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OF
MARIC

HELEN PURCELL
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DECLARATION OF HOMEOWNER BENEFITS AND

COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

SPRINGTREE II

(A Single Family Subdivision)

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10/21/96

TABLE OF CONTENTS
FOR
DECLARATION OF HOMEOWNER BENEFITS AND COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SPRINGTREE II

TABLE OF CONTENTS
FOR
DECLARATION OF HOMEOWNER BENEFITS AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SPRINGTREE II

TABLE OF CONTENTS
FOR
DECLARATION OF HOMEOWNER BENEFITS AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SPRINGTREE II

TABLE OF CONTENTS
FOR
DECLARATION OF HOMEOWNER BENEFITS AND COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SPRINGTREE II

TABLE OF CONTENTS
FOR
DECLARATION OF HOMEOWNER BENEFITS AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SPRINGTREE II

Page No.

DECLARATION OF HOMEOWNER BENEFITS AND

COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

SPRINGTREE II

(A Single Family Subdivision)

This Declaration of Homeowner Benefits and Covenants, Conditions, and Restrictions for Springtree II (A Single Family Subdivision) is made as of the date set forth at the end of this Declaration by Beazer Homes Holdings Corp., a Delaware corporation, doing business in Arizona as Hancock Homes.

BACKGROUND

A. Declarant is the owner of certain real property ("Property" or "Project") that is described on the Plat and that is additionally described as follows:

See Exhibit "A" attached to and incorporated in this Declaration by this reference.

The Property is located in the Town of Gilbert, County of Maricopa, State of Arizona.

B. Declarant desires to provide for the phased construction of a single family subdivision consisting of detached single family residences, common areas, and other facilities.

C. Declarant includes in this Declaration and imposes these benefits, covenants, conditions, and restrictions upon only the lots and those common area tracts described on Exhibit "A". Subsequent to the date of this Declaration, additional phases of lots or common area tracts may be incorporated into the Project as provided below.

D. Declarant intends that this Declaration and the other Project Documents will facilitate a general plan for development for the Property.

Accordingly, Declarant declares that the lots and tracts described on the Plat, together with any other lots and tracts that, in the future, may be included in this Declaration as provided below, shall be held, sold, mortgaged, encumbered, leased, rented, used, occupied, improved, and conveyed subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges, and liens (collectively referred to as "covenants and restrictions").

The covenants and restrictions are for the purpose of protecting the value, attractiveness, and desirability of the Property, and the covenants and restrictions shall benefit, burden, and run with the title to the Property and shall be binding upon all parties having any right, title, or interest in or to any part of the Property and their heirs, successors, and assigns. The covenants and restrictions shall inure to the benefit of each Owner. The Declarant further declares as follows:

ARTICLE I

DEFINITIONS

1.1 "Ancillary Unit" shall mean all permanent or temporary basements, cellars, guest houses, hobby houses, storage sheds, stables, wood sheds, outbuildings, shacks, barns, garages, living quarters, cabanas, gazebos, carports, covered patios, or structures or items of any type similar to any of the foregoing that are not part of the Detached Dwelling Unit and related improvements originally constructed by the Declarant.

1.2 "Architectural Committee" shall mean the committee established pursuant to Article IX of this Declaration and the provisions of any other Project Documents.

1.3 "Architectural Committee Rules" shall mean any rules and regulations or design guidelines that may be adopted or amended by the Architectural Committee.

1.4 "Articles" shall mean the Articles of Incorporation of the Association that have been or will be filed in the office of the Corporation Commission of the State of Arizona, as may be amended from time to time in the manner set forth in the Articles.

1.5 "Assessment," "assessment," "annual assessment," and "special assessment" (and the plural of each) shall mean the assessments authorized in this Declaration, including those authorized in Article IV.

1.6 "Association" shall mean Springtree of South Gilbert Homeowners Association, Inc., that has been or will be incorporated by Declarant and/or others as a non-profit Arizona corporation, and shall mean additionally the Association's successors and assigns.

1.7 "Association Rules" shall mean any rules and regulations adopted by the Association, as may be amended from time to time.

1.8 "Board" and "Board of Directors" shall mean the Board of Directors of the Association.

1.9 "Bylaws" shall mean the bylaws of the Association, as may be amended from time to time in the manner set forth in the Bylaws.

1.10 "Common Area" shall mean all of the real property described on the Plat as common area tracts and any other real property that may be from time to time annexed into the Project as Common Area but shall not include the real property described on the Plat as individual Lots or public streets and shall not include Tracts "Y" and "Z". Whether owned by the Declarant or the Association, the Common Area is reserved for the common use and enjoyment of the Owners and is reserved exclusively for the Owners and not for the public, unless otherwise specifically designated in the Declaration or on the Plat. The term "Common Area" also includes all structures, facilities, furniture, fixtures, improvements, trails, and landscaping, if any and if permitted, located on the common area tracts, and all rights, easements, and appurtenances relating to the real property owned by the Association. Tract "A", as depicted on the Plat, is called the "Median Island Tract". Tracts "B", "C", "D", "G", "H", "P", "Q", and "T", as depicted on the Plat, are called the "Drainage And Retention Tracts". Tract "Q", as depicted on the Plat, is called the "Equestrian Trail Tract". "Areas of Common Responsibility" means those areas that are not part of the Common Area but are either portions of certain Lots or portions of dedicated right-of-way that the Association is obligated to maintain under the terms of Paragraphs 10.12 or 10.13 below.

1.11 "Declarant" shall mean Beazer Homes Holdings Corp., a Delaware corporation, doing business in Arizona as Hancock Homes. The term "Declarant" will include all successors and assigns of Beazer Homes Holdings Corp., if the successors or assigns: (i) acquire more than one (1) undeveloped Lot from the Declarant for the purpose of resale; and (ii) record a supplemental declaration executed by the then-Declarant declaring the successor or assignee as a succeeding Declarant under this Declaration. "Declarant" does not include any Mortgagee.

