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MARICOPA COUNTY RECORDER  
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91-0490874

10/21/91 04:14

61 of 65

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DECLARATION OF COVENANTS, CONDITIONS  
AND RESTRICTIONS  
FOR  
FESTIVAL BY SHEA HOMES



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AND RESTRICTIONS  
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**DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR FESTIVAL BY SHEA HOMES**

THIS DECLARATION is made on the 10th day of October, 1991, by Shea Homes Limited Partnership, a California limited partnership (hereinafter referred to as the "Declarant").

**ARTICLE 1**

**DEFINITIONS**

1.1. "Annexable Property" means the real property located in Maricopa County, Arizona, which is described on Exhibit B attached to this Declaration, together with all buildings and other Improvements located thereon and all easements, rights and privileges appurtenant thereto.

1.2. "Architectural Committee" means the committee established by the Board pursuant to Section 3.4 of this Declaration.

1.3. "Architectural Committee Rules" means the rules adopted by the Architectural Committee.

1.4. "Articles" means the Articles of Incorporation of the Association which have been or will be filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

1.5. "Assessments" means the annual and special assessments levied and assessed against each Lot pursuant to Article 4 of this Declaration.

1.6. "Assessment Lien" means the lien granted to the Association by this Declaration to secure the payment of Assessments and all other amounts payable to the Association under the Project Documents.

1.7. "Association" means the Arizona nonprofit corporation to be organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of "Festival



Homeowners Association", but if such name is not available, Declarant may organize the Association under such other name as the Declarant deems appropriate.

1.8. "Association Rules" means the rules and regulations adopted by the Association, as the same may be amended from time to time.

1.9. "Board" means the Board of Directors of the Association.

1.10. "Bylaws" means the bylaws of the Association, as such bylaws may be amended from time to time.

1.11. "Common Area" means all real property, and all Improvements located thereon, owned by the Association for the common use and enjoyment of the Owners, including without limitation block walls on the boundary line of the real property covered by the Plat which are adjacent to some or all of the Tracts shown on the Plat and/or to dedicated streets within the Project (the "Project Boundary Walls"). The Common Area to be owned by the Association at the time of the conveyance of the first Lot to a Purchaser is described as follows:

Tracts A, B, C, D and E, FESTIVAL BY SHEA HOMES, together with the Project Boundary Walls located on the boundary lines of Lots 1 through 13, inclusive, a portion of Lot 14, portions of Lots 22 and 23, portions of Lots 30 and 31, portions of Lots 41 and 42, Lots 53, 54, 71, 72, 87, 101, 117 through 130, inclusive, Lots 138 through 152, inclusive, and along a portion of the eastern boundary of Central Drive, according to the plat recorded on November 19, 1990, in Book 342, page 2, records of Maricopa County, Arizona.

1.12. "Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.

1.13. "Declarant" means Shea Homes Limited Partnership, a California limited partnership, its successors and any person or entity to whom it may expressly assign any or all of its rights under this Declaration.

1.14. "Declaration" means this Declaration of Covenants, Conditions and Restrictions, as it may from time to time be amended.

1.15. "Eligible Insurer Or Guarantor" means an insurer or governmental guarantor of a First Mortgage who has requested notice

of certain matters from the Association in accordance with Section 9.1 of this Declaration.

1.16. "Eligible Mortgage Holder" means a First Mortgagee who has requested notice of certain matters from the Association in accordance with Section 9.1 of this Declaration.

1.17. "First Mortgage" means any mortgage or deed of trust on a Lot which has priority over all other mortgages or deeds of trust on the same Lot.

1.18. "First Mortgagee" means the holder of any First Mortgage.

1.19. "Improvement" means buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

1.20. "Lot" means any parcel of real property designated as a Lot on the Plat and, where the context indicates or requires, includes the Residential Unit and all other Improvements situated on the Lot.

1.21. "Member" means any person, corporation, partnership, joint venture or other legal entity who is a member of the Association.

1.22. "Owner" means the record owner, whether one or more persons or entities, of beneficial or equitable title (and legal title if the same has merged with the beneficial or equitable title) to the fee simple interest of a Lot. Owner shall not include (i) persons or entities having an interest in a Lot merely as security for the performance of an obligation, or (ii) a lessee or tenant of a Lot. Owner shall include a purchaser under a contract for the conveyance of real property, a contract for deed, a contract to convey, an agreement for sale or any similar contract through which a seller has conveyed to a purchaser equitable title in a Lot under which the seller is obligated to convey to the purchaser the remainder of seller's title in the Lot, whether legal or equitable, on payment in full of all monies due under the contract. Owner shall not include a purchaser under a purchase contract and receipt, escrow instructions or similar executory contracts which are intended to control the rights and obligations of the parties to the executory contracts pending the closing of a sale or purchase transaction. In the case of Lots the fee simple title to which is vested in a trustee pursuant to Arizona Revised Statutes, Section 33-801, et seq., the trustor under the deed of trust shall be deemed to be the Owner. In the case of Lots the fee simple title to which is vested in a trustee pursuant to a subdivision trust agreement or similar agreement, the beneficiary

of such trust who is entitled to possession of the trust property shall be deemed to be the Owner.

1.23. "Plat" means the plat of survey of Festival By Shea Homes which plat has been recorded on November 19, 1990, with the County Recorder of Maricopa County, Arizona, in Book 342, page 2, and all amendments thereto, and any plat of survey of all or any portion of the Annexable Property which is annexed by the Declarant pursuant to Section 2.2 of this Declaration.

1.24. "Project Documents" means this Declaration and the Articles, Bylaws, Association Rules and Architectural Committee Rules.

1.25. "Property" or "Project" means the real property described on Exhibit A attached to this Declaration and all real property subsequently annexed by the Declarant pursuant to Section 2.2 of this Declaration together with all buildings and other Improvements located thereon and all easements, rights and privileges appurtenant thereto.

1.26. "Purchaser" means any person other than the Declarant, who by means of a voluntary transfer becomes the Owner of a Lot except for (i) an Owner who purchases a Lot and then leases it to the Declarant for use as a model in connection with the sale of other Lots or (ii) an Owner who, in addition to purchasing a Lot, is assigned any or all of the Declarant's rights under this Declaration.

1.27. "Residential Unit" means any building situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence by a Single Family.

1.28. "Single Family" means a group of one or more persons each related to the other by blood, marriage or legal adoption, or a group of persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

1.29. "Single Family Residential Use" means the occupation or use of a Residential Unit by a Single Family in conformity with this Declaration and the requirements imposed by applicable zoning laws or other state, county or municipal rules and regulations.

1.30. "Visible From Neighboring Property" means, with respect to any given object, that such object is or would be visible to a person six feet tall, standing on any part of such neighboring property at an elevation no greater than the elevation of the base of the object being viewed.

## ARTICLE 2

## PLAN OF DEVELOPMENT

2.1. Property Initially Subject to the Declaration. This Declaration is being recorded to establish a general plan for the development and use of the Project in order to protect and enhance the value and desirability of the Project. All of the property within the Project shall be held, sold and conveyed subject to this Declaration. By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the development and use of the Property and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the Association and all Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and such shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

2.2. Right of Annexation.

(A) The Declarant hereby expressly reserves the right, until seven (7) years from the date of recording of this Declaration, to annex and subject to this Declaration, without the consent of any Owner, all or any portion of the Annexable Property. The annexation of all or any portion of the Annexable Property shall be accomplished by the Declarant recording with the County Recorder of Maricopa County, Arizona, a Declaration of Annexation stating (i) the legal description of the Annexable Property being annexed; and (ii) a description of any portion of the Annexable Property being added which will be Common Area.

(B) Any portion of the Annexable Property annexed pursuant to this Section shall not become irrevocably annexed to the Project until the date on which the first Lot within the annexed portion of the Annexable Property is conveyed to a Purchaser. If any Declaration of Annexation recorded pursuant to this Section divides the portion of the Annexable Property being

annexed into separate phases, then each phase of the property being annexed shall not become irrevocably annexed to the Project until the date on which the first Lot within such phase is conveyed to a Purchaser.

(C) The Declarant shall have the right to amend any Declaration of Annexation recorded pursuant to this Section to change the description of phases within the property being annexed except that the Declarant may not change any portion of the Annexable Property which has already become irrevocably annexed to the Project.

(D) At any time prior to the date which is seven (7) years after the recording of this Declaration, the Declarant may withdraw from the Project any part of the Annexable Property which has not been irrevocably annexed to the Project pursuant to the provisions of this Section. Any such withdrawal of property from the Project shall be accomplished by the recording with the County Recorder of Maricopa County, Arizona, of a Declaration of Withdrawal describing the portion of the property being withdrawn. Upon the recording of any such Declaration of Withdrawal, that portion of the Annexable Property described in the Declaration of Withdrawal shall no longer be part of the Project or subject to the Declaration.

(E) The voting rights of the Owners of Lots annexed pursuant to this Section shall be effective as of the date the Declaration of Annexation is recorded. The Lot Owners' obligation to pay Assessments shall commence as provided for in Section 4.7 of this Declaration.

(F) The Annexable Property may be added as a whole at one time or in one or more portions at different times, or it may never be added, and there are no limitations upon the order of addition or the boundaries thereof. The property annexed into the Project need not be contiguous, and the exercise of the right as to any portion of the Annexable Property shall not bar the further exercise of the right of annexation as to any other portions of the Annexable Property.

(G) All improvements to be constructed on any portion of the Annexable Property annexed into the Project will be substantially completed prior to the time at which such portion of the Annexable Property becomes irrevocably annexed into the Project pursuant to Subsection (B) of this Section.

