thereafter. In addition, the Association may permit use of any recreational amenities by individuals who do not own a Unit within the Community upon the payment of such user fees or membership fees established by the Board.

#### 14.2. Safety and Security

Each Owner and occupant of a Unit, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property in Mesquite Hills. The Association may, but shall not be obligated to, maintain or support certain activities within Mesquite Hills designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. However, the Association, the Founder, and Founder Affiliate shall not in any way be considered insurers or guarantors of safety or security within Mesquite Hills, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate security or ineffectiveness of security measures undertaken.

No representation or warranty is made that any systems or measures, including security monitoring systems or any mechanism or system for limiting access to Mesquite Hills, cannot be compromised or circumvented, nor that any such systems or security measures undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges, understands, and shall be responsible for informing any tenants and other occupants of such Owner's Unit that the Association, its Board and committees, and the Founder and Founder Affiliates are not insurers or guarantors of security or safety and that each person within Mesquite Hills assumes all risks of personal injury and loss or damage to property, including Units and the contents of Units, resulting from acts of third parties.

#### 14.3. Changes in Master Plan

Each Owner acknowledges that Mesquite Hills is a master planned community, the development of which is likely to extend over many years, and agrees that the neither the Association nor any Neighborhood Association shall engage in, or use Association or Neighborhood Association funds to support, any protest, challenge, or other form of objection to changes in uses or density of property within Mesquite Hills, or changes in the Master Plan as it relates to property outside Mesquite Hills, without the Founder's prior written consent.

#### 14.4. View Impairment

Neither the Founder, nor any Founder Affiliate, nor the Association, guarantee or represent that any view over and across the Units, any open space within the Community will be preserved without impairment. The Founder, Founder Affiliates, and the Association shall have no obligation to relocate, prune, or thin trees or other landscaping except to maintain the Community-



## Disclosures and Waivers

Wide Standard or as otherwise required under a separate covenant or agreement. The Association shall have the right to add trees and other landscaping to the Common Area. There shall be no express or implied easements for view purposes or for the passage of light and air.

### 14.5. Notices and Disclaimers as to Community Systems and Services

Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. The Founder, Founder Affiliates, or any of their respective successors or assigns shall not be liable for, and no Community System or Service user shall be entitled to refund, rebate, discount, or offset in applicable fees for, any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the service provider's control.

The Owner of each Unit shall be responsible for ensuring that the dwelling on such Unit is pre-wired to connect to any Community System installed by or at the request of the Founder pursuant to Section 17.7. If such wiring is installed by a party other than the provider of the Community System, the Owner shall contact the provider of the Community System upon completion of such installation and arrange for the provider of the Community System to inspect the wiring to ensure compatibility with the Community System. If authorized by the Founder, the provider of the Community System may charge the Owner of the Unit a reasonable fee for such inspection. If it is determined that the wiring is not compatible, the Owner of the Unit shall promptly arrange for such wiring to be replaced with wiring that is compatible with the Community System.

### 14.6. Natural Conditions

(a) The Community contains a number of natural and environmentally sensitive areas that may serve as habitats for a variety of native plants and wildlife, some of which may pose hazards to persons or pets coming in contact with them.

Each Owner and occupant of a Unit and every person entering the Community: (i) acknowledges that such plants and wildlife are indigenous to the area and are not restrained or restricted in their movement within or through the Community; and (ii) assumes all risk of personal injury arising from the presence of such plants and wildlife within the Community. The Association, the Founder, or the members, managers, partners, affiliates, officers, directors, agents, or employees of either of the foregoing shall not have any duty to take action to control, remove, or eradicate any plant or wildlife in the Community, nor shall they have any liability for any injury resulting from the presence, movement, or propagation of any plant or wildlife within or through the Community.

(b) The natural areas described in Section 14.6(a) above may also contain bodies of water, muddy areas, and underbrush, among other things, all of which are important to the ecological balance and maintenance of the area as a wildlife habitat. No Owner or occupant of a Unit shall enter upon, or permit their guests or any other person acting on their behalf to enter upon or disturb such areas in any way without the Association's prior written approval.

## NOTES





## Chapter 15

### Rights of Lenders

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*In order to enhance each Owner's ability to obtain financing for the purchase of his or her Unit, this chapter sets forth various provisions for the benefit of lenders who make mortgage loans and for the benefit of those agencies which guarantee and insure mortgage loans made by institutional lenders.*

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in Mesquite Hills. The provisions of this chapter apply to both this Charter and to the By-Laws, notwithstanding any other provisions contained therein.

#### 15.1. Notices of Action

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of Mesquite Hills or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder; and

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or occupant which is not cured within 60 days.

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

#### 15.2. No Priority

No provision of this Charter or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

#### 15.3. Notice to Association

Upon request, each Owner shall furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

#### 15.4. Failure of Mortgagee to Respond

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within 30 days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

#### NOTES



## PART FIVE: COMMUNITY DEVELOPMENT

*The rung of a ladder was never meant to rest upon, but only to hold a man's foot long enough to enable him to put the other somewhat higher.*

*Thomas Henry Huxley*



## Chapter 16

### Expansion of the Community

*It is not practical to develop, market, and sell a community the projected size of Mesquite Hills all at one time. Therefore, the Founder intends to develop the Community in phases to meet demand. This chapter establishes procedures by which the Founder and the Association may expand the Community.*

#### 16.1. Expansion by Founder

From time to time, the Founder may submit to the terms of this Charter all or any portion of the property described in Exhibit "B" by recording a Supplement describing the additional property to be submitted. The Founder may record such a Supplement without the consent of any Person except the owner of such property, if not the Founder.

The Founder's right to expand Mesquite Hills under this section expires when all property described in Exhibit "B" has been submitted to this Charter or 40 years after this Charter is recorded, whichever is earlier. Until then, the Founder may transfer or assign this right to any Founder Affiliate or any Person who is the developer of at least a portion of the real property described in Exhibit "A" or "B." Any such transfer shall be described in a recorded instrument executed by the Founder.

Nothing in this Charter shall require the Founder or any successor to submit additional property to this Charter or to develop any of the property described in Exhibit "B" in any manner whatsoever. The Founder may submit different parcels of property to this Charter at different times. The Founder gives no assurances as to the boundaries of the parcels that may be submitted to this Charter, or as to the order in which the Founder may submit different parcels of property to this Charter.

#### 16.2. Expansion by the Association

The Association also may submit additional property to this Charter by recording a Supplement describing the additional property. Any Supplement which the Association records must be approved by Voting Delegates representing more than 50% of the total votes in the Association at a meeting duly called for such purpose and by the owner of the property to be submitted. In addition, during the Development and Sale Period, the Founder's consent is required. The Association's President and Secretary, the owner of the property, and the Founder, if the Founder's consent is required, shall sign the Supplement.

#### 16.3. Additional Covenants and Easements

Any Supplement that the Founder records may impose additional covenants and easements on the property described in such Supplement, such as covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Service Area Assessments. Such provisions may be included in a Supplement submitting new property to this Charter or may be set forth in a separate Supplement applicable to property previously submitted to this Charter. If someone other than the Founder owns the property, then the Supplement must be signed by such owner evidencing such owner's consent. Any Supplement may add to, create exceptions to, or otherwise modify the terms of this Charter as it applies to the property described in the Supplement, in order to reflect the different character and intended use of such property.

#### 16.4. Effect of Filing a Supplement

A Supplement shall be effective upon recording unless otherwise specified in the Supplement. On the effective date of the Supplement, any additional property made subject to this Charter shall be assigned voting rights in the

**Expansion of the Community**



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Association and assessment liability in accordance with the provisions of this Charter.

**NOTES**



## Chapter 17

### Additional Rights Reserved to the Founder

*This chapter reserves various rights to the Founder, in addition to those specifically reserved elsewhere in the Governing Documents, in order to facilitate the Founder's development and sale of property in the Community, to enable the Founder to respond to Owners' concerns, and to protect various property rights and other interests of the Founder.*

#### 17.1. Withdrawal of Property

During the Development and Sale Period, the Founder may amend this Charter to remove any unimproved portion of the Community from the coverage of this Charter. "Unimproved" means that no permanent structure has yet been completed on the property. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Founder. If the property is Common Area, the Association shall consent to such withdrawal.

#### 17.2. Marketing and Sales Activities

Notwithstanding anything in the Governing Documents to the contrary, during the Development and Sale Period the Founder and its designees or assigns may construct, use, and maintain upon portions of the Common Area and other property they own, such facilities and activities as, in the Founder's opinion, may reasonably be required, convenient, or incidental to the construction or sale of Units.

Such permitted facilities and activities shall include business offices, signs, model homes, sales offices, holding or sponsoring special events, and exterior lighting features or displays. In addition, if reasonably required, convenient, or incidental to construction or sales activities, the Founder and its employees, agents, and designees may park vehicles in designated parking areas, including within courtyards enclosed by building frontages or in parking courts.

#### 17.3. Access for Development Purposes

During the Development and Sale Period, the Founder and its employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area and roadways within the Community for the purpose of making, constructing, and installing such improvements to the Common Area and to the Exhibit "B" property as it deems appropriate.

In addition, during the Development and Sale Period, the Founder may replat property that it owns and convert Units it owns into Common Area.