1.12 "Declaration" shall mean this Declaration of Homeowner Benefits and Covenants, Conditions, and Restrictions and the covenants and restrictions set forth in this entire document (in entirety or by reference), as may be amended from time to time in the manner set forth below.

1.13 "Detached Dwelling Unit" shall mean all buildings that are located on a Lot and that are used or are intended to be used for Single Family Residential Use, including the garage, carport, and open or closed patios.

1.14 "Institutional Guarantor" shall mean, if applicable to the Project, a governmental insurer, guarantor, or secondary market mortgage purchaser such as the Federal Housing Administration (FHA), the Veterans Administration (VA), the Federal Home Loan Mortgage Corporation (FHLMC), and the Federal National Mortgage Association (FNMA) that insures, guarantees, or purchases any note or similar debt instrument secured by a First Mortgage. An Institutional Guarantor will be entitled to vote on those matters that require the approval or

consent of the Institutional Guarantors if the Institutional Guarantor notifies the Association in writing of its desire to vote and its address for delivery of all Association notices.

1.15 "Lot" shall mean any one of the lots that is described and depicted on the Plat and that is initially subjected to this Declaration and shall include any other lot that in the future may be included within the Project as provided in this Declaration. "Inventory Lot" shall mean any Lot owned by the Declarant upon which a Detached Dwelling Unit has not been constructed completely. Completed construction shall be evidenced by the issuance of a final Certificate of Occupancy by the Town of Gilbert. "Completed Inventory Lot" shall mean a Lot owned by Declarant upon which a Detached Dwelling Unit has been completed, as evidenced by the issuance of a final Certificate of Occupancy by the Town of Gilbert.

1.16 "Member" shall mean an Owner of a Lot that is originally subject to this Declaration or that has become subject to this Declaration by an Annexation Amendment or Supplemental Declaration as provided in the Declaration.

1.17 "Mortgage" (whether capitalized or not) shall mean the consensual conveyance or assignment of any Lot, or the creation of a consensual lien on any Lot, to secure the performance of an obligation. The term "Mortgage" includes a deed of trust, mortgage, assignment, or any other agreement for the purpose of creating a lien to secure an obligation, and also includes the instrument evidencing the obligation. "First Mortgage" shall mean a Mortgage held by an institutional lender that is the first and most senior of all Mortgages on the applicable Lot.

1.18 "Mortgagee" (whether capitalized or not) shall mean a person or entity to whom a Mortgage is made and shall include a holder of a promissory note, a beneficiary under a deed of trust, or a seller under an agreement for sale. "First Mortgagee" shall mean a Mortgagee that is the first and most senior of all Mortgagees upon the applicable Lot.

1.19 "Mortgagor" shall mean a person or entity who is a maker under a promissory note, a mortgagor under a mortgage, a trustor under a deed of trust, or a buyer under an agreement for sale, as applicable.

1.20 "Nonrecurring And Temporary Basis" shall mean the parking of vehicles of any type either: (i) for the sole purpose of loading and unloading non-commercial items for use on the Lot; (ii) for temporary visits by guests or invitees of an Owner that do not involve overnight parking; or (iii) for temporary parking of the Owner's vehicles for cleaning or special events that do not involve overnight parking and that do not occur on a frequent or repetitive basis.

1.21 "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple legal title to any Lot. An "Owner" shall not include those persons having an interest in a Lot merely as security for the performance of an obligation or duty (i.e., a mortgagee). In the case of Lots in which the fee simple title is vested of record in a trustee pursuant

to Arizona Revised Statutes, §§ 33-801, et seq., the "Owner" of the Lot shall be deemed to be the trustor. In the case of a Lot covered by an Agreement for Sale of Real Property as described in A.R.S., §§ 33-741, et seq., the buyer of the Lot shall be deemed to be the "Owner." An "Owner's Permittees" shall mean all family members, guests, tenants, licensees, invitees, and agents that use the Owner's Lot or other portions of the Project (including Common Area) with the implied or express consent of an Owner.

1.22 "Person" (whether capitalized or not) shall mean a natural person, a corporation, a partnership, a trust, or other legal entity.

1.23 "Plat" will refer to the subdivision plat Springtree II recorded in Book 421 of Maps, Page 27, Official Records of Maricopa County, Arizona, as it may be amended from time to time pursuant to this Declaration.

1.24 "Project Documents" refers to this Declaration, the Articles, the Bylaws, the Association Rules, the Architectural Committee Rules, and the Plat, collectively, as any or all of the foregoing may be amended from time to time.

1.25 "Recreational Vehicle Parking Area" shall mean that portion of the Enclosed Side Yard of a Lot that has been designated by the Architectural Committee as a place for the parking of Commercial or Recreational Vehicles or Family Vehicles, as respectively defined in Sections 8.23 and 8.24 below. The plans and specifications for any Recreational Vehicle Parking Area must be approved in writing by the Architectural Committee prior to its installation or construction. The Recreational Vehicle Parking Area must be Screened From View and cannot be located in whole or part within any Lot Clear Zone.

1.26 "Screened From View" shall mean that the object in question is appropriately screened from view from abutting Lots, Common Area, and public and private streets by a gate, wall, shrubs, or other approved landscaping or screening devices. The Architectural Committee will be the sole judge as to what constitutes an object being Screened From View or appropriately screened.

1.27 "Single Family" shall mean a group of one or more persons each related to the other by blood, marriage, or legal adoption, or a group of not more than four (4) adult persons not all so related who maintain a common household in a Detached Dwelling Unit located on a Lot.

1.28 "Single Family Residential Use" shall mean the occupancy or use of a Detached Dwelling Unit and Lot by a Single Family in conformity with the Project Documents and the requirements imposed by applicable zoning laws or other state, county, or municipal rules, ordinances, codes, and regulations.

1.29 "Visible From Neighboring Property" shall mean, with respect to any given object, that the object is or would be clearly visible without artificial sight aids to a person six (6) feet tall, standing on any part of the Property (including a Lot, Common Area, or public or private street) adjoining the Lot or the portion of the Property upon which the object is located.