(H) Declarant makes no assurances as to the exact number of Lots which shall be added to the Project by annexation or if all or any portion of the Annexable Property will be annexed, but the cumulative total of Lots added by all annexations hereunder shall not exceed 250.

(I) All taxes and other assessments relating to all or any portion of the Annexable Property annexed into the Project covering any period prior to the time when such portion of the Annexable Property is irrevocably annexed in accordance with Subsection (B) of this Section shall be the responsibility of, and shall be paid for, by the Declarant.

### ARTICLE 3

#### THE ASSOCIATION; RIGHTS AND DUTIES, MEMBERSHIP AND VOTING RIGHTS

3.1. Rights, Powers and Duties. The Association shall be a nonprofit Arizona corporation charged with the duties and invested with the powers prescribed by law and set forth in the Project Documents together with such rights, powers and duties as may be reasonably necessary to effectuate the objectives and purposes of the Association as set forth in the Project Documents. Unless the Project Documents specifically require a vote of the Members, approvals or actions to be given or taken by the Association shall be valid if given or taken by the Board.

3.2. Board of Directors and Officers. The affairs of the Association shall be conducted by a board of directors and such officers and committees as the Board may elect or appoint in accordance with the Articles and the Bylaws.

3.3. Association Rules. The Board may, from time to time and subject to the provisions of this Declaration, adopt, amend and repeal rules and regulations. The Association Rules may restrict and govern the use of any area by any Owner, by the family of such Owner, or by any invitee, licensee or lessee of such Owner except that the Association Rules may not discriminate among Owners and shall not be inconsistent with this Declaration, the Articles or Bylaws. Upon adoption, the Association Rules shall have the same force and effect as if they were set forth in and were a part of this Declaration.

3.4. Architectural Committee. The Board shall establish an Architectural Committee consisting of not less than three (3) members to regulate the external design, appearance and use of the Property and to perform such other functions and duties as may be imposed upon it by this Declaration, the Bylaws or the Board. So long as the Declarant owns any Lot, the Declarant shall have the right to appoint and remove members of the Architectural Committee. At such time as the Declarant no longer owns any Lot, the Board shall have the right to appoint and remove members of the Architectural Committee.

3.5. Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the

Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

**3.6. Transfer of Membership.** Membership in the Association shall be appurtenant to each Lot and a membership in the Association shall not be transferred, pledged or alienated in any way, except upon the sale of a Lot and then only to such Purchaser, or by intestate succession, testamentary disposition, foreclosure of mortgage of record or other legal process. Any attempt to make a prohibited transfer shall be void and shall not be reflected upon the books and records of the Association.

**3.7. Classes of Members.** The Association shall have two classes of voting membership:

**Class A.** Class A members shall be all Owners, with the exception of the Declarant until the termination of the Class B membership. Each Class A member shall be entitled to one (1) vote for each Lot owned.

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

(i) When seventy-five percent (75%) of the Lots have been conveyed to Purchasers; or

(ii) Five (5) years after the conveyance of the first Lot to a Purchaser; or

(iii) When the Declarant notifies the Association in writing that it relinquishes its Class B membership.

**3.8. Joint Ownership.** When more than one person is the Owner of any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall more than one ballot be cast with respect to any Lot. The vote or votes for each such Lot must be cast as a unit, and fractional votes shall not be allowed. In the event that joint Owners are unable to agree among themselves as to how their vote or votes shall be cast, they shall lose their right to vote on the matter in question. If any Owner casts a ballot representing a certain Lot, it will thereafter be conclusively presumed for all purposes that he was acting with the authority and consent of all other Owners of the same Lot. In the event more than one ballot is cast for a particular Lot, none of said votes shall be counted and said votes shall be deemed void.



**3.9. Corporate Ownership.** In the event any Lot is owned by a corporation, partnership or other association, the corporation, partnership or association shall be a Member and shall designate in writing at the time of acquisition of the Lot an individual who shall have the power to vote said membership, and in the absence of such designation and until such designation is made, the president, general partner or chief executive officer of such corporation, partnership or association shall have the power to vote the membership.

**3.10. Suspension of Voting Rights.** In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Project Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the Association shall be suspended and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current, and for a period not to exceed 60 days for each infraction of the Project Documents.

**3.11. Termination of Contracts and Leases.** A contract for any of the following, if entered into prior to the expiration of the Class B membership in the Association, may be terminated by the Association at any time after the expiration of the Class B membership on thirty (30) days written notice to the other party:

(i) Any management contract, employment contract or lease of recreational or parking areas or facilities.

(ii) Any contract or lease, including franchises and licenses, to which the Declarant or any affiliate of the Declarant is a party.

#### ARTICLE 4

##### COVENANT FOR MAINTENANCE ASSESSMENTS

**4.1. Creation of the Lien and Personal Obligation of Assessments.** The Declarant, for each Lot owned by it, hereby covenants, and each Owner of a Lot, by becoming the Owner thereof, whether or not it is expressed in the deed or other instrument by which the Owner acquired ownership of the Lot, is deemed to covenant and agree to pay to the Association annual assessments and special assessments. The annual and special assessments, together with interest, costs and reasonable attorneys' fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Assessment is made. Each such Assessment, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the Owner of such Lot at the time when the Assessment became due. The personal obligation for delinquent Assessments shall not pass to the Owner's successors in title unless expressly assumed by them.



**4.2. Purpose of the Assessments.** The Assessments levied by the Association shall be used exclusively for (i) the upkeep, maintenance and improvement of the Common Area, (ii) the maintenance, repair and replacement of the landscaping situated on the part of the Lots which the Association is obligated to maintain, repair and replace under Section 7.1(B) of this Declaration, (iii) the maintenance, repair and replacement of the landscaped areas located within the City of Chandler right-of-way for Arrowhead Drive and along the western boundary of the Property, and the landscaped areas located within the City of Chandler right-of-way for Ray Road and along the southern boundary of the Property, under Section 7.1(C) of this Declaration, (iv) promoting the recreation, health, safety and welfare of the Owners and residents of Lots within the Property, and (v) the performance and exercise by the Association of its rights, duties and obligations under the Project Documents.

**4.3. Annual Assessment.**

(A) For each fiscal year of the Association, the Board shall adopt a budget for the Association containing an estimate of the total amount of funds which the Board believes to be required during the ensuing fiscal year to pay all Common Expenses including, but not limited to (i) the amount required to pay the cost of maintenance, management, operation, repair and replacement of the Common Area and those parts of the Lots, if any, which the Association has the responsibility of maintaining, repairing or replacing under the Project Documents, (ii) the amount required to pay the cost of maintenance, repair and replacement of landscaped areas in the City of Chandler rights-of-way pursuant to Section 7.1(C) of this Declaration, (iii) the cost of wages, materials, insurance premiums, services, supplies and other expenses required for the administration, operation, maintenance or repair of the Common Area and for the general operation and administration of the Association, (iv) the amount required to render to the Owners all services required to be rendered by the Association under the Project Documents, and (v) such amounts as may be necessary to provide general operating reserves and reserves for contingencies and replacement.

(B) For each fiscal year of the Association commencing with the year in which the first Lot is conveyed to a Purchaser, the total amount of the estimated Common Expenses shall be assessed equally against each Lot by the Board.

(C) An Owner other than the Declarant shall be obligated to pay only twenty-five percent (25%) of the annual assessment attributable to his Lot until the earlier of (i) the date on which a certificate of occupancy or similar permit is issued by the appropriate governmental authority, (ii) six (6) months from the date on which a building permit is issued by the appropriate governmental authority for construction of a resi-

dential unit on the Lot, or (iii) two (2) years after the Lot was conveyed to the Owner by the Declarant. If a Lot ceases to qualify for the reduced twenty-five percent (25%) rate of assessment during the period to which an annual assessment is attributable, the annual assessment shall be prorated between the applicable rates on the basis of the number of days in the assessment period that the Lot qualified for each rate.

(D) The Declarant shall be obligated to pay only twenty-five percent (25%) of the annual assessment attributable to Lots owned by the Declarant until seventy-five percent (75%) of the Lots have been conveyed to Purchasers. If a Lot ceases to qualify for the reduced twenty-five percent (25%) rate of assessment during the period to which an annual assessment is attributable, the assessment shall be prorated between the applicable rates on the basis of the number of days in the assessment period that the Lot qualified for each rate.

(E) Until seventy-five percent (75%) of the Lots have been conveyed to Purchasers, the Declarant shall pay to the Association any amounts which, in addition to the annual assessments levied by the Association, may be required by the Association in order for the Association to fully perform its duties and obligations under the Project Documents, including the obligation to maintain adequate reserve accounts.

(F) The amount of the annual assessment levied pursuant to this Section shall not exceed the maximum annual assessment as computed in accordance with Subsection (I) of this Section.

(G) The Board shall give notice of the annual assessment to each Owner at least thirty (30) days prior to the beginning of each fiscal year of the Association, but the failure to give such notice shall not affect the validity of the annual assessment established by the Board nor relieve any Owner from its obligation to pay the annual assessment.

(H) If the Board determines during any fiscal year that its funds budgeted or available for that fiscal year are, or will, become inadequate to meet all expenses of the Association for any reason, including, without limitation, nonpayment of Assessments by Members, it may increase the annual assessment for that fiscal year and the revised annual assessment shall commence on the date designated by the Board except that no increase in the annual assessment for any fiscal year which would result in the annual assessment exceeding the maximum annual assessment for such fiscal year shall become effective until approved by Members entitled to cast at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose.

(I) The maximum annual assessment for each fiscal year of the Association shall be as follows:

(i) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment for each Lot shall be \$250.00.