#### 17.4. Right to Approve Changes in Mesquite Hills Standards

During the Development and Sale Period, no amendment to or modification of any Rules or Design Guidelines shall be effective without prior notice to and the written approval of the Founder.

#### 17.5. Additional Covenants and Restrictions

During the Development and Sale Period, no one other than the Founder or a Founder Affiliate may record any additional covenants or restrictions affecting any portion of the Community without the Founder's written consent. Any instrument recorded without the required consent shall be void and of no force and effect.

#### 17.6. Exclusive Rights to Use Name of Development

No Person other than the Founder or a Founder Affiliate shall use the name "Mesquite Hills" or any derivative of such name or in any logo or depiction associated with Mesquite Hills in any printed or promotional material without the Founder's prior written consent. However, Owners may use the name "Mesquite Hills" in printed



or promotional matter where such term is used solely to specify that particular property is located within Mesquite Hills, and the Association shall be entitled to use the word "Mesquite Hills" in its name.

**17.7. Community Systems**

The Founder reserves for itself, Founder Affiliates, and their respective successors and assigns, a perpetual right and easement over all of the property in Mesquite Hills to install and operate such Community Systems as the Founder, in its discretion, deems appropriate to serve any portion of the Community. Such right shall include, without limitation, the Founder's right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the region. The Founder also has the right to charge or authorize any provider to charge individual users a reasonable fee, not to exceed the maximum allowable charge for such service, as from time to time is defined by the laws, rules, and regulations of the relevant government authority, if applicable.

The Founder may enter into and assign to the Association, or cause the Association to enter into, a bulk rate service agreement providing for access to any Community Systems for all Units as a Common Expense. If particular services or benefits are provided to particular Owners or Units at their request, the benefited Owner(s) shall pay the service provider directly for such services, or the Association may assess the charges as a Service Area Assessment or Specific Assessment and pay such charges to the provider on behalf of the Owners, as the Board deems appropriate.

Notwithstanding the above, there is no guarantee or representation that any particular Community System will be made available.

**17.8. Easement to Inspect and Right to Correct**

The Founder reserves for itself and others it may designate the right, but not the obligation, to

inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the property within Mesquite Hills, including Units, and a perpetual nonexclusive easement of access throughout Mesquite Hills to the extent reasonably necessary to exercise such right. Except in an emergency, entry onto a Unit shall be only after reasonable notice to the Owner, and no entry into an enclosed structure shall be permitted without the Owner's consent. The Person exercising this easement shall promptly repair, at such person's own expense, any damage he or she causes. Nothing in this paragraph shall relieve an Owner of the responsibility for the maintenance and repair of his or her Unit.

**17.9. Right to Notice of Design or Construction Claims**

No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within Mesquite Hills in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless the Founder and any builder involved in the design or construction have been first notified in writing and given an opportunity to meet with the owner of the property to discuss the owner's concerns and conduct their own inspection.

**17.10. Right to Transfer or Assign the Founder's Rights.**

Any or all of the Founder's special rights and obligations set forth in this Charter or the By-Laws may be transferred in whole or in part to other Persons. However, such a transfer shall not reduce an obligation nor enlarge a right beyond that which Founder has under this Charter or the By-Laws. No such transfer or assignment shall be effective unless it is in a recorded instrument the Founder signs. The foregoing sentence shall not preclude the Founder from permitting other Persons to exercise, on a one-time or limited basis, any right reserved to the Founder in this Charter where the Founder does not intend to transfer such right in its entirety. In such case, it shall not



## Additional Rights Reserved to the Founder

be necessary to record any written assignment unless necessary to evidence the Founder's consent to such exercise.

### 17.11. Termination of Rights

The rights contained in this chapter shall not terminate until the earlier of (a) termination of the Development and Sale Period; or (b) the Founder's recording of a written statement that all sales activity has ceased.

*The very essence of leadership is that you have to have a vision. Theodore Hesburgh*

## NOTES



## PART SIX: PROCEDURES FOR AND LIMITATIONS ON CERTAIN ACTIONS

*There are many ways of going forward, but only one way of standing still.*

*Franklin D. Roosevelt*





## Chapter 18

### Dispute Resolution and Limitation on Litigation

*From time to time, disputes may arise between Owners, or between an Owner and the Association, the Founder or others involved in the Community. This commits the parties to any such a dispute to work together in an attempt to resolve the dispute without litigation in order to facilitate the prompt resolution of such disputes in a manner that respects and builds upon the relationships between the parties. It also requires substantial support of the Association's membership before the Association can engage in certain types of litigation that could result in significant legal and emotional costs to the Community.*

#### 18.1. Agreement to Encourage Resolution of Disputes Without Litigation

(a) **Bound Parties.** The Founder, Founder Affiliates, the Association and its officers, directors, and committee members, all Persons subject to this Charter, and any Person not otherwise subject to this Charter who agrees to submit to this chapter (collectively, "Bound Parties"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving the Community without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with respect to a Claim described in subsection (b), unless and until it has first submitted such Claim to the alternative dispute resolution procedures set forth in Section 18.2 in a good faith effort to resolve such Claim.

(b) **Claims.** As used in this chapter, the term "Claim" shall refer to any claim, grievance, or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Governing Documents;
- (ii) the rights, obligations, and duties of any Bound Party under the Governing Documents; or

(iii) the design or construction of improvements within the Community, other than matters of aesthetic judgment under Chapter 5, which shall not be subject to review and shall not be subject to this chapter.

Notwithstanding the above, the following shall not be considered "Claims" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 18.2:

(i) any suit by the Association to collect assessments or other amounts due from any Owner;

(ii) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Part Two of this Charter (relating to creation and maintenance of community standards);

(iii) any suit that does not include the Founder, a Founder Affiliate, or the Association as a party, if such suit asserts a Claim that would constitute a cause of action independent of the Governing Documents;

(iv) any dispute which affects the material rights or obligations of a party who is not a Bound Party and has not agreed to submit to the procedures set forth in Section 18.2; and

(v) any suit as to which any applicable statute of limitations would expire within 180 days of giving the Notice required by Section 18.2(a), unless the party or parties against whom the Claim is made agree to toll, or extend, the Claim's statute of limitations to comply with this chapter.





## Dispute Resolution and Limitation on Litigation

have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim.

If the parties do not settle the Claim within 30 days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be entitled to file suit or to initiate administrative proceedings on the Claim, as appropriate.

Each Bound Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall pay an equal share of the mediator's fees.

(d) *Settlement.* Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to comply again with the procedures set forth in this section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

### 18.3. Initiation of Litigation by Association

In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceeding unless first approved by Voting Delegates representing at least 75% of the total votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Founder Control Period;
- (b) initiated to enforce the provisions of this Charter, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge *ad valorem* taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

### 18.4. Limitation of Damages

All Bound Parties agree that, in any lawsuit arising out of a Claim subject to the procedures set forth in Section 18.2, any damage award shall be limited to the amount of any actual economic loss suffered by the prevailing party and shall not include punitive damages or damages for pain and suffering, except that punitive damages shall be permitted in the case of a lawsuit arising out of a violation of the Governing Documents.

*Problems cannot be solved at the same level of awareness that created them. Albert Einstein*

### NOTES



## Chapter 19

### Changes in the Common Area

*Various influences and circumstances within and outside the Community may give rise to a need or desire to make changes in the ownership of, or rights to use, Common Area. This chapter explains the procedures for dealing with matters such as changing use rights in Common Area or Limited Common Area, partition of the Common Area, and condemnation.*

#### 19.1. Assignment and Reassignment of Limited Common Area

(a) *Assignment.* In addition to Founder's right to initially assign Limited Common Area, the Board may designate any portion of the Common Area as Limited Common Area upon approval of the Board, the consent of Voting Delegates representing at least 75% of the total votes in the Association, and the consent of Owners of a majority of the Units to which the Board proposes to assign such Limited Common Area, except that no such assignment shall have the effect of denying any Owner access to such Owner's Unit or recreational facilities, if any, within the Common Area to which the Owner had access to prior to the reassignment without such Owner's consent. As long as the Founder owns any property subject to this Charter or which may become subject to this Charter in accordance with Section 16.1, any such assignment shall also require the Founder's written consent.

(b) *Reassignment.* Limited Common Area, once assigned, may be reassigned only with the consent of the Owners of the Units affected by such reassignment.

(c) *Use by Others.* Upon approval of a majority of Owners of Units to which any Limited Common Area is assigned, the Association may permit Owners of other Units to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area.

(d) *Reassignment.* Limited Common Area, once assigned, may be reassigned only with the consent of the Owners of the Units affected by such reassignment.

(e) *Use by Others.* Upon approval of a majority of Owners of Units to which any Limited Common Area is assigned, the Association may permit Owners of other Units to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Service Area Expenses attributable to such Limited Common Area.

#### 19.2. Condemnation



A public entity such as a town, county, or state has the power to condemn property for its own uses and generally has to pay the value of the property to do so.

If any part of the Common Area is taken by any authority having the power of condemnation or eminent domain, or conveyed by the Association in lieu of and under threat of condemnation with such approval as may be required under Section 19.4, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:


If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60 days after such taking the Founder, during the Development and Sale Period, and Voting Delegates entitled to cast at least 75% of the total votes in the Association shall otherwise agree. Any such con-



struction shall be in accordance with plans approved by the Board. The provisions of Section 9.4 regarding funds for restoring damaged improvements shall apply.