1.30 "Yard" (whether capitalized or not) shall mean all portions of the Lot other than the portions of the Lot upon which the Detached Dwelling Unit or an Ancillary Unit is constructed. "Private Yard" means the portion of the yard that is not Visible From Neighboring Property and is shielded or enclosed by walls, fences, hedges, and similar items. "Public Yard" means that portion of the Yard that is Visible From Neighboring Property, whether located in front of, beside, or behind a Detached Dwelling Unit and includes all landscaping that is Visible From Neighboring Property regardless of the fact that the base or ground level of the landscaping is not Visible From Neighboring Property. "Enclosed Side Yard" means the portion of a yard that, when viewed from the street fronting the Detached Dwelling Unit, is located behind any side yard boundary wall located on a Lot. The Enclosed Side Yard shall be no deeper (when measured from the street fronting the Detached Dwelling Unit) than the deepest wall of any Detached Dwelling Unit located on a Lot. The Architectural Committee will be the sole judge as to what constitutes an Enclosed Side Yard in accordance with this Declaration. "Lot Clear Zone" means the five (5) foot area located within the Enclosed Side Yard of a Lot that adjoins the Detached Dwelling Unit and runs parallel with the side wall of the Detached Dwelling Unit.

ARTICLE II

PROPERTY RIGHTS IN COMMON AREAS

2.1 Owners' Easements of Enjoyment. Every Owner shall have a non-exclusive right and easement of use and enjoyment in and to the Common Area, in common with all other persons entitled to use the Common Area. An Owner's right and easement to use and enjoy the Common Area shall be appurtenant to and pass with the title to every Lot and shall be subject to the following:

(a) Charges and Regulations. The right of the Association to charge reasonable admission and other fees for the use of the Common Areas and to regulate the use of the Common Area; the right of the Association to limit the number of the Owner's Permittees who use the Common Area; the right of the Association to limit the number and type of pets that use the Common Area; the right of the Association to hold the Owners accountable for the conduct of the Owner's Permittees and pets;

(b) Suspension of Voting and Usage Rights. The right of the Association to suspend the voting rights of any Owner and to suspend the right to the use of the Common Areas by an Owner or the Owner's Permittees for any period during which any assessment

(together with accrued interest, late charges, and all attorney fees incurred) against that Owner or Owner's Lot remains unpaid, and, in the case of any non-monetary infraction of the Project Documents, for any period during which the infraction remains uncured;

(c) Dedication/Grant. The right of the Association to dedicate or grant an easement covering all or any part of the Common Area to any provider utility company or municipality for the purposes, and subject to the conditions, that may be established by the Declarant during the period of Declarant Control (as defined in Section 3.2) and, after the period of Declarant Control, by the Board. Except for those easements reserved or created in this Declaration or by the Plat, no dedications or grants of easements over all or any part of the Common Area to any municipality or provider utility company shall be effective unless the dedication or grant is approved at a duly called regular or special meeting by an affirmative vote in person or by proxy of two-thirds (2/3) or more of the total number of eligible votes in each class of Members and unless the instrument evidencing the dedication or grant is executed by an authorized officer of the Association and recorded in the proper records in Maricopa County; and

(d) Declarant Use. The right of the Declarant and its agents and representatives, in addition to their rights set forth elsewhere in this Declaration and the other Project Documents, to the nonexclusive use, without extra charge, of the Common Area for sales, display, and exhibition purposes both during and after the period of Declarant Control.

2.2 Delegation of Use. Subject to and in accordance with the Project Documents, any Owner may delegate its right of enjoyment to the Common Area to the Owner's Permittees.

2.3 Conveyance of Common Area. Immediately prior to the time that the first Lot is conveyed to a Class A Member, the Common Area shall be conveyed by Declarant to the Association by the delivery of a special warranty deed, free and clear of all monetary liens, but subject to the covenants and restrictions of the Project Documents. Whether owned by the Declarant or the Association, the Common Area will be maintained by the Association at the expense of the Owners, all as detailed in Article IV below.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner of a Lot, by accepting a deed for that Lot (whether or not expressed in the deed or conveying instrument) or otherwise becoming an "Owner", shall be a Member of the Association and shall be bound by the provisions of the Project Documents, shall be deemed to have personally covenanted and agreed to be bound by all covenants and restrictions contained in the Project Documents, and shall be deemed to have entered into a contract

with the Association and each other Owner for the performance of the respective covenants and restrictions. The personal covenant of each Owner described in the preceding sentence shall be deemed to be in addition to the real covenants and equitable servitudes created by the Declaration, and this personal covenant of each Owner shall not limit or restrict the intent that this Declaration benefit and burden, as the case may be, and run with title to all Lots and Common Area covered by this Declaration. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot that is subject to assessment. Upon the permitted transfer of an ownership interest in a Lot, the new Owner shall automatically become a Member of the Association. With the exception of Declarant, membership in the Association shall be restricted solely to Owners of Lots.

3.2 Class. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A members shall be all Owners, with the exception of the Declarant. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one person holds an interest in any Lot, all joint owners shall be Members; however, for all voting purposes and quorum purposes, they shall together be considered to be one (1) Member. The vote for any jointly-owned Lot shall be exercised as the joint owners determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Any attempt to cast multiple votes for a given Lot shall result in the invalidity of all votes cast for that Lot.

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

1. Four (4) months after the date when the total votes outstanding in the Class A membership first equals or exceeds the total votes outstanding in the Class B membership;

2. The date that is six (6) years after the date of the close of escrow on the first Lot sold by Declarant; or

3. When the Declarant notifies the Association in writing that it relinquishes its Class B membership.

Upon the conversion of Declarant's Class B membership to Class A membership, the Declarant will be entitled to only one (1) vote for each Lot owned by the Declarant. The period of time during which Class B membership is in existence shall be referred to in this Declaration as the period of "Declarant Control." For the purposes of Section 3.2(b)(1) above, the number of votes shall be based upon the Lots initially covered by this Declaration, plus all Lots that in the future may be included

in or covered by this Declaration as provided in this Declaration, minus all Lots withdrawn from this Declaration, if any.