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the Board may, without a vote of the membership, increase the maximum annual assessment during each fiscal year of the Association by the greater of (a) 5% of the maximum annual assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (All Items) U.S. City Average, published by the United States Department of Labor, Bureau of Labor Statistics (1982 - 84 = 100 ) (the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year in accordance with the following formula:

X = Consumer Price Index for September of the calendar year immediately preceding the year in which annual assessments commenced.

Y = Consumer Price Index for September of the year immediately preceding the calendar year for which the maximum annual assessment is to be determined.

$\frac{Y-X}{X}$  multiplied by the maximum annual assessment for the then current fiscal year equals the amount by which the maximum annual assessment may be increased.

In the event the Consumer Price Index ceases to be published, then the index which shall be used for computing the increase in the maximum annual assessment permitted under this Subsection shall be the substitute recommended by the United States government for the Consumer Price Index or, in the event no such successor index is recommended by the United States government, the index selected by the Board.

(iii) The increase in the maximum annual assessment pursuant to this Subsection (I) shall be calculated without considering the portion of the

immediately preceding annual assessment attributable to the payment of utility charges or insurance premiums by the Association. In addition to the increase in the maximum annual assessment pursuant to Subsection (I)(ii) above, the maximum annual assessment shall include an increase for each fiscal year from and after January 1 of the year immediately following the conveyance of the first Lot to a purchaser in an amount equal to the amount in the Association budget for the prior fiscal year applicable to utility charges and insurance premiums, multiplied by the percentage increase in utility charges or the percentage increase in insurance premiums during the prior fiscal year, whichever is greater.

**4.4. Special Assessments.** In addition to the annual assessments authorized above, the Association may levy, in any fiscal year, a special assessment applicable to that fiscal year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement of the Common Area, including fixtures and personal property related thereto, or for any other lawful Association purpose, provided that any such special assessment shall have the assent of Members having at least two-thirds (2/3) of the votes entitled to be cast by Members who are voting in person or by proxy at a meeting duly called for such purpose. Special assessments shall be levied at a uniform rate for all Lots.

**4.5. Notice and Quorum for Any Action Authorized Under Sections 4.3 or 4.4.** Written notice of any meeting called for the purpose of obtaining the consent of the Members for any action for which the consent of the Members is required under Section 4.3 or 4.4 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of Members shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

**4.6. Date of Commencement of Annual Assessments; Due Dates.** Except as provided in Section 4.7 with respect to Lots annexed into the Project pursuant to Section 2.2 of this Declaration, the annual assessments shall commence as to all Lots on the first day of the month following the conveyance of the first Lot to a Purchaser. The first annual assessment shall be adjusted according to the number of months remaining in the fiscal year of the Association. The Board may require that the annual assessment

be paid in installments and in such event the Board shall establish the due dates for each installment. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association or the Association's designated agent setting forth whether the Assessments on a specified Lot have been paid.

**4.7. Assessments on Lots Subsequently Annexed.** The annual assessment for Lots annexed by the Declarant pursuant to Section 2.2 of this Declaration shall commence on the first day of the first month following the month in which the annexed portion of the Annexable Property becomes irrevocably annexed to the Project in accordance with Section 2.2 of this Declaration, and no Assessments may be levied against any such Lot until such time. If any Declaration of Annexation recorded pursuant to Section 2.2 of this Declaration divides the Annexable Property being annexed into separate phases, then the annual assessments for Lots annexed by the Declarant shall not commence until the first day of the first month following the month in which the phase of the Annexable Property within which such Lot is located is irrevocably annexed in accordance with Section 2.2 of this Declaration, and no Assessments may be levied against any such Lot until such time.

**4.8. Effect of Nonpayment of Assessments; Remedies of the Association.**

(A) Any Assessment, or any installment of an Assessment, not paid within fifteen (15) days after the Assessment, or the installment of the Assessment, first became due shall (i) bear interest from the due date at the greater of the rate of twelve percent (12%) per annum, or the prevailing FHA/VA interest rate for new home loans, or (ii) be subject to a late charge of \$5.00 per month or partial month until paid, whichever is greater. Any Assessment, or any installment of an Assessment, which is delinquent shall become a continuing lien on the Lot against which such Assessment was made. The Assessment Lien shall be perfected by the recordation of a "Notice of Claim of Lien" which shall set forth (i) the name of the delinquent Owner as shown on the records of the Association, (ii) the legal description or street address of the Lot against which the claim of lien is made, (iii) the amount claimed as of the date of the recording of the notice including late charges, interest, lien recording fees, reasonable collection costs and reasonable attorneys' fees, and (iv) the name and address of the Association.

(B) The Assessment Lien shall have priority over all liens or claims created subsequent to the recordation of the Notice of Claim of Lien except for (i) tax liens for real property taxes on the Lot, (ii) assessments on any Lot in favor of any

municipal or other governmental body and (iii) the lien of any First Mortgage.

(C) Before recording a Notice of Claim of Lien against any Lot the Association shall make a written demand to the defaulting Owner for payment of the delinquent Assessments together with late charges, interest, reasonable collection costs and reasonable attorneys' fees, if any. The demand shall state the date and amount of the delinquency. Each default shall constitute a separate basis for a demand or claim of lien, but any number of defaults may be included within a single demand or claim of lien. If the delinquency is not paid within ten (10) days after delivery of the demand, the Association may proceed with recording a Notice of Claim of Lien against the Lot of the defaulting Owner. The Association shall not be obligated to release the Assessment Lien until all delinquent Assessments, late charges, interest, lien recording fees, reasonable collection costs and reasonable attorneys' fees have been paid in full whether or not all of such amounts are set forth in the Notice of Claim of Lien.

(D) The Association shall have the right, at its option, to enforce collection of any delinquent Assessments together with late charges, interest, lien recording fees, reasonable collection costs, reasonable attorneys' fees and any other sums due to the Association in any manner allowed by law including, but not limited to, (i) bringing an action at law against the Owner personally obligated to pay the delinquent Assessments and such action may be brought without waiving the Assessment Lien securing the delinquent Assessments or (ii) bringing an action to foreclose the Assessment Lien against the Lot in the manner provided by law for the foreclosure of a realty mortgage. The Association shall have the power to bid in at any foreclosure sale and to purchase, acquire, hold, lease, mortgage and convey any and all Lots purchased at such sale.

**4.9. Subordination of the Lien to Mortgages.** The Assessment Lien shall be subordinate to the lien of any First Mortgage. The sale or transfer of any Lot shall not affect the Assessment Lien except that the sale or transfer of a Lot pursuant to judicial or nonjudicial foreclosure or any proceeding in lieu thereof shall extinguish the Assessment Lien as to payments which became due prior to the sale or transfer. No sale or transfer shall relieve the Lot from liability for any Assessments thereafter becoming due or from the lien thereof.

**4.10. Exemption of Owner.** No Owner of a Lot may exempt himself from liability for Assessments levied against his Lot or for other amounts which he may owe to the Association under the Project Documents by waiver and non-use of any of the Common Area and facilities or by the abandonment of his Lot.



4.11. Maintenance of Reserve Fund. Out of the annual assessments, the Association shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements to the Common Area.

4.12. No Offsets. All Assessments and other amounts payable to the Association shall be payable in accordance with the provisions of the Project Documents, and no offsets against such Assessments or other amounts shall be permitted for any reason, including, without limitation, a claim that the Association is not properly exercising its duties and powers as provided in the Project Documents.

4.13. Working Capital Fund. To insure that the Association shall have adequate funds to meet its expenses or to purchase necessary equipment or services, each Purchaser of a Lot from the Declarant shall pay to the Association immediately upon becoming the Owner of the Lot a sum equal to one-sixth (1/6th) of the annual assessment on his Lot. Such payment shall be non-refundable and shall not be considered as an advance payment of any Assessments levied by the Association pursuant to this Declaration.

## ARTICLE 5

### PERMITTED USES AND RESTRICTIONS

5.1. Residential Use. All Lots shall be used, improved and devoted exclusively to Single Family Residential Use. No gainful occupation, profession, trade or other nonresidential use shall be conducted on any Lot.

5.2. Animals. No animals, birds, fowl, poultry, or livestock, other than a reasonable number of generally recognized house or yard pets, shall be maintained on any Lot and then only if they are kept, bred or raised thereon solely as domestic pets and not for commercial purposes. No animal shall be allowed to make an unreasonable amount of noise, or to become a nuisance. No structure for the care, housing or confinement of any animal shall be maintained so as to be Visible From Neighboring Property. No Owner or any lessee or guest of an Owner shall permit any dog or other pet being kept on a Lot to relieve itself on another Owner's Lot. It shall be the responsibility of such Owner, lessee or guest to remove immediately any droppings from pets. No dog, cat or other pet shall be permitted to run at large, and each dog, cat or other pet shall be confined entirely to an Owner's Lot except that a dog, cat or other pet shall be permitted to leave an Owner's Lot if such dog, cat or other pet is at all times kept on a leash not to exceed six (6) feet in length and is under the direct control of the Owner.

5.3. Antennas. No antenna, satellite television dish antenna or other device for the transmission or reception of

television or radio signals or any other form of electromagnetic radiation, including, but without limitation, Citizen's Band or Ham Radio signals shall be erected, used or maintained outdoors on any Lot without the prior written approval of the Architectural Committee.

**5.4. Utility Lines.** No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings or other structures. No Residential Unit, landscaping or other Improvement shall be placed, erected or maintained upon any area designated on the Plat as a public utility easement which may damage or interfere with the installation and maintenance of utilities. The public utility easement areas, and all Improvements thereon, shall be maintained by the Owner of the Lot on which the easement area is located unless the easement area is to be maintained by the utility company or a county, municipality or other public authority.