If the taking or conveyance does not involve any improvements on the Common Area, if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be treated in the same manner as proceeds from the sale of Common Area under Section 19.4.

19.3. Partition

 Partition is a legal action in which a party requests to have a portion of one interest in property split off so that the party can possess that portion or interest separately from other parties who have rights in the property.

Except as permitted in this Charter, the Common Area shall remain undivided, and no Person shall bring any action to partition any portion of the Common Area without the written consent of all Owners and Mortgagees. This section shall not prohibit the Board from acquiring and disposing of tangible personal property or from acquiring and disposing of real property that may or may not be subject to this Charter.

19.4. Transfer, Mortgaging, or Dedication of Common Area

The Association may dedicate portions of the Common Area to Yavapai County, Arizona or to any other local, state, or federal governmental or quasi-governmental entity, may subject Common Area to a security interest, or may transfer or convey Common Area as follows:

(a) if Common Area other than Limited Common Area, upon the written direction of Voting Delegates representing at least 75% of the total votes in the Association and, during the Development and Sale Period, the written consent of the Founder; and

(b) if Limited Common Area, upon written approval of Owners of at least 75% of the Units to which such Limited Common Area is assigned.

The proceeds from the sale or mortgaging of Common Area other than Limited Common Area shall be an asset of the Association to be used as the Board determines. The proceeds from the sale or mortgaging of Limited Common Area shall be disbursed in the manner approved by the Owners of Units to which the Limited Common Area is assigned at the time such sale or mortgage is authorized.

No conveyance or encumbrance of Common Area may deprive any Unit of rights of access or support.

*Anyone who has never made a mistake has never tried anything new. Albert Einstein*

NOTES



## Chapter 20

### Termination and Amendment of Charter

As the Community matures and grows, the rules by which it is governed must be flexible enough to adapt to changes in the development plan, as well as changes in the needs and desires of the Community that inevitably will occur. This chapter sets out procedures by which either the Founder or the Owners as a group may amend this Charter to address such changes.

#### 20.1. Term and Termination

This Charter shall be effective for a minimum of 21 years from the date it is recorded. After 21 years, this Charter shall be extended automatically for successive 10-year periods unless at least 75% of the then Owners sign a document stating that the Community Charter is terminated and that document is recorded within the year before any extension. In such case, this Charter shall terminate on the date specified in the termination document.

This section shall not permit termination of any easement created in this Charter without the consent of the holder of such easement.

#### 20.2. Amendment

(a) *By the Founder.* In addition to specific amendment rights granted elsewhere in this Charter, until termination of the Founder Control Period, the Founder may unilaterally amend this Charter for any purpose.

Thereafter, the Founder may unilaterally amend this Charter: (i) to correct clerical, typographical or technical errors; (ii) to comply with any applicable governmental statute, rule, regulation, or judicial determination; (iii) to comply with the requirements, standards or guidelines of any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; (iv) to enable any reputable title insurance company to issue title insur-

ance coverage on the Units; and (v) as necessary to exercise the rights reserved to the Founder under the Charter.

In addition, during the Development and Sale Period, the Founder may unilaterally amend this Charter for any other purpose, provided the amendment has no material adverse effect upon the rights of more than 2% of the Owners.

(b) *By the Owners.* Except as otherwise specifically provided above, this Charter may be amended only by:

(i) the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing at least 75% of the total votes in the Association, including 75% of the total votes held by Owners other than the Founder; and

(ii) during the Development and Sale Period, the Founder's written consent.

(c) *Validity and Effective Date.* Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of the Founder or the Founder Member without the written consent of the Founder or the Founder Member, respectively (or the assignee of such right or privilege). In addition, the approval requirements set forth in Chapters 15 and 17 shall be met, if applicable.

If an Owner consents to any amendment to this Charter or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mort-



## Termination and Amendment of Charter

gage or contract between the Owner and a third party will affect the validity of such amendment.

Any amendment shall become effective upon recording unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Charter.

(e) *Exhibits.* Exhibits "A" and "B" are incorporated by this reference, and this chapter shall govern amendment of those exhibits. Exhibit "C" is incorporated by this reference and may be amended under Chapter 7 or pursuant to Sections 20.1 and 20.2. All other exhibits are attached for informational purposes and may be amended as provided in those exhibits or in the provisions of this Charter that refer to such exhibits.

*Don't ever take a fence down until you know  
why it was put up. Robert Frost*

## NOTES



In witness of the foregoing, the Founder has executed this Charter this 23<sup>rd</sup> day of April, 2008.

FOUNDER: RH DEVELOPMENT, LLC, an Arizona limited liability company

By: *Chris Read*  
Name: Dr. Chris Read  
Its: Managing Member

STATE OF CALIFORNIA    )  
  )  
COUNTY OF SAN DIEGO    )

The foregoing instrument was acknowledged before me this 23<sup>rd</sup> day of April, 2008 by Dr. Chris Read, as the Managing Member of RH Development, LLC, an Arizona limited liability company.

Witness my hand and official seal.

*J Nakaya*  
Notary Public

My Commission expires: 5/22/09







EXHIBIT "A"

Land Initially Submitted



## EXHIBIT A

### PARCEL I:

A parcel of ground lying in Section 4, and the surface to a depth of 25 feet immediately beneath the surface of that portion of the Northeast quarter of Section 5, Township 15 North, Range 3 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at a found Dr. Morgan Johnson brass cap monument accepted as the North quarter corner of Section 5; Thence North 89 degrees, 54 minutes, 20 seconds East (basis of bearings), 2650.12 feet to a found 1917 G.L.O. brass cap monument at the Northeast corner of Section 5 from which a found 1917 G.L.O. brass cap monument at the East quarter corner lies South 00 degrees, 02 minutes, 27 seconds West, 2644.55 feet;

Thence South 00 degrees, 02 minutes, 27 seconds West, 714.52 feet to a set 5/8 inch rebar with plastic cap stamped "SEC RLS 13015" at a point of intersection with the Cottonwood Airport property;

Thence South 42 degrees, 01 minutes, 45 seconds West along said airport property, a distance of 36.48 feet to a found one inch square bolt from which a found 1/2 inch rebar lies South 04 degrees, 26 minutes, 51 seconds East, 2.01 feet;

Thence South 47 degrees, 59 minutes, 53 seconds East along said airport property, a distance of 32.82 feet to a set 5/8 inch rebar with plastic cap stamped "SEC LS 13015" on the East line of Section 5;

Thence continuing along said airport property South 47 degrees, 59 minutes, 53 seconds East, 529.21 feet to a point in the center of a dirt road from which point a found one inch square bolt lies South 47 degrees, 59 minutes, 53 seconds East, 1538.55 feet;

Thence along said road centerline the following courses:

South 26 degrees, 40 minutes, 30 seconds West, 381.99 feet;

Thence South 17 degrees, 10 minutes, 30 seconds West, 608.67 feet to a point of curvature, the central point of which North 72 degrees, 49 minutes, 30 seconds West, 586.85 feet;

Thence through a central angle of 39 degrees, 01 minutes, 06 seconds along an arc to the right, length of 399.64 feet;

Thence South 56 degrees, 11 minutes, 36 seconds West, 320.35 feet to a point of curvature, the central point of which lies North 33 degrees, 49 minutes, 24 seconds West, 454.65 feet;

Thence through a central angle of 28 degrees, 21 minutes, 30 seconds along an arc to the right, a length of 225.03 feet;



Exhibit A (continued)

Thence South 84 degrees, 33 minutes, 06 seconds West, 221.82 feet to a point of curvature, the central point of which lies South 05 degrees, 26 minutes, 54 seconds East, 319.51 feet;

Thence through a central angle of 11 degrees, 29 minutes, 13 seconds along an arc to the left, a length of 64.06 feet to a point intersection with the East-West mid-section line;

Thence North 89 degrees, 48 minutes, 53 seconds West, 1692.56 feet to a found one inch square bolt accepted as the center of Section 5 from which a found 191 7 G.L.O. brass cap monument at the West quarter corner of Section 5 lies North 89 degrees, 49 minute, 26 seconds West, 2534.62 feet also from said bold, a found 1917 G.L.O. brass cap monument at the South quarter corner of Section 5, lies South 00 degrees, 06 minutes, 24 seconds East, 2571.21 feet;

Thence North 00 degrees, 07 minutes, 01 seconds West, 2631.64 feet to the POINT OF BEGINNING.

EXCEPTING THEREFROM:

A portion of the Northwest quarter of Section 4, Township 15 North, Range 3 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

COMMENCING at the Northwest corner of said Section 4;

Thence South 00 degrees, 02 minutes, 27 seconds West along the West line of said Section 4, a distance of 763.62 feet to the POINT OF BEGINNING;

Thence departing said West line, South 47 degrees, 59 minutes, 53 seconds East, a distance of 529.21 feet;

Thence South 26 degrees, 40 minutes, 30 seconds West, a distance of 234.52 feet;

Thence North 85 degrees, 00 minutes, 27 seconds West, a distance of 288.01 feet;

Thence North 58 degrees, 07 minutes, 14 seconds West, a distance of 1.70 feet to a point on said West line of Section 4;

Thence North 00 degrees, 02 minutes, 27 seconds East along said West line, a distance of 537.72 feet to the POINT OF BEGINNING.