3.3 Transfer of Control. When the period of Declarant Control ends, the Class A Members shall accept control of the Association from the Declarant and full responsibility for the operation of the Association and administration of the Property as provided in the Project Documents, and Declarant shall have no further responsibility for any future acts or omissions with respect to the operation of the Association and administration of the Property. Any claims of the Association or any Owners against the Declarant for present or past acts or omissions of the Declarant with respect to the operation of the Association or the administration of the Property (including the availability or sufficiency or any reserves) shall be waived, unenforceable, and void if not commenced within one (1) year from the expiration of Declarant Control.

ARTICLE IV

COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 Lien and Personal Obligation for Assessments.

(a) Creation of Lien. Each Owner of any Lot, by accepting a deed for that Lot (whether or not expressed in the deed or conveying instrument) or otherwise becoming an "Owner", is deemed personally to covenant and agree to be bound by all covenants and restrictions and all duties, obligations, and provisions of the Project Documents and to pay to the Association: (i) annual assessments or charges; (ii) special assessments for capital improvements under Section 4.4, unexpected or extraordinary expenses for repairs of Common Area or Areas of Common Responsibility, or other Association matters; (iii) an amount sufficient to, on demand, indemnify and hold harmless the Association for, from, and against all obligations undertaken or incurred by the Association at or on account of that individual Owner's special request and to repay the Association for all expenditures on account of the special request; (iv) an amount sufficient to reimburse the Association for the cost of performing any obligation of an Owner under the Project Documents that the Owner has failed to timely pay or perform; and (v) all other assessments as may be fixed, established, and collected from time to time as provided in this Declaration or the other Project Documents, including, without limitation, any accrued interest, taxable court costs, late fees, attorney fees, fines, penalties, or other charges. The assessments and amounts described above, together with all accrued interest, court costs, attorney fees, late fees, and all other expenses incurred in connection with the assessments and amounts described above, whether or not a lawsuit or other legal action is initiated, shall be referred to in the Project Documents as an "assessment" or the "assessments". Pursuant to A.R.S. § 33-1807, the Association shall have a consensual and continuing lien upon the Lot against which the assessment is made or has been incurred for the payment of all assessments.

(b) Personal Obligation. Each assessment also shall be the personal, joint, and several obligation of each person who was the Owner of the Lot at the time when the assessment became due or charge was incurred. The personal obligation for delinquent assessments shall not pass to the particular Owner's successors in title unless expressly assumed by them; however, the personal obligation of the prior Owner for the delinquent assessments or charges shall not be deemed released or discharged by reason of any assignment, conveyance, or transfer of title of a Lot. Notwithstanding the previous sentence, in the event of an assignment, conveyance, or transfer of title to any Lot, the assessment additionally shall continue as a lien against the Lot in the hands of the subsequent Owner, except in those circumstances described in Section 4.9 below. The recordation of this Declaration shall constitute record notice and perfection of any assessment or assessment lien, and, notwithstanding Section 4.10 below, further recordation of any claim of lien (or Notice and Claim of Lien) for assessment shall not be required for perfection or enforcement.

4.2 Purpose of Annual Assessments. The annual assessments levied by the Association shall be used for the purpose of: (i) promoting the recreation, health, safety, welfare, and desirability of the Project for its Owners; (ii) operating of the Common Area (including payment of all taxes, utilities, and rubbish collection fees, if any, and if not individually billed to the Owners); (iii) insuring (including a reserve fund for insurance deductibles), maintaining, repairing, painting, and replacing improvements in the Common Area (including any reserve fund for the foregoing); (iv) maintaining, installing, and repairing any landscaping located with the Areas of Common Responsibility; and (v) enhancing and protecting the value, desirability, and attractiveness of the Lots and Common Area generally. The annual assessment may include a reserve fund for taxes, insurance, maintenance, repairs, and replacements of the Common Area and other improvements that the Association is responsible for maintaining.

4.3 Initial and Annual Assessments. Until December 31, 1997, the maximum annual assessments shall be Three hundred seventy eight and No/100 Dollars ($ 378 .00) per Lot. From and after the "base year" ending December 31, 1997, the maximum annual assessment shall be as determined by the Board of Directors, subject to the limitation in the following sentence. The annual assessment may not be increased over the annual assessment in the previous year by more than the Permitted Percentage Increase (as defined below), unless the additional increase is approved at a duly called regular or special meeting by an affirmative vote (in person or by proxy) of two-thirds (2/3) or more of the total number of eligible votes cast at that meeting in each class of Members. From and after December 31, 1997, the Board, without a vote of the Members, may increase the maximum annual assessments during each fiscal year of the Association by an amount ("Permitted Percentage Increase") equal to the greater of: (i) ten percent (10%); or (ii) a percentage calculated by dividing the Consumer Price Index in the most recent October (identified by an "A" in the formula below) by the Consumer Price Index for the October one (1) year prior (identified by a "B" in the formula below), minus one (1) (i.e., CPI percentage = (A/B) -1). By way of example only, the percentage increase in the assessment for 1998

cannot be increased by more than the greater of: (I) ten percent (10%); or (II) the increase in the Consumer Price Index for October, 1997, divided by the Consumer Price Index in October, 1996), minus one (1). The term "Consumer Price Index" shall refer to the "United States Bureau of Labor Statistics, Consumer Price Index, United States and selected areas, all items" issued by the U.S. Bureau of Labor Statistics, or its equivalent or revised or successor index.