**5.5. Temporary Occupancy.** No trailer, basement of any incomplete building, tent, shack, garage or barn, and no temporary buildings or structure of any kind shall be used at any time for a residence on any Lot, either temporary or permanent. Temporary buildings or structures used during the construction of a Residential Unit or other structure on a Lot shall be removed immediately after the completion of construction.

**5.6. Trucks, Trailers, Campers and Boats.** No mobile home, travel trailer, tent trailer, trailer, boat, boat trailer, or other similar equipment may be parked, maintained, constructed, reconstructed or repaired on any Lot or Common Area or on any street so as to be Visible From Neighboring Property or any street.

**5.7. Motor Vehicles.**

(A) No automobile, motorcycle, motorbike, truck, camper, recreational vehicle or other motor vehicle of any kind shall be parked, kept or maintained on any Lot or on the Common Area except for (i) motor vehicles which do not exceed 222 inches in length, 75 inches in height and 84 inches in width, (ii) motor vehicles which are owned by any guest or invitee of any Owner or tenant and which are parked on a Lot only during such time as the guest or invitee is visiting the Owner or tenant but in no event shall such a motor vehicle be parked on a Lot for more than seven (7) days during any six (6) month period of time.

(B) Except for emergency vehicle repairs, no automobile, motorcycle, motorbike or other motor vehicle of any kind shall be constructed, reconstructed or repaired on any Lot or



the Common Area. No inoperable vehicle or vehicle which because of missing fenders, bumpers, hoods or other parts or because of lack of proper maintenance is, in the sole opinion of the Architectural Committee, unsightly or detracts from the appearance of the Project shall be stored, parked or kept on any Lot or the Common Area.

**5.8. Towing of Vehicles.** The Association shall have the right to have any truck, mobile home, travel trailer, tent trailer, trailer, camper shell, detached camper, recreational vehicle, boat, boat trailer or similar equipment or vehicle or any automobile, motorcycle, motorbike, or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of the Project Documents towed away at the sole cost and expense of the owner of the vehicle or equipment. Any expense incurred by the Association in connection with the towing of any vehicle or equipment shall be paid to the Association upon demand by the owner of the vehicle or equipment. If the vehicle or equipment towed is owned by an Owner, then the cost incurred by the Association in towing the vehicle or equipment shall be assessed against the Owner and his Lot, and such cost shall be secured by the Assessment Lien.

**5.9. Nuisances.** No nuisance shall be permitted to exist or operate upon any Lot so as to be offensive or detrimental to any other property in the vicinity thereof or to its occupant. Without limiting the generality of the foregoing provisions, no exterior speakers, horns, whistles, bells or other sound devices, except fire detection and security devices used exclusively for such purposes, shall be located, used or placed on any property.

**5.10. Repair of Buildings.** No Residential Unit, building, landscaping or other Improvement upon any Lot shall be permitted to fall into disrepair, and each such Residential Unit, building, landscaping or other Improvement shall at all times be kept in good condition and repair by the Owner thereof.

**5.11. Trash Containers and Collection.** No garbage, rubbish or trash shall be placed or kept on any Lot except in covered containers. In no event shall such containers be maintained so as to be Visible From Neighboring Property except to make the same available for collection and then only for the shortest time reasonably necessary to effect such collection. No rubbish or debris of any kind shall be placed or permitted to accumulate upon or adjacent to any Lot, and no odors shall be permitted to arise therefrom so as to render any such property or any portion thereof unsanitary, unsightly, offensive or detrimental to any other property in the vicinity thereof or to its occupants. No incinerators shall be kept or maintained on any Lot.

**5.12. Clothes Drying Facilities.** Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed or maintained on any Lot unless they are erected,

placed or maintained in such a manner as to not be Visible From Neighboring Property.

5.13. Encroachments. No tree, shrub, or planting of any kind on any Lot shall be allowed to overhang or otherwise to encroach upon any sidewalk, street, pedestrian way, or other area from ground level to a height of twelve (12) feet.

5.14. Machinery, Equipment and Structures. No machinery or equipment of any kind shall be placed, operated or maintained upon or adjacent to any Lot or Common Area except such machinery or equipment as is usual and customary in connection with the use, maintenance or repair of a Residential Unit, appurtenant structures, or other Improvements constructed by the Declarant or approved by the Architectural Committee. Playground structures, gazebos, second story balconies and similar structures shall not be erected, placed or maintained on any Lot unless they are erected, placed or maintained in such a manner as to not be Visible From Neighboring Property.

5.15. Restriction on Further Subdivision. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner other than the Declarant, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner other than the Declarant.

5.16. Signs. No signs whatsoever (including, but without limitation, commercial, political, "for sale," "for rent" and similar signs) shall be erected or maintained on any Lot except:

(i) One residential identification sign with a total face area of seventy-two square inches or less;

(ii) Such signs as may be required by legal proceedings; and

(iii) One "for sale" or "for rent" sign with a total face area of five square feet or less, placed at least 15 feet from back of curb.

5.17. Declarant's Exemption. Nothing contained in this Declaration shall be construed to prevent the erection or maintenance by Declarant, or its duly authorized agents, of model homes, structures, Improvements or signs necessary or convenient to the construction, development, identification, or sale or lease of Lots or other property within the Project.

5.18. Mineral Exploration. No Lot shall be used in any manner to explore for or to remove any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, or any earth substance of any kind and no derrick or other equipment designed or

intended for any such activity shall be erected, placed, constructed or maintained on any Lot.

5.19. Diseases and Insects. No Owner shall permit any thing or condition to exist upon any property which could induce, breed or harbor infectious plant diseases or noxious insects.

5.20. Architectural Control.

(A) All Improvements constructed on Lots within the Project shall be of new construction, and no buildings or other structures shall be removed from other locations on to any Lot.

(B) No excavation or grading work shall be performed on any Lot without the prior written approval of the Architectural Committee.

(C) No Improvements, including, but not limited to, fences and walls, shall be constructed or installed on any Lot without the prior written approval of the Architectural Committee.

(D) No addition, alteration, repair, change or other work which in any way alters the exterior appearance, including but without limitation, the exterior color scheme, of any Lot, or the Improvements located thereon, shall be made or done without the prior written approval of the Architectural Committee.

(E) Any Owner desiring approval of the Architectural Committee for the construction, installation, addition, alteration, repair, change or replacement of any Improvement which would alter the exterior appearance of the Improvement, shall submit to the Architectural Committee a written request for approval specifying in detail the nature and extent of the construction, installation, addition, alteration, repair, change or replacement of any Improvement which the Owner desires to perform. Any Owner requesting the approval of the Architectural Committee shall also submit to the Architectural Committee any additional information, plans and specifications which the Architectural Committee may request. In the event that the Architectural Committee fails to approve or disapprove an application for approval within sixty (60) days after the application, together with all supporting information, plans and specifications requested by the Architectural Committee have been submitted to it, approval will not be required and this Section will be deemed to have been complied with by the Owner who had requested approval of such plans.

(F) The approval by the Architectural Committee of any construction, installation, addition, alteration, repair, change or other work pursuant to this Section shall not be deemed a waiver of the Architectural Committee's right to withhold approval of any similar construction, installation, addition,

alteration, repair, change or other work subsequently submitted for approval.

(G) Upon receipt of approval from the Architectural Committee for any construction, installation, addition, alteration, repair, change or other work, the Owner who had requested such approval shall proceed to perform, construct or make the construction, installation, addition, alteration, repair, change or other work approved by the Architectural Committee as soon as practicable and shall diligently pursue such work so that it is completed as soon as reasonably practicable and within such time as may be prescribed by the Architectural Committee.

(H) The approval of the Architectural Committee required by this Section shall be in addition to, and not in lieu of, any approvals, consents or permits required under the ordinances or rules and regulations of any county or municipality having jurisdiction over the Project.

(I) The provisions of this Section shall not apply to, and approval of the Architectural Committee shall not be required for, the construction, erection, installation, addition, alteration, repair, change or replacement of any Improvements made by, or on behalf of, the Declarant.

5.21. Common Walls. The rights and duties of Owners of Lots with respect to common walls shall be as follows:

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

(ii) In the event that any common wall is damaged or destroyed through the act of an Owner, it shall be the obligation of such Owner to rebuild and repair the common wall without cost to the other Owner or Owners;

(iii) In the event any such common wall is damaged or destroyed by some cause other than the act of one of the adjoining Owners, his agents, tenants, licensees, guests or family (including ordinary wear and tear and deterioration from lapse of time) then, in such event, both such adjoining Owners shall proceed forthwith to rebuild or repair the same to as good condition as formerly at their joint and equal expense;

(iv) Notwithstanding any other provision of this Section, an Owner who, by his negligent or willful act, causes any common wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements;

(v) The right of any Owner 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;

(vi) In addition to meeting the other requirements of this Declaration and of any other building code or similar regulations or ordinances, any Owner proposing to modify, make additions to or rebuild a common wall shall first obtain the written consent of the adjoining Owners except as provided for in Subsection (viii) of this Section;

(vii) In the event any common wall encroaches upon a Lot or the Common Area, a valid easement for such encroachment and for the maintenance of the common wall shall and does exist in favor of the Owners of the Lots which share such common wall;

(viii) All or any part of a common wall may be removed in order to allow access to a Lot by machinery and equipment used in the construction or installation of a swimming pool, spa or jacuzzi and related equipment on a Lot without the consent of the adjoining Owners provided such removal has been approved in writing by the Architectural Committee. In the event of any such removal, the Owner of the Lot on which the swimming pool, spa or jacuzzi or related equipment is being constructed or installed must restore the common wall to its prior condition at his sole cost and expense within thirty (30) days after completion of the construction or installation work.