FURTHER EXCEPTING THEREFROM:

The surface to a depth of 25 feet immediately beneath the surface of that portion of the Northeast quarter of Section 5, Township 15 North, Range 3 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

BEGINNING at the Northeast corner of said Section 5;



Exhibit A (continued)

Thence South 00 degrees, 02 minutes, 27 seconds West along the East line of said Section 5, a distance of 714.57 feet;

Thence South 42 degrees, 01 minute, 45 seconds West, a distance, of 36.48 feet;

Thence South 47 degrees, 59 minutes, 53 seconds East, a distance of 32.82 feet to said East line;

Thence South 00 degrees, 02 minutes, 27 seconds West along said East line, a distance of 537.72 feet;

Thence North 58 degrees, 07 minutes, 14 seconds West, a distance of 286.47 feet;

Thence North 47 degrees, 56 minutes, 03 seconds West, a distance of 1712.82 feet to the North line of said Section 5;

Thence North 89 degrees, 54 minutes, 20 seconds East along said North line, a distance of 1515.74 feet to the POINT OF BEGINNING.

PARCEL II: Allen Springs Road/Mingus Avenue Access Easement

A portion of the Northwest Quarter of Section 4, Township 15 North, Range 3 East of the Gila and Salt River Base and Meridian, Yavapai County, Arizona, described as follows:

Commencing at the Northwest Comer of said Section 4;

Thence South 00 degrees, 02 minutes, 27 seconds West, along the West line of said Section 4 a distance of 763.52 feet;

Thence departing said West line, South 47 degrees, 59 minutes, 53 seconds East, a distance of 503.29 feet to a found 112 inch rebar, said point being the Point Of Beginning;

Thence continuing South 47 degrees, 59 minutes, 53 seconds East, a distance of 25.92 feet to a point on the approximate centerline of the unpaved road, known as Allen Springs Road and Mingus Avenue;

Thence South 26 degrees, 40 minutes, 30 seconds West along said road centerline, a distance of 234.52;

Thence North 85 degrees, 40 minutes, 27 seconds West, a distance of 26.90 feet to a set 1/2 inch rebar;

Thence North 26 degrees, 30 minutes, 30 seconds East, a distance of 251.31 feet to the Point of Beginning.



EXHIBIT "B"

Land Subject to Annexation

Note to clerk and title examiners:

This Charter is not intended to create an encumbrance on title to the property described in this Exhibit "B." Such title may be encumbered only with the consent of the owner by filing a Supplement in accordance with this Charter.



## EXHIBIT "C"

### Initial Rules

The purpose of Rules is not to anticipate all acceptable or unacceptable behavior in advance and eliminate all improvements or activities that fall outside of "the norm." In fact, it is expressly intended that the Reviewer under Chapter 5, and the Board, as appropriate, have discretion to approve or disapprove items, or to enforce or not enforce technical violations of the Governing Documents, based upon aesthetic or other considerations consistent with the established guidelines. As such, while something may be approved or permitted for one Unit under one set of circumstances, the same thing may be disapproved for another Unit under a different set of circumstances. The exercise of discretion in approving or enforcement shall not be construed as a waiver of approval or enforcement rights, nor shall it preclude the Board from taking enforcement action in any appropriate circumstances.

The following shall apply to all property subject to this Charter until such time as they are modified pursuant to the Charter.

1. **General.** The property subject to this Charter shall be used only for residential, recreational, and related purposes (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by the Founder to assist in the sale of property described in Exhibit "A" or "B," offices for any property manager retained by the Association, or business offices for the Founder or the Association) consistent with this Charter and any Supplement.

2. **Restricted Activities.** Unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board, the following activities are prohibited within Mesquite Hills:

(a) Parking any vehicles on private streets or thoroughfares, or parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles, or inoperable vehicles in places other than enclosed garages or other locations screened from view of adjacent property in a manner approved by the Reviewer pursuant to Chapter 5; provided, construction, service and delivery vehicles shall be exempt from this provision during normal business hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area, and further provided, public service and public safety vehicles shall be exempt from this provision to the extent required by Arizona law;

(b) Raising, breeding, or keeping animals except that a reasonable number of dogs, cats, or other usual and common household pets may be permitted in a Unit. However, those pets which are permitted to roam free, or, in the Board's sole discretion, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Units shall be removed upon the Board's request. If the pet owner fails to honor such request, the Board may remove the pet. All pets shall be kept on a leash or otherwise confined in a manner acceptable to the Board whenever outside the Unit and shall be confined each night and not permitted to roam free. All pet owners shall be responsible for immediately removing and disposing of any pet waste on Common Areas. Pets shall be registered, licensed, and inoculated as required by law. Owners shall be responsible for ensuring all waste deposited by their pets is collected from their Unit and the Common Area. No pet food shall be left on the outside portion of any dwelling on a Unit;



(c) Any activity that emits foul or obnoxious odors outside the Unit or creates noise or other conditions that tend to disturb the peace or threaten the safety of the occupants of other Units;

(d) Any activity that violates local, state, or federal laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(e) Pursuit of hobbies or other activities that tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(f) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance, or nuisance to persons using the Common Area or to the occupants of other Units;

(g) Outside burning of trash, leaves, debris, or other materials, except during the normal course of constructing a dwelling on a Unit;

(h) Use or discharge of any radio, loudspeaker, horn, whistle, bell, or other sound device so as to be audible to occupants of other Units, except alarm devices used exclusively for security purposes;

(i) Use and discharge of firecrackers and other fireworks;

(j) Accumulation of rubbish, trash, or garbage except between regular garbage pick ups, and then only in approved containers;

(k) Discharge of firearms; provided, the Board shall have no obligation to take action to prevent or stop such discharge;

(l) On-site storage of fuel, except that a reasonable amount of fuel may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment, and the Association shall be permitted to store fuel for operation of maintenance vehicles, generators, and similar equipment. This provision shall not apply to any underground fuel tank authorized pursuant to Chapter 5;

(m) Woodpiles, brush, or other materials, unless they are stored in a manner not to be attractive to rodents, snakes, or other animals and to minimize the potential danger from fires. No open fires shall be lighted or permitted within Mesquite Hills, except in a contained outdoor fireplace or barbecue unit while attending and in use for cooking purposes or within a safe and well designed interior fireplace. All Owners and occupants of Mesquite Hills must maintain their yards and underbrush in a manner that minimizes the risk of fire. Due to the fact that Mesquite Hills is located in an area susceptible to wildfires, the Association and governmental entities may promulgate regulations concerning fire to minimize cataclysmic damage to dwellings and natural vegetation that can be caused by fire;

(n) Any activities which materially disturb or destroy the vegetation, wildlife, wetlands, or air quality within Mesquite Hills or which use excessive amounts of water or which result in unreasonable levels of sound or light pollution;

(o) Conversion of any carport or garage to finished space for use as an apartment or other integral part of the living area on any Unit without prior approval pursuant to Chapter 5;



(p) Any modification of any thing, permanently or temporarily, on the outside portions of the Unit, whether such portion is improved or unimproved, except in strict compliance with the provisions of Chapter 5 of the Charter. This shall include, without limitation, signs, basketball hoops, and swing sets and similar sports and play equipment; clotheslines; garbage cans; woodpiles; above-ground swimming pools; hedges, walls, dog runs, animal pens, or fences of any kind; and satellite dishes and antennas, except that:

(i) an antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is one meter or less in diameter; or

(ii) an antenna designed to receive video programming services via multipoint distribution services, including multi-channel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement; or

(iii) an antenna that is designed to receive television broadcast signals;

(collectively, "Permitted Antennas") shall be permitted on Units, subject to such reasonable requirements as to location and screening as may be set forth in the Design Guidelines, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. Notwithstanding the above, the Founder and Founder Affiliates shall have the right to place one or more antennae or towers for radio or telecommunications on property they own or lease in Mesquite Hills pursuant to their rights reserved in Chapter 15.

3. **Prohibited Conditions.** The following shall be prohibited at Mesquite Hills:

(a) Plants, animals, devices, or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of Mesquite Hills;

(b) Structures, equipment, or other items on the exterior portions of a Unit which have become rusty, dilapidated, or otherwise fallen into disrepair; and

(c) Capturing, killing, or trapping wildlife within the Community or property owned, managed, or maintained by the Association, except under circumstances imposing an imminent threat to the safety of Persons or pets.





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**EXHIBIT "D"**

**By-Laws of Mesquite Hills Home Owners Association, Inc.**



EXHIBIT "D"

BY-LAWS

OF

MESQUITE HILLS HOMEOWNERS ASSOCIATION, INC.



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**BY-LAWS  
OF  
MESQUITE HILLS HOMEOWNERS ASSOCIATION, INC.**

**Chapter 1  
Name, Principal Office, and Definitions**

**1.1. Name.**

The name of the corporation is Mesquite Hills Homeowners Association, Inc. (the "Association").