4.4 Special Assessments. The Association, at any time and from time to time in any assessment year, in addition to the annual assessments authorized above or any other assessments authorized elsewhere in this Declaration, may levy a special assessment against all of the Members for the purpose of defraying, in whole or in part: (i) the cost of any construction, reconstruction, repair, or replacement (whether or not due to destruction, governmental taking, or otherwise) of a capital improvement upon or under the Common Area (including fixtures and personal property related to the Common Area); or (ii) the cost of any other unexpected or extraordinary expenses for repairs of Common Area or other Association matters; however, any special assessment must be approved at a duly called regular or special meeting by an affirmative vote (in person or by proxy) of two thirds (2/3) or more of the total number of eligible votes cast at that meeting for each class of Members. Notwithstanding the foregoing, no approval of the Members shall be needed to levy assessments on an Owner that arise out of the Owner's failure to comply with the Project Documents including, without limitation, any assessment levied pursuant to Sections 4.1(c), 4.1(d), 4.6, 5.2, or 5.6 of the Declaration.

4.5 Notice and Quorum. Written notice of any meeting called for the purpose of taking any action authorized under Section 4.3 or 4.4 shall be sent to all Members not less than ten (10) days nor more than fifty (50) days in advance of the meeting. At the first meeting called regarding any given proposal, the presence (at the beginning of the meeting) of Members or proxies entitled to cast sixty percent (60%) or more of the total number of eligible votes of the Association, regardless of class of membership, shall constitute a quorum. If the required quorum is not present, one other meeting for the same purpose may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be at least thirty percent (30%) of all the total number of eligible votes of the Association, regardless of class of membership. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

4.6 Uniform Rate of Assessment. Both the annual assessments outlined in Section 4.3 and the special assessments outlined in Section 4.4 must be fixed at a uniform rate for all assessable Lots; however, the rate of assessment for Inventory Lots and Completed Inventory Lots owned by Declarant shall be twenty-five percent (25%) of the rate for completed and occupied Lots owned by an Owner other than the Declarant. Notwithstanding the reduced assessment on Inventory Lots and Completed Inventory Lots, Declarant shall be obligated to pay to the Association for any shortages or deficiencies in the Association's operating budget caused by reason of Declarant's reduced assessments; however, Declarant's maximum obligation for these shortages or deficiencies shall be equal to the uniform rate of assessment on all Lots multiplied by the number of Lots upon which Declarant paid a reduced assessment, less all amounts previously paid by

Declarant as reduced assessments on such Lots. Annual assessments may be collected in installments throughout the year as the Board of Directors may determine. The provisions of this Section 4.6 shall not preclude the Association from making a separate or additional charge to, or special assessment on, an Owner for or on account of special services or benefits rendered to, conferred upon, or obtained by or for that Owner or the Owner's Lot. If any expense incurred by the Association is caused by the misconduct of any Owner or the Owner's Permittees, the Association may specially assess the expense exclusively against the offending Owner and/or Lot.

4.7 Date of Commencement of Assessments. The annual assessments established in this Declaration regarding any given Lot subject to this Declaration shall commence on the first day of the month following the conveyance of the Common Areas to the Association. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall endeavor to fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period; however, the annual assessment shall be binding notwithstanding any delay. Written notice of the annual assessment and of any special assessments shall be sent to every Owner subject to the assessment. The due dates shall be established by the Board of Directors. Assessments shall be payable in the full amount specified by the assessment notice, and no offsets against such amount shall be permitted for any reason whatsoever including, without limitation, abandonment of the Owner's Lot, a claim that the Association is not properly exercising its duties in maintenance or enforcement, a claim against the Declarant or its affiliates, or the non-use or claim of non-use by Owner of all or any portion of the Common Area. Assessments may be collected in advance or in arrears as the Board of Directors shall determine in their sole discretion. The Association, acting through the Board of Directors, upon written demand and for a reasonable charge, shall furnish to any Owner or the Owner's authorized representative or designee a certificate signed by an officer of the Association setting forth whether the assessments and charges on a specified Lot have been paid and setting forth any other matters as may be required from time to time by Arizona law. A properly executed certificate of the Association as to the status of assessments on a Lot and any other required matters shall be binding on the Association as of the date of issuance of the certificate and for the time period specified in the certificate.

4.8 Effect of Nonpayment of Assessments - Remedies of the Association.

(a) Late Charge. Any assessment that is not paid within thirty (30) days after the due date shall be subject to a one-time late charge equal to ten percent (10%) of the unpaid assessment and, additionally, shall bear interest from the due date at the minimum rate of ten percent (10%) per annum or any other legal interest rate approved by the Board of Directors and permitted under the requirements of any applicable Institutional Guarantor.

(b) Protective Advances. If an Owner fails to make payments under any Mortgage affecting a Lot or fails to pay taxes or governmental assessments on the Owner's Lot, the Association may make payments of the amounts due under any Mortgage or may

make the required payments for taxes or other governmental assessments on the Lot, and all payments shall be due and payable immediately as a special assessment and shall be added to the lien in favor of the Association.

(c) Collection and Lien Actions. Each Owner of a Lot, by accepting a deed for that Lot (whether or not expressed in the deed or conveying instrument), or otherwise becoming an "Owner", vests in the Association and its agents the right and power to bring all actions against the Owner personally for the collection of all assessments due under the Project Documents as a debt and to enforce the lien securing the assessment by all methods available for the enforcement or foreclosure of liens. The Association shall have the power to bid in any foreclosure, sheriff's sale, or similar sale (whether or not the foreclosure was initiated by the Association or some other person) and to acquire, hold, lease, mortgage, and convey the Lot purchased. The Association may institute suit to recover a money judgment for unpaid assessments of the Owner without being required to foreclose its lien on the Lot and without waiving the lien that secures the unpaid assessments. Any foreclosure may be instituted without regard to the value of the Lot, the solvency of the Owner, or the relative size of the Owner's default. The assessment lien and the rights of enforcement under this Declaration shall be in addition to and not in substitution of all other rights and remedies that the Association may have under the Project Documents or under Arizona law.