#### 5.22. Maintenance of Walls other than Common Walls.

(A) Walls (other than common walls) located on a Lot shall be maintained, repaired and replaced by the Owner of the Lot.

(B) Any wall which is placed on the boundary line between a Lot and the Common Area shall be maintained, repaired and replaced by the Owner of the Lot except that the Association shall be responsible for the repair and maintenance of the side of the wall which faces the Common Area.

(C) The Project Boundary Walls shall be maintained, repaired and replaced by the Association.

5.23. Outdoor Burning. There shall be no outdoor burning of trash or other debris; provided, however, that the foregoing shall not be deemed to prohibit the use of normal residential barbecues or other similar outside cooking grills.

5.24. Fuel Tanks. No fuel tanks of any kind shall be erected, placed or maintained on the Property except for propane or similar fuel tanks permitted under the ordinances of the county or municipality having jurisdiction over the property.

5.25. Window Coverings. No reflective materials, including, but without limitation, aluminum foil, reflective screens or glass, mirrors or similar type items, or temporary window coverings such as newspapers or bed sheets shall be installed or placed upon the outside or inside of any windows of any Residential Unit or other structure without the prior written approval of the Architectural Committee. No enclosures, drapes, blinds, shades, screens or other items affecting the exterior appearance of a Residential Unit or other structure shall be constructed or installed in any Residential Unit or other structure without the prior written consent of the Architectural Committee.

5.26. HVAC and Solar Panels. Except as initially installed by the Declarant, no heating, air conditioning, evaporative cooling or solar energy collecting unit or panels shall be placed, constructed or maintained upon any Lot without the prior written approval of the Architectural Committee.

5.27. Drainage Plan. No Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained on any drainage easement as shown on the Plat, and no Residential Unit, structure, building, landscaping, fence, wall or other Improvement shall be constructed, installed, placed or maintained in any manner that would obstruct, interfere with or change the direction or flow of water in accordance with the drainage plans for the Project or for any Lot as shown on the drainage plans on file with the county or municipality in which the Project is located.

5.28. Leasing of Lots. No Owner may lease less than his entire Lot, and no Lot may be leased for a period of less than thirty (30) days. All leases shall be in writing and shall provide that the terms of the lease shall be subject in all respects to the provisions of the Project Documents, and any failure by the lessee to comply with the terms of the Project Documents shall be a default under the lease. Upon leasing his Lot, an Owner shall promptly notify the Association of the commencement date and termination date of the lease and the names of each lessee or other person who will be occupying the Lot during the term of the lease.

5.29. Installation of Landscaping.

(A) Within six (6) months after becoming the Owner of a Lot, the Owner shall install landscaping and irrigation improvements in compliance with the xeriscape principles and other applicable requirements set forth in the City of Chandler Zoning Code in that portion of his Lot which is between the street(s) adjacent to his Lot and the exterior wall of his Residential Unit or any wall separating the side or back yard of the Lot from the front yard of the Lot. The landscaping and irrigation improvements shall be installed in accordance with plans approved in writing by the Architectural Committee. Prior to installation of such

landscaping, the Owner shall maintain the front yard of his Lot in a weed-free condition.

(B) In addition to complying with the requirements of Subsection (A) above, the Owners of Lots 124 through 130, inclusive, shall install in their respective back yards, within six (6) months after becoming the Owner of such Lot, landscaping and irrigation improvements in compliance with the xeriscape principles and other applicable requirements set forth in the City of Chandler Zoning Code. The landscaping and irrigation improvements shall be installed in accordance with plans approved in writing by the Architectural Committee. Prior to installation of back yard landscaping, the Owner must maintain in a weed-free condition property in the back yard of his Lot which is Visible From Neighboring Property.

(C) If any Owner fails to landscape the front yard of his Lot within the time provided for in this Section, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to install such landscaping improvements as the Association deems appropriate, and the cost of any such installation shall be paid to the Association by the Owner of the Lot, upon demand from the Association. Any amounts payable by an Owner to the Association pursuant to this Section shall be secured by the Assessment Lien, and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of assessments.

## ARTICLE 6

### EASEMENTS

6.1. Utility Easement. There is hereby created a blanket easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to, water, sewer, gas, telephone, electricity and a cable television system. By virtue of this easement, it shall be expressly permissible for the providing utility to erect and maintain the necessary poles and other necessary facilities and equipment on the Common Area. This easement shall in no way affect any other recorded easements on the Common Area.

6.2. Easements for Ingress and Egress. Easements for ingress and egress are hereby reserved to the Declarant, the Owners, and their family, guests, tenants and invitees, and to the owners and occupants of the Annexable Property and their families, tenants, guests and invitees, whether or not the Annexable Property has been annexed or subjected to this Declaration, for pedestrian traffic over, through and across sidewalks, paths, walks and lanes



as the same from time to time may exist upon the Common Area; and for vehicular traffic over, through and across such portions of the Common Area as from time to time may be paved and intended for such purposes; and for such other purposes reasonably necessary to the use and enjoyment of a Lot or the Common Area.

### 6.3. Unit Owners' Easements of Enjoyment.

(A) Every Owner shall have a right and easement of enjoyment in and to the Common Area which right and easement shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

(i) The right of the Association to adopt reasonable rules and regulations governing the use of the Common Area;

(ii) The right of the Association to suspend the voting rights of an Owner for any period during which any Assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any other infraction or violation of the Project Documents;

(iii) The right of the Association to convey the Common Area, or any part thereof, or subject the Common Area, or any part thereof, to a mortgage, deed of trust, or other security interest, provided that any such conveyance or encumbrance is approved by the affirmative vote or written consent, or any combination thereof, of the Owners of at least ninety percent (90%) of the Lots;

(iv) All rights and easements set forth in this Declaration including, but not limited to, the rights and easements granted to the Declarant by Sections 6.4 and 6.5 of this Declaration.

(B) If a Lot is leased or rented, the lessee and the members of his family residing with the lessee shall have the right to use the Common Area during the term of the lease, and the Owner shall also have the right to use the Common Area until the termination or expiration of the lease.

(C) The guests and invitees of any member or other person entitled to use the Common Area pursuant to Subsection (A) above or of any lessee who is entitled to use the Common Area pursuant to Subsection (B) above may use the Common Area provided they are accompanied by a Member, lessee or other person entitled to use the Common Area pursuant to Subsection (A) or (B) above. The Association shall have the right to limit the number of guests and invitees who may use the Common Area at any one time and may restrict the use of the Common Area by guests and invitees to certain specified times.



(D) An Owner's right and easement of enjoyment in and to the Common Area shall not be conveyed, transferred, alienated or encumbered separate and apart from a Lot. Such right and easement of enjoyment in and to the Common Area shall be deemed to be conveyed, transferred, alienated or encumbered upon the sale of any Lot, notwithstanding that the description in the instrument of conveyance, transfer, alienation or encumbrance may not refer to such right and easement.

#### 6.4. Declarant's Use for Sales and Leasing Purposes.

(A) Declarant shall have the right and an easement to maintain sales or leasing offices, management offices and models throughout the Project and to maintain one or more advertising signs on the Common Area while the Declarant is selling Lots in the Project. Declarant reserves the right to place models, management offices and sales and leasing offices on any Lots owned by Declarant and on any portion of the Common Area in such manner, of such size and in such locations as Declarant deems appropriate.

(B) Declarant may from time to time relocate models, management offices and sales and leasing offices to different locations within the Project. Upon the relocation of a model, management office or sales and leasing office constituting a Common Area, Declarant may remove all personal property and fixtures therefrom.

(C) So long as Declarant is marketing Lots in the Project, Declarant shall have the right to restrict the use of the parking spaces which are located on the Common Area. Such right shall include reserving such spaces for use by prospective Lot purchasers, Declarant's employees and others engaged in sales, leasing, maintenance, construction or management activities.

(D) The Declarant reserves the right to retain all personal property and equipment used in the sales, management, construction and maintenance of the Project that has not been represented as property of the Association. The Declarant reserves the right to remove from the Project any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

#### 6.5. Declarant's Easements.

(A) Declarant shall have the right and an easement on and over the Common Area to construct thereon all buildings and improvements the Declarant may deem necessary and to construct improvements on the Annexable Property whether or not the Annexable Property has been annexed and submitted to this Declaration and to use the Common Area and any Lots owned by Declarant for construction or renovation related purposes including the storage of tools, machinery, equipment, building materials, appliances,

supplies and fixtures, and the performance of work respecting the Project or the Annexable Property whether or not the Annexable Property has been annexed and submitted to this Declaration.

(B) Declarant shall have the right and an easement on, over and under the Common Area for the purpose of maintaining and correcting drainage of surface, roof or storm water. The easement created by this Subsection expressly includes the right to cut any trees, bushes, or shrubbery, to grade the soil or to take any other action reasonably necessary.

(C) The Declarant shall have an easement on, over and through the Lots for any access necessary to complete any renovations, warranty work or modifications to be performed by Declarant.

(D) The Declarant shall have the right and an easement on, over, and through the Common Area as may be reasonably necessary for the purpose of discharging its obligations and exercising any rights or easements reserved or granted to the Declarant in this Declaration.