**1.2. Principal Office.**

The Association's principal office shall be located in Yavapai County, Arizona. The Association may have such other offices as the Board may determine or as the Association's affairs require.

**1.3. Definitions.**

The words used in these By-Laws shall be given their normal, commonly understood definitions. Capitalized terms shall have the same meaning as set forth in that certain Charter for Mesquite Hills, recorded by RH Development, LLC, an Arizona limited liability company, in the public records of Yavapai County, Arizona, as it may be amended (the "Charter"). The term "majority," as used in these By-Laws, means those votes, Owners, or other group, as the context may indicate, totaling more than 50% of the total eligible number.

**Chapter 2  
Membership: Meetings, Quorum, Voting, Proxies**

**2.1. Membership.**

The Association shall have two classes of Membership, Owner Membership and Founder Membership, as more fully set forth in the Charter. Provisions of the Charter pertaining to Membership are incorporated by this reference.

**2.2. Place of Meetings.**

The Association shall hold meetings at the Association's principal office or at such other suitable place the Board may designate.

**2.3. Association Meetings.**

(a) **General.** Association meetings shall be of the Voting Delegates unless the Board otherwise specifies or Arizona law otherwise requires; provided, until Voting Delegates are selected, meetings shall be of the Members and references in these By-Laws to Voting Delegates shall be deemed to be



references to the Members. The first Association meeting, whether a regular or special meeting, shall be held within one year after the Association's incorporation.

(b) **Annual Meetings.** The Board shall schedule regular annual meetings to occur within 90 days before or after the close of the Association's fiscal year, on such date and at such time and place as the Board shall determine.

(c) **Special Meetings.** The President may call special meetings. In addition, the President or the Secretary shall call a special meeting if so directed by Board resolution or upon a written petition of Voting Delegates representing at least 40% of the total votes in the Association.

#### **2.4. Notice of Meetings.**

The President, Secretary, officers, or other persons calling a meeting of the Voting Delegates shall deliver or cause to be delivered to each Voting Delegate entitled to vote at such meeting a written notice stating the place, day, and hour of the meeting. In the case of a special meeting or when otherwise required by statute, the Charter, or these By-Laws, the purpose or purposes for which the meeting is called shall also be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

Such notice shall be delivered by such means as permitted under Section 8.5, at least 10 but not more than 50 days before the date of such meeting.

#### **2.5. Waiver of Notice.**

Waiver of notice of an Association meeting shall be deemed the equivalent of proper notice. Any Voting Delegate may waive, in writing, notice of any Association meeting, either before or after such meeting. A Voting Delegate's attendance at a meeting shall be deemed a waiver by such Voting Delegate of notice of the time, date, and place thereof, unless the Voting Delegate specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed a waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

#### **2.6. Adjournment of Meetings.**

If any Association meeting cannot be held because a quorum is not present, the Voting Delegates representing a majority of the votes present at such meeting may adjourn the meeting to a time at least 5 but not more than 30 days from the scheduled date of the original meeting. At the reconvened meeting, if a quorum is present, any business may be transacted which might have been transacted at the meeting originally called. If those in attendance at the original meeting do not fix a time and place for reconvening the meeting, or if for any reason a new date is fixed for reconvening the meeting after adjournment, the Board shall provide notice to the Voting Delegates of the time and place for reconvening the meeting in the manner prescribed for regular meetings.

Voting Delegates present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the departure of enough Voting Delegates to leave



less than a quorum, provided at least a majority of the votes required to constitute a quorum must approve any action taken.

## 2.7. Voting.

(a) **Voting Rights.** Members shall have such voting rights as are set forth in the Charter, which provisions are specifically incorporated by this reference. Until such time as the Board first calls for election of a Voting Delegate for any Neighborhood, the Owners within such Neighborhood shall be entitled personally to cast the votes attributable to their respective Units on any issue as to which a Voting Delegate representing the neighborhood would be entitled to vote.

(b) **Election of and Removal of Voting Delegates.** The Owner Members owning Units within each Neighborhood shall elect a Voting Delegate to cast all votes attributable to their Units on all Association matters requiring a Membership vote, except as otherwise specified in the Charter or these By-Laws. In addition, each Neighborhood shall elect an alternate Voting Delegate who shall be responsible for casting such votes in the absence of the Voting Delegate.

The first election of a Voting Delegate and alternate Voting Delegate from each Neighborhood shall occur at least 30 days prior to any Association meeting at which the Voting Delegate from such Neighborhood will be entitled to vote. Thereafter, the Board shall call for an election of Voting Delegates and alternates on an annual basis.

Voting Delegate elections shall be by ballots cast by mail, computer, or at a meeting of the Owner Members within such Neighborhood, as the Board determines. Upon written petition signed by Owner Members holding at least 20% of the votes attributable to Units within any Neighborhood, the election for such Neighborhood shall be held at a meeting. Candidates for election as Voting Delegates may be nominated by the Board, a nominating committee the Board may appoint, or from the floor at any meeting at which such election is to be held. In addition or in the alternative, any person may submit his or her name for consideration.

The presence, in person, or the filing of ballots of Owner Members representing at least 20% of the total votes attributable to Units in the Neighborhood shall constitute a quorum for any Neighborhood meeting or election. In the event of a failure to obtain a quorum or vacancy in such positions for any Neighborhood, the Board may appoint a Voting Delegate or alternate Voting Delegate to represent such Neighborhood until a successor is elected.

Subject to the above quorum requirement, in any election of Voting Delegates, the candidate who receives the greatest number of votes shall be elected as the Voting Delegate, and the candidate receiving the next greatest number of votes shall be elected as the alternate Voting Delegate. In the event of a tie vote among the leading candidates, the Voting Delegate shall be determined by drawing names from a hat, with the first person drawn being the Voting Delegate and the second being the alternate Voting Delegate. The Voting Delegate and the alternate Voting Delegate shall serve a term of one year or until their successors are elected, whichever is longer.



Any Voting Delegate may be removed, with or without cause, upon the vote or written petition of Owner Members representing a majority of the total number of Units in the Neighborhood that the Voting Delegate represents.

(c) **Establishment of Election Districts.** Founder shall establish Election Districts, if at all, not later than the date of expiration of the Founder Control Period by filing with the Association and recording a Supplement identifying the Units comprising each Election District by Neighborhood designation, legal description, or other means such that the Units within each Election District can easily be determined. The Founder, acting alone, may amend to change such designation at any time prior to the expiration of the Founder Control Period. After the Founder Control Period, the Founder may amend to designate additional Units as part of any Election District.

After termination of the Founder Control Period, the Board shall have the right to record or amend any such Supplement upon the vote of a majority of the total number of directors and approval of Voting Delegates representing a majority of the total number of Neighborhoods and a majority of the total votes in the Association. Neither recordation of nor the Founder's amendment of such Supplement shall constitute an amendment to this Charter. No consent or approval of any Person shall be required except as stated in this subsection. Until such time as Election Districts are established, all of Mesquite Hills shall constitute a single Election District. After a Supplement establishing Election Districts has been recorded, any and all portions of Mesquite Hills which are not assigned to a specific Election District shall constitute a single Election District.

## 2.8. Proxies.

Voting by proxy by Members or Voting Delegates shall not be allowed.

## 2.9. Quorum.

Except as these By-Laws or the Charter otherwise provide, the presence of Voting Delegates representing 30% of the total votes in the Association shall constitute a quorum at all Association meetings and the vote of the Voting Delegates representing a majority of the total eligible votes cast shall constitute the action of the Voting Delegates.

## 2.10. Conduct of Meetings.

The President or a Board-approved designee shall preside over all Association meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions adopted and all other transactions occurring at such meetings are kept with the Association's books.

## 2.11. Action Without a Meeting.

Any action required or permitted by the Charter, the Articles, these By-Laws ("Governing Documents") or by law to be taken at a meeting of the Members or Voting Delegates may be taken without a meeting, without prior notice, and without a vote. In order for such action to be approved, the minimum number of votes necessary to authorize such action at a meeting as if all Members or Voting Delegates entitled to vote thereon were present at such meeting must sign a written consent





specifically authorizing the proposed action. Such consents shall be signed within 60 days after receipt of the earliest dated consent, dated, and delivered to the Association. Such consents shall be filed with the Association's minutes and shall have the same force and effect as a vote of the Members or Voting Delegates at a meeting.

### Chapter 3 Board of Directors: Selection, Meetings, Powers

#### A. Composition and Selection.

##### 3.1. Governing Body; Qualifications.

The Board shall govern the Association's affairs. Each director shall have one vote. Except with respect to directors appointed by the Founder, directors shall be Owners or residents. However, no Owner and resident representing the same Unit may serve on the Board at the same time. A "resident" shall be any natural person 18 years of age or older whose principal residence is a Unit within Mesquite Hills.

If an Owner is not an individual, any officer, director, partner, Member, or any trust officer of such Owner shall be eligible to serve as a director unless a written notice to the Association signed by the Owner specifies otherwise. However, no Owner may have more than one such representative on the Board at a time except in the case of directors the Founder appoints.

##### 3.2. Number of Directors.

The Board shall consist of three to seven directors, as provided in Section 3.3.