4.9 Subordination of the Lien to Mortgages. Except as established under A.R.S. § 33-1807.C. and regardless of whether or not a Notice and Claim of Lien has been recorded by the Association, the Association's lien for the assessments established in this Declaration shall be superior to all liens, charges, homestead exemptions, and encumbrances that are imposed on or recorded against any Lot after the date of recordation of this Declaration. The Association's lien for the assessments established in this Declaration, however, shall be automatically subordinate to: (i) the lien of any Mortgagee holding a Mortgage that was recorded before the date on which the assessment sought to be enforced became delinquent, except for the amount of assessments that accrues from and after the date upon which the Mortgagee acquires title to or comes in possession of any Lot and except for amounts due to the Association as described in Section 5.6 below; and (ii) any liens for real estate taxes or other governmental assessments or charges that by law are prior and superior to the lien for such assessments. The sale or transfer of any Lot shall not affect the lien for assessments or the personal obligation of the Owner to pay all assessments arising during the Owner's ownership of the Lot; however, the sale or transfer of any Lot pursuant to a judicial foreclosure or trustee's sale by a Mortgagee shall extinguish that portion of the lien on the Lot that became due prior to the judicial foreclosure or trustee's sale. In the case of a sale or transfer by judicial foreclosure or trustee's sale by a Mortgagee, the Mortgagee or other successor Owner shall not be liable for any assessments that become due prior to the sale or foreclosure by the Mortgagee. No sale or transfer pursuant to a judicial foreclosure or trustee's sale of any Mortgagee shall relieve any foreclosed Owner from personal liability or shall act to release the lien for any assessments that may become due or arise after the judicial foreclosure or trustee's sale. Nothing in this Declaration,

however, shall be construed to release any Owner or previous Owner from the Owner's personal obligation to pay any assessment arising during the Owner's or previous Owner's ownership of the Lot, and the Association may enforce collection of the assessments arising during his/her ownership of the Lot in any manner permitted under Arizona law or the Project Documents.

4.10 Notice of Lien. Without affecting the priority and perfection of any assessment that has been perfected as of the date of recordation of this Declaration, the Association may give (but is not obligated to give) notice to any Owner whose assessment is due and unpaid by mailing to the Owner a copy of a "Notice and Claim of Lien" which may state, among other things, the following: (i) the last known name of the delinquent Owner; (ii) the legal description or street address of the Lot against which the claim of lien is made; (iii) the amount claimed to be due and owing from the Owner and assessed against the Lot; and (iv) a statement that the claim is made by the Association pursuant to the terms of the Declaration and the other Project Documents. Each default in the payment of any assessment shall constitute a separate basis for a claim of lien, but any number of defaults may be included within a single Notice and Claim of Lien. The Association may record a Notice and Claim of Lien against the delinquent Owner's Lot. The Notice and Claim of Lien may be executed by any officer of the Association, the managing agent for the Association, or legal counsel for the Association, but in all events the lien will remain that of the Association.

4.11 Initial Working Capital. To ensure that the Association will have adequate funds for reserves and extraordinary or unexpected expenses, each purchaser of a Lot from the Declarant shall pay to the Association, immediately upon becoming the Owner of a Lot, a working capital payment equal to one-sixth (1/6) of the Association's annual assessment for the then current fiscal year of the Association. Working capital payments shall be collected only upon the original sale of the Lot by the Declarant and shall not be collected on subsequent resales. All working capital payments to the Association shall be deposited in the Association's reserve account or separately accounted for in the Association's operating account as a reserve fund, and all working capital reserve funds shall be used only as directed by the Board of Directors, as they may see fit in their sole discretion. During the period of Declarant Control, neither the Association nor the Declarant shall use any of the working capital funds to defray the Declarant's expenses or construction costs or to pay for ordinary expenses of the Association. Declarant, in its sole discretion, may advance certain amounts to the Association as working capital; however, Declarant shall not be obligated to advance any amounts for working capital. If Declarant elects to advance any amounts for working capital, Declarant shall be entitled to a reimbursement from the Association, upon Declarant's demand, for all working capital funds previously advanced by Declarant. Except for those amounts paid by Declarant, all amounts paid as working capital shall be non-refundable and shall not act as a credit against any assessment payable by an Owner pursuant to this Declaration.

ARTICLE V

COMMON AREA AND LOT MAINTENANCE

5.1 Common Area. Except as provided in Section 5.2, the Association shall be responsible for the maintenance, repair, and replacement of the Common Area and the Areas of Common Responsibility, and, without any approval of the Owners, the Association may: (i) reconstruct, repair, replace, and refinish any landscaping or improvement located on or used in connection with the Common Area and the Areas of Common Responsibility; and (ii) do any other acts deemed necessary to preserve, beautify, and protect the Common Area and the Areas of Common Responsibility in accordance with the general purposes specified in the Project Documents. The Board of Directors shall be the sole and absolute judge as to the appropriate maintenance of the Common Area and the Areas of Common Responsibility. Notwithstanding anything contained in this Section 5.1, the Association will have no obligation to perform any maintenance or repair work that is performed by any municipality or provider utility company that is responsible for the maintenance of any utilities or improvements located within any Common Area or the Areas of Common Responsibility. No Owner shall alter, remove, injure, or interfere in any way with any landscaping, lawns, plants, irrigation systems, sprinklers, shrubs, trees, and the like, if any, placed on the Common Area or the Areas of Common Responsibility without the express written consent of the Declarant, during the period of Declarant Control, or the Architectural Committee, after the period of Declarant Control.

5.2 Repairs Necessitated by Owner. In the event that the need for maintenance or repair to any Common Area or the Areas of Common Responsibility is caused through the acts or omissions (including negligent acts or omissions) of an Owner, the Owner's Permittees, or any pet of the Owner, the Association, in its discretion, may add the cost of the maintenance or repairs, including the deductible portion of any applicable insurance policy, to the assessment against the Lot owned by that Owner, without regard to the availability of any insurance proceeds payable to the Association for the cost of the maintenance or repairs. In addition to the foregoing, if the Owner of a given Lot is held liable to the Association by a court of competent jurisdiction for maintenance or repair work performed by the Association to any other Lot (i.e., a Lot not owned by that Owner), the amount of that judgment shall be added to and become a part of the assessment against the Lot owned by that Owner.