**6.6. Easement over Lots in Favor of Association.** The Lots, but not the Residential Unit situated thereon, are hereby made subject to the following easements in favor of the Association and its directors, officers, agents, employees and independent contractors:

(A) For inspection of the Lots in order to verify the performance by Owners of all items of maintenance and repair for which they are responsible;

(B) For inspection, maintenance, repair and replacement of the Common Area situated in or accessible from such Lots;

(C) For correction of emergency conditions in one or more Lots or casualties to the Common Area or the Lots;

(D) For the purpose of enabling the Association, the Board, the Architectural Committee or any other committees appointed by the Board to exercise and discharge their respective rights, powers and duties under the Project Documents;

(E) For inspection, at reasonable times and upon reasonable notice to the Owner, of the Lots in order to verify that the provisions of the Project Documents are being complied with by the Owners, their guests, tenants, invitees and the other occupants of the Lot;

(F) For the purpose of maintaining, repairing or replacing the Improvements on the Lots which the Association is obligated to maintain under Section 7.1(B) of this Declaration;

(G) For the purpose of maintaining, repairing or replacing the landscaping which the Association is obligated to install and maintain under Section 7.1(C) of this Declaration.

## ARTICLE 7

### MAINTENANCE

#### 7.1. Maintenance by the Association.

(A) The Association shall be responsible for the maintenance, repair and replacement of the Common Area and may, without any approval of the Owners being required, do any of the following:

(i) Reconstruct, repair, replace or refinish any Improvement or portion thereof upon any such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area);

(ii) Construct, reconstruct, repair, replace or refinish any portion of the Common Area used as a road, street, walk, driveway and parking area;

(iii) Replace injured and diseased trees or other vegetation in any such area, and plant trees, shrubs and ground cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes;

(iv) Place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof;

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

(B) The Association shall also maintain, repair and replace those portions of each Lot, and the Improvements situated thereon, which the Declarant designates in a recorded instrument as an area that is to be maintained, repaired or replaced by the Association. In the event the need for maintenance, repair or replacement of any portion of the Lots which the Association is obligated to maintain pursuant to this Section is caused by the willful or negligent act of an Owner, his family, guests, invitees or animals for whom he is legally responsible under Arizona law, the Association shall cause the maintenance or repair to be

performed and the cost of such maintenance or repair shall be levied against the Owner's Lot and shall be collected by the Association in the same manner as Assessments.

(C) The Association shall also maintain, repair and replace the landscaped areas located within the City of Chandler right-of-way for Arrowhead Drive and along the western boundary of the Property and the landscaped areas located within the City of Chandler right-of-way for Ray Road and along the southern boundary of the Property, both as required by the City of Chandler.

7.2. Maintenance of Lots by Owners. Each Owner shall be solely responsible for the maintenance, repair and replacement of his Lot, and the Residential Unit and all Improvements located thereon except for the Improvements to be maintained by the Association pursuant to Section 7.1(B) of this Declaration.

7.3. Damage or Destruction of Common Area by Owners. No Owner shall in any way damage or destroy any Common Area or interfere with the activities of the Association in connection therewith. Any expenses incurred by the Association by reason of any such act of an Owner shall be paid by said Owner, upon demand, to the Association to the extent that the Owner is liable therefor under Arizona law, and such amounts shall be a lien on any Lots owned by said Owner and the Association may enforce collection of any such amounts in the same manner as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

7.4. Nonperformance by Owners. If any Owner fails to maintain any portion of his Lot, and the Improvements located thereon, the Association shall have the right, but not the obligation, to enter upon such Owner's Lot to perform the maintenance and repairs not performed by the Owner, and the cost of any such work performed by or at the request of the Association shall be paid for by the Owner of the Lot, upon demand from the Association, and such amounts shall be a lien upon the Owner's Lot and the Association may enforce collection of such amounts in the same manner and to the same extent as provided elsewhere in this Declaration for the collection and enforcement of Assessments.

7.5. Payment of Utility Charges. Each Lot shall be separately metered for water, sewer and electrical service and all charges for such services shall be the sole obligation and responsibility of the Owner of each Lot. The cost of water, sewer and electrical service to the Common Area shall be a Common Expense of the Association and shall be included in the budget of the Association.

## ARTICLE 8

## INSURANCE

8.1. Scope of Coverage. Commencing not later than the time of the first conveyance of a Lot to a person other than the Declarant, the Association shall maintain, to the extent reasonably available, the following insurance coverage:

(A) Property insurance on the Common Area insuring against all risk of direct physical loss, insured against in an amount equal to the maximum insurable replacement value of the Common Area, as determined by the Board; provided, however, that the total amount of insurance after application of any deductibles shall not be less than one hundred percent (100%) of the current replacement cost of the insured property, exclusive of land, excavations, foundations and other items normally excluded from a property policy;

(B) Comprehensive general liability insurance, including medical payments insurance, in an amount determined by the Board, but not less than \$1,000,000.00. Such insurance shall cover all occurrences commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Area, and shall also include hired automobile and non-owned automobile coverages with cost liability endorsements to cover liabilities of the Owners as a group to an Owner and provide coverage for any legal liability that results from lawsuits related to employment contracts in which the Association is a party;

(C) Workmen's compensation insurance to the extent necessary to meet the requirements of the laws of Arizona;

(D) Such other insurance as the Association shall determine from time to time to be appropriate to protect the Association or the Owners;

(E) The insurance policies purchased by the Association shall, to the extent reasonably available, contain the following provisions:

(i) That there shall be no subrogation with respect to the Association, its agents, servants, and employees, with respect to Owners and members of their household;

(ii) No act or omission by any Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery on the policy;

(iii) That the coverage afforded by such policy shall not be brought into contribution or proration with any insurance which may be purchased by Owners or their mortgagees or beneficiaries under deeds of trust;

(iv) A "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of the negligent acts of the Association or other Owners;

(v) The Association shall be named as the Insured;

(vi) For policies of hazard insurance, a standard mortgagee clause providing that the insurance carrier shall notify the first mortgagee named in the policy at least thirty days in advance of the effective date of any substantial modification, reduction or cancellation of the policy;

(F) If there is a steam boiler in connection with the Common Area, boiler explosion insurance evidenced by the standard form of boiler machinery insurance policy and providing coverage in the minimum amount of \$50,000.00 per accident per location;

(G) If the Property is located in an area identified by the Secretary of Housing & Urban Development as an area having special flood hazards, a policy of flood insurance on the Common Area must be maintained in the lesser of one hundred percent (100%) of the current replacement cost of the buildings and any other property covered by the required form of policy or the maximum limit of coverage available under the National Insurance Act of 1968, as amended;

(H) "Agreed Amount" and "Inflation Guard" endorsements.

**8.2. Certificates of Insurance.** An insurer that has issued an insurance policy under this Article shall issue certificates or a memorandum of insurance to the Association and, upon request, to any Owner, mortgagee or beneficiary under a deed of trust. Any insurance obtained pursuant to this Article may not be cancelled until thirty (30) days after notice of the proposed cancellation has been mailed to the Association, each Owner and each mortgagee or beneficiary under deed of trust to whom certificates of insurance have been issued.

### **8.3. Fidelity Bonds.**

(A) The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association and all other persons handling or responsible for funds of or administered by the Association, including, but without

limitation, officers, directors and employees of any management agent of the Association, whether or not they receive compensation for their services. The total amount of fidelity bond maintained by the Association shall be based upon the best business judgment of the Board, and shall not be less than the greater of (i) the amount equal to one hundred fifty percent (150%) of the estimated annual operating expenses of the Association, (ii) the estimated maximum amount of funds, including reserve funds, in the custody of the Association or the management agent, as the case may be, at any given time during the term of each bond, (iii) the sum equal to three months assessments on all Lots plus adequate reserve funds. Fidelity bonds obtained by the Association must also meet the following requirements:

(i) The fidelity bonds shall name the Association as an obligee;

(ii) The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms or expressions;

(iii) The bonds shall provide that they may not be cancelled or substantially modified (including cancellation from non-payment of premium) without at least ten (10) days prior written notice to the Association.

(B) The Association shall require any management agent of the Association to maintain its own fidelity bond in an amount equal to or greater than the amount of the fidelity bond to be maintained by the Association pursuant to Subsection (A) of this Section. The fidelity bond maintained by the management agent shall cover funds maintained in bank accounts of the management agent and need not name the Association as an obligee.

**8.4. Payment of Premiums.** The premiums for any insurance obtained by the Association pursuant to this Article shall be included in the budget of the Association and shall be paid by the Association.

**8.5. Insurance Obtained by Owners.** Each Owner shall be responsible for obtaining property insurance for his own benefit and at his own expense covering his Lot, and all Improvements and personal property located thereon. Each Owner shall also be responsible for obtaining at his expense personal liability coverage for death, bodily injury or property damage arising out of the use, ownership or maintenance of his Lot.

**8.6. Payment of Insurance Proceeds.** With respect to any loss to the Common Area covered by property insurance obtained by the Association in accordance with this Article, the loss shall be adjusted with the Association and the insurance proceeds shall be

payable to the Association and not to any mortgagee or beneficiary under a deed of trust. Subject to the provisions of Section 8.7 of this Article, the proceeds shall be disbursed for the repair or restoration of the damage to Common Area.

**8.7. Repair and Replacement of Damaged or Destroyed Property.** Any portion of the Common Area damaged or destroyed shall be repaired or replaced promptly by the Association unless (i) repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (ii) Owners owning at least eighty percent (80%) of the Lots vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves shall be paid by the Association. If the entire Common Area is not repaired or replaced, insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition which is not in violation of any state or local health or safety statute or ordinance and the remainder of the proceeds shall be distributed to the Owners on the basis of an equal share for each Lot.