##### 3.3. Selection of Directors; Term of Office.

(a) **Initial Board.** The initial Board shall consist of the three directors identified in the Articles of Incorporation, who shall serve until their successors are appointed or elected as provided in this section.

(b) **Directors During Founder Control Period.** Except as otherwise provided in this subsection, the Founder Member may appoint, remove, and replace Board Members until termination of the Founder Control Period. During such period, the Voting Delegates shall be entitled to elect a minority of the total number of directors according to the following schedule (directors elected by the Owners are referred to as "Owner Directors"):

(i) Within 60 days after the time that Owners other than Builders own 75% of the maximum number of Units permitted by the applicable zoning for the property described in the Master Plan or whenever the Founder Member earlier determines, the Board shall be increased to five directors and the President shall call for an election by which the Voting Delegates, as a group, shall be entitled to elect two of the five directors, who shall be elected at large (i.e., without regard to Election Districts). The Founder shall appoint the remaining three directors. The Owner Directors shall be elected for a term of two years or until the happening of the event described in subsection (c)(i) below, whichever is



shorter. If such directors' terms expire prior to the happening of the event described in subsection (c)(i) below, successors shall be elected for a like term.

**(c) Directors After the Founder Control Period.**

(i) Within 90 days after termination of the Founder Control Period, the Board shall be increased to seven directors, and the President shall call for an election by which the Voting Delegates shall be entitled to elect six directors, with an equal number of directors elected by the Voting Delegates representing each Election District and any remaining directorships filled at large by the votes of all Voting Delegates. The Founder shall appoint the remaining director. Three directors shall serve a term of two years and three directors shall serve a term of one year, as such directors determine among themselves.

(ii) Until such time that Founder determines, Founder may appoint one director. At such time, the director appointed by Founder shall resign and the remaining directors shall appoint a director to serve until the next annual meeting, at which time the Voting Delegates, voting at large, shall elect a director to fill such position. Such director shall be elected for a two-year term.

(iii) Upon expiration of the term of office of each Owner Director, the Voting Delegates shall elect a successor to serve a term of two years. Owner Directors shall hold office until their respective successors have been elected. Directors may serve no more than three consecutive two year terms.

Diagram 3.1 illustrates the concept of transition of control of the Board during and after the Founder Control Period.

**3.4. Nomination and Election Procedures.**

(a) **Nomination of Candidates.** At least 30 days prior to any election of directors by the Voting Delegates, the Board shall appoint a Nominating Committee consisting of a chairman, who shall be a Board member, and three or more Owners or representatives of Owners. The Nominating Committee shall serve a term of one year or until its successors are appointed. The names of the Nominating Committee members shall be announced in the notice of each election.

In preparation for each election, the Nominating Committee shall meet and make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled by the Voting Delegates at such election. The Nominating Committee shall nominate separate slates for the directors, if any, to be elected at large by all Voting Delegates, and for the director(s) to be elected by the Voting Delegates within each Election District. In making its nominations, the Nominating Committee shall use reasonable efforts to nominate candidates representing the diversity that exists within the pool of potential candidates. Nominations



COMPOSITION OF BOARD OF DIRECTORS			
Initial Board	75% of Permitted Units Conveyed	90 Days After Termination of Founder Control Period	At Such Time Founder Determines
Founder	Owner	Owner	Owner
Founder	Owner	Owner	Owner
Founder	Founder	Owner	Owner
	Founder	Owner	Owner
	Founder	Owner	Owner
		Owner	Owner
		Founder	Owner

Diagram 3. 1

shall also be permitted from the floor at the meeting at which any election is held. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes.

(b) **Election Procedures.** At each election, voting shall be by written ballot. Each Voting Delegate may cast all votes assigned to the Units it represents for each position to be filled from any slate of candidates on which such Voting Delegate is entitled to vote.

In the event of a tie vote on any slate, the Voting Delegates entitled to vote on such slate shall be informed of the tie vote and given the opportunity to discuss the candidates among themselves in an effort to resolve the tie before another vote is taken. If the second vote again results in a tie, then the Board shall call for election of the director(s) from such slate by the Owners represented by such Voting Delegates. Such election shall be held by mail, with ballots to be sent by first class mail to each Owner entitled to vote on such slate within 10 days after the meeting at which the original election was held.

**3.5. Removal of Directors and Vacancies.**

Any Owner Director may be removed, with or without cause, by the vote of Voting Delegates holding a majority of the votes entitled to be cast for the election of such director. Any director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a director by the Voting Delegates, the Voting Delegates entitled to elect the removed director shall elect a successor for the remainder of the term of such director. Owner Directors may not be removed by Founder.

At any meeting at which a quorum is present, a majority of the directors may remove any Owner Director who has three consecutive unexcused absences from Board meetings, or who is more than 60 days delinquent (or resides in a Unit owned by an Owner who is so delinquent) in the payment of any assessment or other charge due the Association. The Board may appoint a successor to fill the vacancy for the remainder of the term.



In the event of the death, disability, or resignation of an Owner Director, the Board may declare a vacancy and appoint a successor to fill the vacancy until the next annual meeting, at which time the Voting Delegates entitled to fill such directorship shall elect a successor for the remainder of the term.

Any director whom the Board appoints shall be selected from among eligible Owners or residents of Units within the Election District represented by the director who vacated the position.

This section shall not apply to the initial directors identified in the Articles of Incorporation and to directors the Founder appoints. The Founder shall appoint a successor to fill any vacancy on the Board resulting from the death, disability, or resignation of a director appointed by the Founder.

## **B. Meetings.**

### **3.6. Organizational Meetings.**

The Board shall hold an organizational meeting within 10 days following each annual Association meeting at such time and place as the Board shall fix.

### **3.7. Regular Meetings.**

The Board shall hold regular meetings at such time and place as a majority of the directors shall determine, but the Board shall meet at least four times during each fiscal year with at least one meeting per quarter.

### **3.8. Special Meetings.**

The Board shall hold special meetings when called by written notice signed by the President, Vice President, or any two directors.

### **3.9. Notice; Waiver of Notice.**

Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The Board shall notify each director of meetings by: (i) personal delivery; (ii) first class mail, postage prepaid; (iii) telephone communication, either directly to the director or to a person at the director's office or home who would reasonably be expected to communicate such notice promptly to the director; or (iv) facsimile, electronic mail, or other electronic communication device, with confirmation of transmission. All such notices shall be given at or sent to the director's telephone number, fax number, electronic mail address, or sent to the director's address as shown on the Association's records. The Board shall deposit notices sent by first class mail into a United States mailbox at least five business days before the day of the meeting. The Board shall give notices by personal delivery, telephone, or other device at least 48 hours before the time set for the meeting.

The Board shall notify the Members of each Board meeting by either: (i) posting notice of the meeting in a conspicuous place in Mesquite Hills at least 48 hours in advance of the meeting; (ii) publication of a schedule of the Board meetings in a newspaper, newsletter, on a community intranet or



website, or by similar means at least 7 days prior to the meeting; or (iii) mailing notice of the meeting to each Member.

Transactions of any Board meeting, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if: (i) a quorum is present; and (ii) either before or after the meeting each director not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting also shall be deemed given to any director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

### **3.10. Telephonic Participation in Meetings.**

Members of the Board or any committee the Board designates may participate in a Board or committee meeting by conference telephone or similar communications equipment through which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this section shall constitute presence at such meeting.

### **3.11. Quorum of Board.**

At all Board meetings, a majority of the directors shall constitute a quorum for the transaction of business, and the votes of a majority of the directors present at a meeting at which a quorum is present shall constitute the Board's decision, unless Arizona law, these By-Laws, or the Charter specifically provide otherwise. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the departure of one or more directors, if at least a majority of the required quorum for that meeting approves any action taken. If the Board cannot hold a meeting because a quorum is not present, a majority of the directors present may adjourn the meeting to a time not less than 5 nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present the Board may transact, without further notice, any business it might have transacted at the original meeting.

### **3.12. Conduct of Meetings.**

The President or any designee the Board approves by resolution shall preside over all Board meetings. The Secretary shall ensure that minutes of the meetings are kept and that all resolutions and all transactions occurring at such meetings are included in the Association's records.

### **3.13. Open Meetings; Executive Session.**

(a) Subject to the provisions of Sections 3.13(b) and 3.14, all Board meetings shall be open to all Members, but only directors may participate in any discussion or deliberation unless a director requests that attendees be granted permission to speak. In such case, the President may limit the time any individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than directors, for consideration of one or more of the following topics:



- (i) Board or Association employment or personnel matters;
- (ii) legal advice from an attorney regarding Board or Association matters;
- (iii) proposed, pending, or contemplated litigation; and/or
- (iv) personal, health, and financial information about an Owner, an employee of the Association, a contractor or an employee of a contractor for the Association.

**3.14. Action Without a Formal Meeting.**

Any action which may be taken at a Board meeting may be taken without a meeting if all directors sign a written consent, setting forth the action so taken. Such consent shall have the same force and effect as a unanimous vote. The Board shall post or otherwise provide notice of the Board's action in a prominent place within Mesquite Hills within three business days after obtaining all written consents to an action. Failure to give such notice shall not render the action taken invalid.