5.3 Maintenance of Detached Dwelling Unit. The Detached Dwelling Unit and all other permitted Ancillary Units must be maintained by the Owner of the applicable Lot in a clean, safe, neat, and attractive condition and repair and must be adequately painted and finished. Without limiting the foregoing, the Owner of each Lot shall be responsible for: (i) all conduits, ducts, plumbing, wiring, and other facilities and utility services that are contained on the Lot; (ii) all service equipment, such as refrigerators, air conditioners, heaters, dishwashers, washers, dryers, ovens, and stoves; and (iii) all floor coverings, roofs, windows, doors, paint (internal and external), finishes, siding, and electrical and plumbing fixtures.

5.4 Access at Reasonable Hours. For the purpose of performing the maintenance, repairs, or replacements permitted under this Article V, the Association and the Association's agents or employees shall have the right, after reasonable notice to an Owner (except in the case of emergency, in which case no notice need be given), to enter onto the Owner's Lot at any reasonable time. For the purposes of performing the maintenance authorized by Section 5.1 upon any portion of the Common Area or the Areas of Common Responsibility, the Association and the Association's agents or employees may enter onto the Common Area or the Areas of Common Responsibility on a Lot without notice to any Owner at reasonable hours.

5.5 Landscaping. Unless completed by Declarant as part of the Owner's purchase contract for the Lot and Detached Dwelling Unit, the Public Yard of a Lot must be landscaped by the Owner of the Lot within ninety (90) days of becoming an Owner. The foregoing restriction shall not apply to the Declarant or any Lots owned by the Declarant as model units or Completed Inventory Lots. Plans for all landscaping, lawns, plants, irrigation systems, sprinklers, shrubs, trees, decorative features (such as flag poles, planters, bird baths, and walkways), and the like (collectively called in this Declaration the "landscaping") that are to be installed anywhere on the Owner's Lot (whether in the Public Yard or not) must be approved prior to installation by the Architectural Committee under Article IX of this Declaration. Except for any Areas of Common Responsibility that may be located on a Lot and that will be maintained by the Association, the Lot and all landscaping located in the Public Yard of a Lot must be maintained in clean, safe, neat, and attractive condition and repair solely by the Owner of that Lot, and Owner shall be solely responsible for neatly trimming and properly cultivating the landscaping and for the removal of all trash, weeds, leaves, and other unsightly material located in the Public Yard of a Lot. As part of the Owner's landscaping plans for a Lot, the Owner must incorporate and plant at least two (2) fifteen (15) gallon non-deciduous trees in the Public Yard.

5.6 Owner's Failure to Maintain. If an Owner fails to perform any maintenance and repair required under the terms of this Article V, then, upon the vote of a majority of the Board of Directors and after not less than thirty (30) days prior written notice to that Owner, the Association shall have the right (but not the obligation) to enter upon or into that Lot and to provide the required maintenance or make the required repairs. Any entry by the Association or its agents shall not be considered a trespass. The cost of these maintenance items and repairs shall be added to the assessments charged to the Owner, shall be paid promptly to the Association by that Owner as a special assessment or otherwise, and shall constitute a lien upon that Owner's Lot. The rights of the Association described above are in addition to any other remedies available to the Association under the Project Documents or Arizona law. If, concurrent with delivery of the thirty (30) day written default notice to Owner for failure of the Owner to perform its obligations under Section 5.3 above, the Association delivers written notice to any of the holders of a Mortgage on the defaulting Owner's Lot, the lien in favor of the Association shall constitute a "lien for other assessments" of the Association under A.R.S. §33-1807.C. and shall have priority to any notified Mortgagee solely

with respect to the special assessment made for the cost of the maintenance and repairs performed by the Association.

5.7 General Standards. Except as may be otherwise provided in this Declaration or the other Project Documents, the Association and each respective Owner of a Lot, as applicable, shall maintain the areas they are respectively responsible for at a level of general maintenance at least equal to that prevailing with respect to areas of a similar nature located in residential communities commonly and generally deemed to be of the same quality as the Project.

ARTICLE VI

DUTIES AND POWERS OF THE OWNERS' ASSOCIATION

6.1 Duties and Powers. In addition to the duties and powers enumerated in the other Project Documents or elsewhere in the Declaration, the Association, through its Board of Directors, shall have the power and authority to:

(a) Common Area. Maintain and otherwise manage the Common Area and all other real and personal property that may be acquired by the Association;

(b) Legal and Accounting Services. Obtain legal, accounting, and other services deemed by the Board, in its discretion, to be necessary or desirable in the operation of the Association and the Common Area;

(c) Easements. Subject to the limitations, if any, imposed by the Project Documents, grant easements where necessary for utilities, sewer facilities, and CATV on, under, over, through, upon, or across the Common Area to serve the Common Areas or any Lot;

(d) Employment of Managers. Employ affiliated or third-party managers or other persons and contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association;

(e) Purchase Insurance. Purchase insurance for the Common Area for risks, with companies, and in amounts as the Board determines to be necessary, desirable, or beneficial, subject to the provisions of Section 6.2 below;

(f) Other. Perform other acts authorized expressly or by implication under this Declaration and the other Project Documents including, without limitation, the right to construct improvements on the Lots and Common Area; and

(g) Enforcement. Enforce the provisions of this Declaration and the other Project Documents by all legal means, including, without limitation, the expenditure of funds of the Association, the employment of legal counsel, the commencement of actions, and the establishment of a system of fines or penalties for the enforcement of this Declaration and the other Project Documents.

6.2 Insurance.

(a) Liability Insurance. Comprehensive general liability insurance covering the Common Area shall be purchased and obtained by the Board, or acquired by assignment from Declarant, promptly following the Board's election, and shall be maintained in force at all times. The premiums shall be paid out of the Association's funds. The insurance shall be carried with reputable companies authorized and qualified to do business in Arizona. The minimum amounts of coverage shall be $1,000,000 for bodily injury and property damage on a combined single limit basis. The policy shall be purchased on an occurrence basis and shall name as insureds the Owners, the Association (its directors, officers, employees, and agents acting in the scope of their employment), and the Declarant (its directors, officers, partners, employees, and agents in the scope of their employment) for so long as Declarant owns any Lot. This policy shall include, but need not be limited to, insurance against injury or damage occurring in or on the Common Area.