## ARTICLE 9

### RIGHTS OF FIRST MORTGAGEES

**9.1. Notification to First Mortgagees.** Upon receipt by the Association of a written request from a First Mortgagee or insurer or governmental guarantor of a First Mortgage informing the Association of its correct name and mailing address and the Lot number or address to which the request relates, the Association shall provide such Eligible Mortgage Holder or Eligible Insurer Or Guarantor with timely written notice of the following:

(i) Any condemnation loss or any casualty loss which affects a material portion of the Project or any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor;

(ii) Any delinquency in the payment of Assessments or charges owed by an Owner of a Lot subject to a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder or Eligible Insurer Or Guarantor or any other default in the performance by the Owner of any obligation under the Project Documents, which delinquency remains uncured for the period of sixty (60) days;

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

(iv) Any proposed action which will require the consent of a specified percentage of Eligible Mortgage Holders as set forth in Sections 9.2 or 9.3 of this Declaration.



**9.2. Approval Required to Terminate Project.** Any termination of the legal status of the Project for reasons other than the substantial destruction or a substantial taking in condemnation of the Project shall not be effective unless approved by Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least sixty-seven percent (67%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders.

**9.3. Approval Required for Amendment to Declaration, Articles or Bylaws.**

(A) The approval of Eligible Mortgage Holders holding First Mortgages on Lots the Owners of which have at least fifty-one percent (51%) of the votes in the Association allocated to Owners of all Lots subject to First Mortgages held by Eligible Mortgage Holders shall be required to add or amend any material provisions of the Declaration, Articles or Bylaws which establish, provide for, govern or regulate any of the following:

- (i) Voting rights;
- (ii) Assessments, assessment liens or subordination of assessment liens;
- (iii) Reserves for maintenance, repair and replacement of Common Areas;
- (iv) Insurance or fidelity bonds;
- (v) Responsibility for maintenance and repairs;
- (vi) Expansion or contraction of the Project, or the addition, annexation or withdrawal of property other than the Annexable Property to or from the Project;
- (vii) Boundaries of any Lot;
- (viii) Reallocation of interests in the Common Areas or the rights to their use;
- (ix) Convertability of Lots into Common Areas or of Common Areas into Lots;
- (x) Leasing of Lots;
- (xi) Imposition of any restrictions on an Owner's right to sell or transfer his Lot;

(xii) A decision by the Association to establish self management when professional management had been required previously by an Eligible Mortgage Holder;

(xiii) Restoration or repair of the Project (after a hazard damage or partial condemnation) in a manner other than that specified in the Project Documents;

(xiv) Any action to terminate the legal status of the Project after substantial destruction or condemnation occurs;

(xv) Any provisions which expressly benefit First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors.

(B) Any addition or amendment to the Declaration, Articles or Bylaws shall not be considered material if it is for the purpose of correcting technical errors or for clarification only. Any First Mortgagee who receives a written request to approve additions or amendments to the Declaration, Articles or Bylaws which are not material who does not deliver or mail to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

**9.4. First Mortgagee Not Liable for Prior Assessments.**

Any First Mortgagee or any other party acquiring title or coming into possession of a Lot through foreclosure of the First Mortgage, purchase at a foreclosure sale or trustee sale, or through any equivalent proceedings, such as, but not limited to, the taking of a deed in lieu of foreclosure shall acquire title free and clear of any claims for unpaid assessments and charges against the Lot which became payable prior to the acquisition of such Lot by the First Mortgagee or other party. Any Assessments and charges against the Lot which accrue prior to such sale or transfer shall remain the obligation of the defaulting Owner of the Lot.

**9.5. First Mortgagee's Right of Inspection of Records.**

Any First Mortgagee will, upon written request, be entitled to (a) inspect the books and records of the Association during normal business hours, (b) receive within ninety (90) days following the end of any fiscal year of the Association, a financial statement of the Association for the immediately preceding fiscal year of the Association, free of charge to the requesting party, and (c) receive written notice of all meetings of the Members of the Association and be permitted to designate a representative to attend all such meetings.

**9.6. Limitation on Partition and Subdivision.** No Lot shall be partitioned or subdivided without the prior written approval of the holder of any First Mortgage on such Lot.

**9.7. Prior Written Approval of First Mortgagees.** Unless at least two-thirds (2/3) of the First Mortgagees (based upon one vote for each First Mortgage owned) or Owners (other than the sponsor, developer or builder) of the individual Lots have given their prior written approval, the Association shall not be entitled to:

(i) By act or omission seek to abandon, partition, subdivide, sell or transfer the Common Area owned, directly or indirectly, by the Association for the benefit of the Lots (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Area shall not be deemed a transfer within the meaning of this subsection);

(ii) Change the method of determining the obligations, assessments, dues or other charges which may be levied against a Lot Owner;

(iii) By act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of Lots, the exterior maintenance of Lots, and the improvements located thereon, the maintenance of the Common Area, party walks or fences and driveways, or the upkeep of lawns and plantings in the Project;

(iv) Use hazard insurance proceeds for losses to any Common Area, other than the repair, replacement or reconstruction of such Common Area.

**9.8. Conflicting Provisions.** In the event of any conflict or inconsistency between the provisions of this Article and any other provision of the Project Documents, the provisions of this Article shall prevail; provided, however, that in the event of any conflict or inconsistency between the different Sections of this Article or between the provisions of this Article and any other provision of the Project Documents with respect to the number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers Or Guarantors that must consent to (i) an amendment of the Declaration, Articles or Bylaws, (ii) a termination of the Project, or (iii) certain actions of the Association as specified in Sections 9.2, 9.3 and 9.7 of this Declaration, the provision requiring the consent of the greatest number or percentage of Owners, First Mortgagees, Eligible Mortgage Holders or Eligible Insurers or Guarantors shall prevail; provided, however, that so long as there is a Class B membership in the Association, the Declarant, without the consent of any Owner or First Mortgagee being required, shall have the right to amend this Declaration, the Articles or the Bylaws in order to conform this Declaration, the Articles or the Bylaws to the requirements or guidelines of the Federal National Mortgage Association, the

Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required or requested by the Declarant.

## ARTICLE 10

### GENERAL PROVISIONS

10.1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

10.2. Severability. Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

10.3. Duration. The covenants and restrictions of this Declaration shall run with and bind the Property for a term of twenty (20) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years.

10.4. Amendment.

(A) Except for amendments made pursuant to Subsection (B) of this Section, the Declaration may only be amended by the written approval or the affirmative vote of Owners of not less than sixty-seven percent (67%) of the Lots.

(B) So long as there is a Class B membership in the Association, the Declarant may amend this Declaration or the Plat, without obtaining the approval or consent of any Owner or First Mortgagee, in order to conform this Declaration or the Plat to the requirements or guidelines of the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration or any federal, state or local governmental agency whose approval of the Project, the Plat or the Project Documents is required by law or is requested by the Declarant.

(C) So long as the Declarant owns any Lot, any amendment which would delete or modify any right granted to the Declarant by this Declaration must be approved in writing by the Declarant.

(D) So long as there is a Class B membership in the Association, any amendment to this Declaration or the Plat must have the prior approval of the Veterans Administration or the Federal Housing Administration.

(E) Any amendment to Sections 3.7, 4.3 or 4.4 of this Declaration must have the written approval or the affirmative vote of the Owners representing at least sixty-seven percent (67%) of the votes in each class of membership.

(F) Any amendment approved pursuant to Subsection (A) above or pursuant to Subsection (E) above shall be signed by the President or Vice President of the Association and shall be recorded with the County Recorder of Maricopa County, Arizona. Any such amendment shall certify that the amendment has been approved as required by this Section. Any amendment made by the Declarant pursuant to Subsection (B) of this Section shall be executed by the Declarant and shall be recorded with the County Recorder of Maricopa County, Arizona.

**10.5. Violations and Nuisance.** Every act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Declarant, the Association or any Owner.

**10.6. Violation of Law.** Any violation of any state, municipal, or local law, ordinance or regulation, pertaining to the ownership, occupation or use of any property within the Property is hereby declared to be a violation of this Declaration and subject to any or all of the enforcement procedures set forth herein.

**10.7. Remedies Cumulative.** Each remedy provided herein is cumulative and not exclusive.

**10.8. Delivery of Notices and Documents.** Any written notice or other documents relating to or required by this Declaration may be delivered either personally or by mail. If by mail, it shall be deemed to have been delivered twenty-four hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed as follows: If to the Declarant, the Association or the Architectural Committee, at 4040 E. Camelback Road, Phoenix, Arizona 85018; if to an Owner, to the address of his Lot or to any other address last furnished by the Owner to the Association; provided, however, that any such address may be changed at any time by the party concerned by recording a written notice of change of address and delivering a copy thereof to the Association. Each Owner of a Lot shall file the correct mailing address of such Owner with the Association, and shall promptly notify the Association in writing of any subsequent change of address.

**10.9. FHA/VA Approval.** As long as there is a Class B membership, the following actions will require the prior approval of the Federal Housing Administration or the Veterans Administration: annexation of additional properties, dedication of Common Areas, and amendment of this Declaration.

**10.10. Binding Effect.** By acceptance of a deed or by acquiring any interest in any of the property subject to this Declaration, each person or entity, for himself or itself, his heirs, personal representatives, successors, transferees and assigns, binds himself, his heirs, personal representatives, successors, transferees and assigns, to all of the provisions, restrictions, covenants, conditions, rules, and regulations now or hereafter imposed by this Declaration and any amendments thereof. In addition, each such person by so doing thereby acknowledges that this Declaration sets forth a general scheme for the improvement and development of the Property and hereby evidences his intent that all the restrictions, conditions, covenants, rules and regulations contained in this Declaration shall run with the land and be binding on all subsequent and future Owners, grantees, purchasers, assignees, lessees and transferees thereof. Furthermore, each such person fully understands and acknowledges that this Declaration shall be mutually beneficial, prohibitive and enforceable by the various subsequent and future Owners. Declarant, its successors, assigns and grantees, covenants and agrees that the Lots and the membership in the Association and the other rights created by this Declaration shall not be separated or separately conveyed, and such shall be deemed to be conveyed or encumbered with its respective Lot even though the description in the instrument of conveyance or encumbrance may refer only to the Lot.