**C. Powers and Duties.**

**3.15. Powers.**

The Board shall have the power to administer the Association's affairs, perform the Association's responsibilities, and exercise the Association's rights, as set forth in the Governing Documents and as provided by law. The Board may do or cause to be done on the Association's behalf all acts and things except those which the Governing Documents or Arizona law require to be done and exercised by the membership generally.

**3.16. Duties.**

The Board's duties shall include, without limitation:

- (a) preparing and adopting, in accordance with the Charter, an annual budget establishing each Owner's share of the Common Expenses and any Service Area Expenses;
- (b) levying and collecting assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;



- (e) depositing all funds received on the Association's behalf in a bank depository which it shall approve and using such funds to operate the Association; however, in the Board's business judgment any reserve funds may be deposited in depositories other than banks;
- (f) making and amending Rules in accordance with the Charter;
- (g) opening bank accounts on the Association's behalf and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Governing Documents;
- (i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; however, the Association's obligation in this regard shall be conditioned in the manner provided in the Charter;
- (j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Charter, paying the cost thereof, and filing and adjusting claims, as appropriate;
- (k) paying the cost of all services rendered to the Association;
- (l) keeping a detailed accounting of the Association's receipts and expenditures;
- (m) making available to any prospective purchaser of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in Section 8.4;
- (n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of Mesquite Hills;
- (o) indemnifying a director, officer, or committee Member, or former director, officer or committee Member of the Association to the extent such indemnity is required by Arizona law, the Articles, or these By-Laws; and
- (p) assisting in the resolution of disputes between Owners and others without litigation, as set forth in the Charter.

### 3.17. Committees.

(a) **General.** The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

(b) **Covenants Committee.** In addition to any other committees that the Board may establish pursuant to Section 3.17(a), the Board may appoint a Covenants Committee consisting of at least three and no more than seven Owners who shall not be officers, directors, or employees of the Association,



nor the spouse, parent, sibling, or child of any officer, director, or employee. Acting in accordance with the provisions of the Charter, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Chapter 8 of the Charter. The Covenants Committee shall have no responsibility for seeking out violations of the Governing Documents.

(c) **Service Area Committees.** The Owners within any Service Area which has no formal organizational structure or association may elect a Service Area Committee to determine the nature and extent of services, if any, which it desires to have the Association provide to the Service Area, over and above those services which the Association provides to all Units in Mesquite Hills. A Service Area Committee, if elected, shall consist of three Owners of Units in the applicable Service Area; however, if approved by the vote of a least 67% of the Owners of Units within the Service Area, the number may be increased to five.

Elections of Service Area Committees may be held by written ballot sent to all Owners of Units within the Service Area, or at a meeting of the Owners of Units within the Service Area, as the Board determines. The Board or any Owner of a Unit in the Service Area may nominate candidates for election to the Service Area Committee. That number of candidates equal to the number of positions to be filled receiving the most votes shall be elected. Service Area Committee members shall be elected for a term of one year or until their successors are elected. Any director elected to the Board from a Service Area shall be an *ex officio* member of the Service Area Committee. The members of the committee shall elect a chairperson from among themselves, who shall preside at its meetings and shall be responsible for transmitting any and all communications to the Board.

Meetings of a Service Area Committee shall be open to all Owners of Units in the Service Area and their representatives.

## Chapter 4 Officers

### 4.1. Officers.

The Association's officers shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among the Board Members; other officers may, but need not, be Board Members. The Board may appoint such other officers, including one or more Assistant Secretaries and Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more offices may be held by the same person, except the offices of President and Secretary.

### 4.2. Election and Term of Office.

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Association, to serve until their successors are elected.





#### 4.3. Removal and Vacancies.

The Board may remove any officer whenever, in its judgment, the Association's best interests will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

#### 4.4. Powers and Duties.

The Association's officers shall have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as the Board may specifically confer or impose. The President shall be the Association's chief executive officer. The Treasurer shall have primary responsibility for preparing the budget as provided for in the Charter and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

#### 4.5. Resignation.

Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at a later time specified therein. Unless the resignation specifies, acceptance of such resignation shall not be necessary to make it effective.

### Chapter 5 Standards of Conduct; Liability and Indemnification

#### 5.1. Standards for Directors and Officers.

The Board shall exercise its powers in a reasonable, fair, and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

In performing their duties, directors and officers shall act as fiduciaries and shall be insulated from liability as provided for directors of corporations under Arizona law and as otherwise provided by the Governing Documents. Directors and officers shall discharge their duties as directors or officers, and as members of any committee to which they are appointed, in a manner that the director or officer believes in good faith to be in the best interest of the corporation and with the care that an ordinarily prudent person in a like position would exercise under similar circumstances. A director is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, others prepare or present to the extent authorized under Arizona law.

#### 5.2. Liability.

(a) A director shall not be personally liable to the Association, any Member, or any other Person for any action taken or not taken as a director if the director has acted in accordance with Section 5.1.

(b) A director also shall not be personally liable for any action taken or not taken as a director if the director:



(i) acts within the expressed or implied scope of the Governing Documents and his or her actions are not *ultra vires*;

(ii) affirmatively undertakes to make decisions which the director reasonably believes are necessary for the Association's continued and successful operation and, when decisions are made, makes them on an informed basis;

(iii) acts on a disinterested basis, promptly disclosing any real or potential conflict of interests (pecuniary or other), and avoiding participation in decisions and actions on matters as to which he has a conflict of interest (beyond that which all directors have by virtue of their ownership or occupancy of a Unit); and

(iv) acts in a non-fraudulent manner and without reckless indifference to the Association's affairs.

(c) The Association's officers, directors, and committee Members shall not be liable for any mistake of judgment, negligent, or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and directors shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on the Association's behalf (except to the extent that such officers or directors may also be Members).

### 5.3. Indemnification.

Subject to the limitations of Arizona law, the Association shall indemnify, hold harmless, and defend every officer, director, and committee Member for, from, and against all damages and expenses, including counsel fees and expenses, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board) to which he or she may be a party by reason of being or having been an officer, director, or committee member, except that the Association shall have no obligation to indemnify any individual against liability or expenses incurred in connection with a proceeding:

(a) brought by or in the right of the Association, although it may reimburse the individual for reasonable expenses incurred in connection with the proceeding if it is determined, by the court or in the manner provided above, that the individual met the relevant standard of conduct under Arizona law; or

(b) to the extent that the individual is adjudged liable for conduct that constitutes:

(i) appropriation, in violation of his or her duties, of any business opportunity of the Association;

(ii) intentional misconduct or knowing violation of the law;

(iii) an unlawful distribution to Members, directors, or officers; or



- (iv) receipt of an improper personal benefit

This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or committee Member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

#### **5.4. Conflicts of Interest; Code of Ethics.**

Unless otherwise approved by a majority of the other directors, no Owner Director may transact business with the Association or any Association contractor during his or her term as director or within two years after the term expires. A director shall promptly disclose in writing to the Board any actual or potential conflict of interest affecting the director relative to his or her performance as a director. A director's failure to make such disclosure shall be grounds for removal by a majority vote of the other Board members.

Notwithstanding the above, directors the Founder appoints may be employed by or otherwise transact business with the Founder or its affiliate, and the Founder may transact business with the Association or its contractors.

The initial Board shall create and adopt a written "Code of Ethics" applicable to all directors, officers, and committee members. The Code of Ethics shall incorporate the above standards and other conduct rules it deems appropriate. At a minimum, the Code of Ethics shall require each officer and director to conduct himself or herself in a manner consistent with the Board Standards described in Section 5.1. Each officer and director, as a pre-condition to service, shall acknowledge and agree, in writing, to abide by the Code of Ethics.

#### **5.5. Advancement of Expenses.**

In accordance with the procedures and subject to the conditions and limitations set forth in Arizona law, the Board may authorize the Association to advance funds to pay for or reimburse the reasonable expenses incurred by a present or former officer, director, or committee member in any proceeding to which he or she may be a party by reason of being or having been an officer, director, or committee member of the Association.

#### **5.6. Board and Officer Training.**

The Board shall conduct or provide for seminars and continuing educational opportunities designed to educate and inform its officers and directors of their responsibilities as officers and directors. Such programs may include instruction on applicable Arizona corporate and fiduciary law principles, other issues relating to administering community affairs, and upholding and enforcing the Governing Documents. The Board may retain industry professionals, which may include property managers, attorneys, and accountants, as appropriate or necessary for such purpose. Each newly elected officer and director shall complete a training seminar within the first six months of assuming such position. The seminar may be live, video or audiotape, or in other format.



In a similar manner, the Board may provide or provide for Owner and resident education and training opportunities designed to foster awareness of Mesquite Hills's governance, operations, and concerns. The Board shall conduct or provide for training and information classes designed to educate Owners of the nomination, election, and voting processes and the duties and responsibilities of directors and officers, as provided in Sections 3.15 and 3.16.

## Chapter 6 Management and Accounting

### 6.1. Compensation of Directors and Officers.

The Association shall not compensate directors and officers for acting as such unless Voting Delegates representing a majority of the total votes in the Association approve such compensation at an Association meeting. The Association may reimburse any director or officer for expenses he or she incurs on the Association's behalf upon approval of a majority of the other directors. Nothing herein shall prohibit the Association from compensating a director or officer, or any entity with which a director or officer is affiliated, for services or supplies he or she furnishes to the Association in a capacity other than as a director or officer pursuant to a contract or agreement with the Association. However, such director must make known his or her interest to the Board prior to entering into such contract, and a majority of the Board, excluding any interested director, must approve such contract.

### 6.2. Right of Founder Member to Disapprove Actions.

So long as there is a Founder Member, the Founder Member shall have a right to disapprove any action, policy, or program of the Association, the Board, and any committee which, in the Founder Member's sole judgment, would tend to impair rights of the Founder or a Founder Affiliate under the Charter or these By-Laws, interfere with development or construction of any portion of Mesquite Hills, or diminish the level of services the Association provides.

(a) **Notice.** The Association shall give the Founder Member written notice of all meetings and proposed actions approved at Association, Board, or committee meetings (or by written consent in lieu of a meeting). The Association shall give such notice by certified mail, return receipt requested, or by personal delivery at the address the Founder Member has registered with the Association. As to Board meetings, such notice shall comply with Section 3.9, and shall, except in the case of regular Board meetings pursuant to these By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting.

(b) **Opportunity to be Heard.** At any such meeting, the Association shall give the Founder Member the opportunity to join in, or to have its representatives or agents join in, discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

The Board shall not implement any action, policy, or program subject to the right of disapproval set forth herein until and unless the requirements of this section have been met.



The Founder Member, its representatives, or its agents shall make its concerns, thoughts, and suggestions known to the Board and/or the Members of the subject committee. The Founder Member, acting through any officer or director, agent, or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action.

The Founder Member may use this right to disapprove of proposed actions but shall not use it to require any action or counteraction of any committee, the Board, or the Association. The Founder Member shall not use its right to disapprove to reduce the level of services the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

### 6.3. Accounts and Reports.

(a) The Board shall follow the following accounting standards unless the Board by resolution specifically determines otherwise:

- (i) accounting and controls should conform to generally accepted accounting principles; and
- (ii) the Association's cash accounts shall not be commingled with any other accounts, and during the Founder Control Period, operating accounts shall not be commingled with reserve accounts.

(b) Commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association within 60 days after the end of each quarter, containing:

- (i) an income statement reflecting all income and expense activity for the preceding period;
- (ii) a statement reflecting all cash receipts and disbursements for the preceding period;
- (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
- (iv) a balance sheet as of the last day of the preceding period; and
- (v) a delinquency report listing all Owners who are delinquent in paying any assessments at the time of the report (any assessment or installment thereof shall be considered to be delinquent on the 15th day following the due date unless the Board specifies otherwise by resolution). A copy of the quarterly financial report shall be made available at a minimal charge to any Member requesting a copy.

(c) An annual report consisting of at least the following shall be made available for Members' review within 180 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines.



#### 6.4. Borrowing.

The Association shall have the power to borrow money for any legal purpose. However, the Board shall obtain Voting Delegate approval in the same manner provided in the Charter for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 20% of the Association's budgeted gross expenses for that fiscal year.

During the Founder Control Period, no Mortgage or lien shall be placed on any portion of the Common Area without the affirmative vote or written consent, or any combination thereof, of Voting Delegates representing at least 67% of the total votes in the Association.

#### 6.5. Right to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Service Areas, and other owners or residents associations, within and outside Mesquite Hills. The Board shall consent to any common management agreement.

#### 6.6. Agreements, Contracts, Deeds, Leases, Checks, Etc.

All Association agreements, contracts, deeds, leases, checks, and other instruments shall be executed by at least two officers or by such other person or persons as the Board may designate by resolution.

### Chapter 7 Enforcement Procedures

The Association shall have the power, as provided in the Charter, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Charter, the Board shall comply with the following procedures prior to imposition of sanctions:

#### 7.1. Notice and Response.

The Board or its delegate shall serve the alleged violator with written notice describing: (a) the nature of the alleged violation; (b) the proposed sanction to be imposed; (c) the alleged violator shall have 10 days to present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to Section 3.17; and (d) a statement that the proposed sanction may be imposed as contained in the notice unless a hearing is requested within 10 days of the notice.

The alleged violator shall respond to the notice of the alleged violation in writing within such 10-day period, regardless of whether the alleged violator is challenging the imposition of the proposed sanction. If the alleged violator cures the alleged violation and notifies the Board in writing within such 10-day period the Board may, but shall not be obligated to, waive the sanction. Such waiver shall not



constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

Prior to the effectiveness of sanctions imposed pursuant to this chapter, proof of proper notice shall be placed in the minutes of the Board or Covenants Committee, as applicable. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative requests and appears at the hearing.

## **7.2. Hearing.**

If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if one has not been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. The minutes of the meetings of the Board or Covenants Committee, as applicable, shall contain a written statement of the results of the hearing (*i.e.*, the facts as presented at the hearing and the Board's or Committee's decision) and the sanction, if any, to be imposed.

If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; however, the Board or Covenants Committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

## **7.3. Appeal.**

Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board, pursuant to such procedures as the Board shall adopt. To exercise this right, the violator must deliver a written notice of appeal to the Association's manager, President, or Secretary within 10 days after the hearing before the Covenants Committee.

# **Chapter 8 Miscellaneous**

## **8.1. Fiscal Year.**

The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

## **8.2. Parliamentary Rules.**

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Arizona law or the Governing Documents.



### 8.3. Conflicts.

If there are conflicts among the provisions of Arizona law, the Articles of Incorporation, the Charter, and these By-Laws, the provisions of Arizona law, the Charter, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

### 8.4. Books and Records.

(a) **Inspection of Association Documents by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer, or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the Membership register, books of account, and the minutes of meetings of the Members, the Board, and committees, except for minutes relating to closed portions of any Board meeting as set forth in Section 3.13(b). The Board shall provide for such inspection to take place at the Association's office or at such other place within Mesquite Hills as the Board shall designate.

(b) **Rules for Inspection.** The Board shall establish rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing the documents requested.

(c) **Inspection by Directors.** Every director shall have the absolute right at any reasonable time to inspect all Association books, records, and documents and the physical properties owned or controlled by the Association. A director's right of inspection includes the right to make a copy of relevant documents at the Association's expense.

### 8.5. Notices.

(a) **Form of Notice and Method of Delivery.** Except as otherwise provided or authorized in the Charter or these By-Laws or by Arizona law, all notices, demands, bills, statements, or other communications under the Charter or these By-Laws shall be in writing and may be delivered in person or by United States mail.

(b) **Delivery Address.** Notices shall be delivered or sent to the intended recipient as follows:

- (i) if to an Owner or Voting Delegate, at the address, telephone facsimile number, or e-mail address which the Owner or Voting Delegate has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of such Owner or Voting Delegate;
- (ii) if to the Association, the Board, or a committee of either, at the address, facsimile number, or e-mail address of the principal office of the Association or its managing agent, or at such





other address as the Association shall designate by notice in writing to the Members pursuant to this section; or

(iii) if to the Founder, at the Founder's principal address as it appears on the Arizona Corporation Commission's records, or at such other address as the Founder shall designate by notice in writing to the Association pursuant to this section.

(c) **Effective Date.** Notice sent in accordance with subsections (a) and (b) shall be deemed to have been duly given and effective at the earliest of the following:

(i) when received;

(ii) if sent by United States mail, five days after its deposit with the U.S. Postal Service, correctly addressed, with first class or higher priority postage prepaid;

(iii) if delivered personally or by private carrier, when actually delivered to the address of the intended recipient, as evidenced by the signature of the person at such address who accepts such delivery; or

(iv) if sent by telephone facsimile or electronic mail, upon transmission, as evidenced by a printed confirmation of transmission.

## 8.6. Amendment.

(a) **By Founder.** Prior to termination of the Founder Control Period, the Founder may unilaterally amend these By-Laws for any purpose. Thereafter, the Founder may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary: (i) to correct clerical, typographical or technical errors; (ii) to comply with any applicable governmental statute, rule, regulation, or judicial determination; (iii) to comply with the requirements, standards, or guidelines of any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation; (iv) to enable any reputable title insurance company to issue title insurance coverage on the Units; and (v) as necessary to exercise the rights reserved to the Founder under the Charter. So long as there is a Founder Member, the Founder Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no material adverse effect upon the rights of more than 2% of the Owners.

(b) **By Members Generally.** Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Voting Delegate representing 75% of the total votes in the Association, and the consent of the Founder Member, if such exists. In addition, the approval requirements set forth in Chapter 16 of the Charter shall be met, if applicable. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Validity and Effective Date of Amendments.** Amendments to these By-Laws shall become effective upon their approval in the manner set forth above, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of approval, or



such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

No amendment may remove, revoke, or modify any of the Founder's rights or privileges without the written consent of the Founder or the assignee of such right or privilege.

### CERTIFICATION

I, the undersigned, do hereby certify:

That I am the duly elected and acting President of Mesquite Hills Homeowners Association, Inc., an Arizona corporation;

That the foregoing By-Laws constitute the original By-Laws of said Association, as duly adopted at a meeting of the Board of Directors thereof held on the 22<sup>nd</sup> day of April, 2008.

IN WITNESS WHEREOF, I have hereunto subscribed my name on this 23<sup>rd</sup> day of April, 2008.

Chris Read, President