**10.11. Management Agreements.** Any agreement for professional management of the Association or the Project or any other contract providing for services of the Declarant, or other developer, sponsor or builder of the Project shall not exceed one year. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days or less written notice.

**10.12. Gender.** The singular, wherever used in this Declaration, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions of this Declaration apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

**10.13. Topic Headings.** The marginal or topical headings of the sections contained in this Declaration are for convenience only and do not define, limit or construe the contents of the sections or this Declaration.

**10.14. Survival of Liability.** The termination of membership in the Association shall not relieve or release any such former Member from any liability or obligation incurred under or in any way connected with the Association during the period of such membership, or impair any rights or remedies which the Association may have against such former Member arising out of, or in any way connected with such membership and the covenants and obligations incident thereto.

**10.15. Construction.** In the event of any discrepancies, inconsistencies or conflicts between the provisions of this Declaration and the Articles, Bylaws, Association Rules or Architectural Committee Rules, the provisions of this Declaration shall prevail.

**10.16. Joint and Several Liability.** In the case of joint ownership of a Lot, the liabilities and obligations of each of the joint Owners set forth in or imposed by this Declaration, shall be joint and several.

**10.17. Attorneys' Fees.** In the event the Association employs an attorney to enforce any lien granted to it under the terms of this Declaration or to collect any Assessments or other amounts due from an Owner or to enforce compliance with or recover damages for any violation of or noncompliance with the Project Documents, the prevailing party in any such action shall be entitled to recover from the other party its reasonable attorneys' fees incurred in any such action.

**10.18. Perpetuities.** If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provision shall continue only until twenty-

one (21) years after the death of the last survivor of the now living descendants of the person who is president in the United States as of the date this Declaration is recorded.

SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership

By: J.F. Shea Co., Inc., a Nevada corporation, general partner

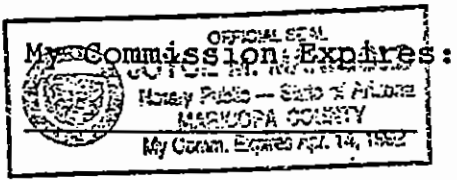
By: [Signature]  
Its: Vice President

By: [Signature]  
Its: Assistant Secretary

STATE OF ARIZONA )  
County of Maricopa ) ss.

The foregoing instrument was acknowledged before me this 10th day of October, 1991 by Garth Wieger, the Vice President of J.F. Shea Co., Inc., a Nevada corporation, general partner of Shea Homes Limited Partnership, a California limited partnership, on behalf of the limited partnership.

[Signature]  
Notary Public



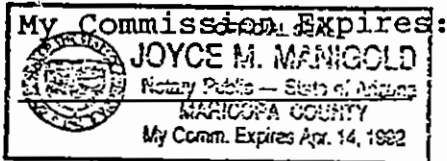
STATE OF ARIZONA )  
County of Maricopa ) ss.

The foregoing instrument was acknowledged before me this 10th day of October, 1991 by Kathleen J. Rubino, the Assistant Secretary of J.F. Shea Co., Inc., a Nevada



corporation, general partner of Shea Homes Limited Partnership, a California limited partnership, on behalf of the limited partnership.

  
Notary Public



91 490874

**EXHIBIT A**

Lots 1 through 37, inclusive, and 47 through 152, inclusive and Tracts A, B, C, D and E, FESTIVAL BY SHEA HOMES, according to the plat recorded November 19, 1990 in Book 342 of Maps, Page 2, records of Maricopa County, Arizona.

**EXHIBIT B**

Lots 38 through 46, inclusive, FESTIVAL BY SHEA HOMES, according to the plat recorded November 19, 1990 in Book 342 of Maps, Page 2, records of Maricopa County, Arizona; and

The Southeast Quarter of the Southeast Quarter of Section 20, Township 1 South, Range 5 East, of the Gila and Salt River Base and Meridian, Maricopa County, Arizona;

EXCEPT the South 950 feet of the East 640 feet thereof.

PL 35.  
WHEN RECORDED, MAIL TO:

Janet Jeter Gould, P.C.  
Two N. Central, Suite 1200  
Phoenix, Arizona 85004



DECLARATION OF ANNEXATION TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR FESTIVAL BY SHEA HOMES

THIS DECLARATION OF ANNEXATION is made and executed as of the 18th day of September, 1992, by SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership, hereinafter referred to as the "Declarant".

RECITALS:

A. Declarant is the Declarant under that certain Declaration of Covenants, Conditions and Restrictions for Festival by Shea Homes, dated October 10, 1991, and recorded as Instrument No. 91-490874 on October 21, 1991, in the records of Maricopa County, Arizona, hereinafter referred to as the "Declaration".

B. Declarant is the current owner of that certain real property situated in the County of Maricopa, State of Arizona, described on Exhibit "A" attached hereto and by this reference incorporated herein which, together with all buildings and other Improvements (as that term is defined in the Declaration) located thereon and all easements, rights and privileges appurtenant thereto, is hereinafter referred to as the "Additional Property".

C. Pursuant to Section 2.2 of the Declaration, the Declarant is entitled and has the right to annex and subject to the provisions of the Declaration certain property which includes the Additional Property.

D. Declarant desires to annex and subject to the Declaration the Additional Property.

NOW, THEREFORE, the Declarant hereby declares that:

Each and all of the provisions of the Declaration, and any amendments thereto made in accordance therewith, shall apply to the Additional Property as if the Additional Property had been included in and made subject to the provisions of the Declaration *ab initio*, subject to all rights of amendment, revocation, withdrawal and additional annexation reserved to the Declarant in the Declaration.

92 526615

That portion of the Additional Property which will be Common Area (as that term is defined in the Declaration) is described on Exhibit "B" attached hereto and by this reference incorporated herein.

IN WITNESS WHEREOF, SHEA HOMES LIMITED PARTNERSHIP, a California limited partnership, has executed this instrument as of the date first above written.

SHEA HOMES LIMITED PARTNERSHIP,  
a California limited partnership

By: J.F. Shea Co., Inc., a Nevada  
corporation, general partner

By: *Garth Wieger*  
Its: Vice President

By: *Joyce M. Manigault*  
Its: Assistant Secretary

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa     )

The foregoing instrument was acknowledged before me this  
18th day of September, 1992 by Garth Wieger  
the Vice President of J.F. Shea Co., Inc., a Nevada  
corporation, general partner of Shea Homes Limited Partnership, a  
California limited partnership, on behalf of the limited partner-  
ship.

*Tina Appenzeller*  
Notary Public

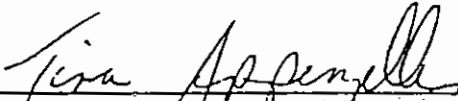
My Commission Expires:



92 525515

STATE OF ARIZONA        )  
                                  ) ss.  
County of Maricopa     )

The foregoing instrument was acknowledged before me this  
18th day of September, 1992 by Joyce M. Manigold,  
the \_\_\_\_\_ of J.F. Shea Co., Inc., a Nevada  
corporation, general partner of Shea Homes Limited Partnership, a  
California limited partnership, on behalf of the limited partner-  
ship.

  
\_\_\_\_\_  
Notary Public

My Commission Expires:

\_\_\_\_\_



92 526616

EXHIBIT "A"

ADDITIONAL PROPERTY

Lots 1 through 133, inclusive, and Tracts A, B, C, D, E, F and G, CELEBRATION BY SHEA HOMES, according to the plat recorded July 14, 1992, in Book 351 of Maps, Page 48, records of Maricopa County, Arizona.

92 526616

EXHIBIT "B"

COMMON AREA  
WITHIN ADDITIONAL PROPERTY

Tracts A, B, C, D, E, F and G, CELEBRATION BY  
SHEA HOMES, according to the plat recorded  
July 14, 1992, in Book 351 of Maps, Page 48,  
records of Maricopa County, Arizona.



Recording Requested By:  
FIRST AMERICAN TITLE

When Recorded Mail To:

FESTIVAL HOMEOWNERS ASSOCIATION  
c/o AMCOR PROPERTY PROFESSIONALS  
P. O. Box 13193  
Socttsdale, AZ 85267-3193

OFFICIAL RECORDS OF  
MARICOPA COUNTY RECORDER  
HELEN PURCELL

93-0208706

04/07/93 04:08

LILIAN 22 OF 75

**SPECIAL  
WARRANTY DEED**

*pk*  
*nc*  
Title No. DR-586444

(without liens or encumbrances)

*A* For the consideration of TEN AND NO/100 DOLLARS, and other valuable considerations,  
SHEA HOMES LIMITED PARTNERSHIP, a California Limited Partnership,

the GRANTOR herein, does hereby convey to

FESTIVAL HOMEOWNERS ASSOCIATION, an Arizona non-profit corporation,

*the* the GRANTEE

the following described real property situated in Maricopa County, Arizona:

Tracts A through G inclusive, of CELEBRATION BY SHEA HOMES, according to the plat of record in the office of the County Recorder of Maricopa County, Arizona, recorded in Book 351 of Maps, page 48, and Certificate of Correction recorded December 21, 1992 in 92-724375 of Official Records.