(b) Hazard and Multi-Peril Insurance - Master Policy for Common Area. A master or blanket hazard and multi-peril insurance policy shall be purchased or obtained by the Board or acquired by assignment from Declarant promptly following the construction of any building or other similar permanent structure on the Common Area. Once purchased, obtained, or acquired, the hazard insurance policy shall be maintained in force at all times. The premiums shall be paid out of the Association's funds. The hazard insurance policy shall be carried with reputable companies authorized and qualified to do business in the State of Arizona and shall insure against loss from fire and other hazards covered by the standard extended coverage endorsement and "all risk" endorsement to the hazard insurance policy for the full replacement cost of all of the permanent improvements upon the Common Area. The hazard insurance policy shall be in an amount determined from time to time by the Board in its sole discretion. The hazard insurance policy shall name the Declarant (for so long as Declarant owns a Lot), Association, and any First Mortgagee of the insured permanent improvements on the Common Area as insureds, as their respective interests may appear.

(c) Hazard Insurance - Detached Dwelling Units. The Association shall not be obligated to obtain property insurance, liability insurance, flood insurance, or any other type of hazard insurance covering the Detached Dwelling Units or the Lots. The procurement and maintenance of these types of insurance on the Detached Dwelling Units

and the Lots shall be the sole obligation of the Owners of the respective Lot and Detached Dwelling Unit.

(d) Other Insurance. The Board may purchase (but is not obligated to purchase) additional insurance that the Board determines to be advisable or necessary including, but not limited to, workmen's compensation insurance, boiler explosion insurance, demolition insurance, flood insurance, fidelity bonds, director and officer liability insurance, and insurance on personal property owned by the Association. All premiums for these types of insurance and bonds shall be paid out of the Association's funds. The Association may assess the Owners in advance for the estimated cost of these types of insurance. By virtue of owning a Lot subject to this Declaration, each Owner covenants and agrees with all other Owners and the Association that each Owner shall carry "all-risk" casualty insurance on the Detached Dwelling Units. Without limiting any other provision of the Declaration, it shall be each Owner's sole responsibility to secure liability insurance, theft, fire, multi-peril, and other hazard insurance covering loss or damage to the Owner's personal property, Detached Dwelling Unit, and any other insurance not carried by the Association that the Owner desires.

(e) General Provisions on Insurance. The Board of Directors of the Association is granted the authority to negotiate loss settlements with the appropriate insurance carriers covering insurance purchased and obtained by the Association pursuant to Paragraph 6.2. Any two (2) Directors of the Association may sign a loss claim form and release form in connection with the settlement of a loss claim, and their signatures shall be binding on the Association and the Members. Any policy of insurance obtained by the Association may contain a reasonable deductible no higher than that permitted by any Institutional Guarantor. The deductible shall be paid by the party who would be responsible for the repair in the absence of insurance and, in the event multiple parties are responsible but without waiving any right to enter a joint and several liability, the deductible shall be allocated in relation to the amount each party's responsibility bears to the total loss, as determined by the Board. Where possible, each insurance policy maintained by the Association must require the insurer to notify the Association in writing at least ten (10) days before the cancellation or any substantial change to the Association's insurance.

(f) Non-liability of Association. Notwithstanding the requirement of the Association to obtain insurance coverage as stated in this Declaration, neither the Declarant (nor its officers, directors, partners, or employees) nor the Association nor any director, officer, or agent of the Association shall be liable to any Owner or any other party if any risks or hazards are not covered by the insurance to be maintained by the Association or if the amount of insurance is not adequate, and it shall be the responsibility of each Owner to ascertain the coverage and protection afforded by the Association's insurance and to procure and pay for any additional insurance coverage and protection that the Owner may desire.

(g) Provisions Required. The comprehensive general liability insurance referred to in Subsection 6.2(a) and, if applicable, the hazard insurance policy referred to in Subsection 6.2(b) shall contain the following provisions (to the extent available at a reasonable cost):

1. Any "no other insurance" clause shall exclude insurance purchased by any Owners or First Mortgagees;

2. The coverage afforded by the policies shall not be brought into contribution or proration with any insurance that may be purchased by any Owners or First Mortgagees;

3. The act or omission of any one or more of the Owners or the Owner's Permittees shall not constitute grounds for avoiding liability on the policies and shall not be a condition to recovery under the policies;

4. A "severability of interest" endorsement shall be obtained that shall preclude the insurer from denying the claim based upon negligent acts or omissions of the Association or Owners;

5. Any policy of property insurance that gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that this election is not exercisable without the prior written consent of the Association;

6. Each insurer shall waive its rights to subrogate under each policy against the Association (and its directors, officers, agents, and employees) and the Owner (and the Owner's Permittees);

7. A standard mortgagee clause shall be included and endorsed to provide that any proceeds shall be paid to the Association, for the use and benefit of First Mortgagees as their interest may appear, or endorsed to fully protect the interest of First Mortgagees and their successors and assigns; and

8. An "Agreed Amount" and "Inflation Guard" endorsement shall be obtained, when available.

(h) Governmental Requirements. Notwithstanding anything to the contrary contained in this Section 6.2, the Association shall maintain any other forms or types of insurance as may be required from time to time by any applicable guidelines issued by any Institutional Guarantor. Additionally, all insurance maintained by the Association must meet the rating requirements of any Institutional Guarantor.

6.3 Damage and Destruction - Reconstruction. In the event of damage or destruction of any improvements upon the Common Area, the Board shall obtain bids and contract for repair or reconstruction of these improvements. If the proceeds of any insurance policies payable as a result of the damage or destruction together with the amounts paid by a responsible Owner under Section 5.2 of this Declaration are insufficient to complete the repair or reconstruction, the deficiency shall be the subject of a special assessment against all Lots if approved by a vote of the Owners as provided in Section 4.4. In the event that the cost of repairing or reconstructing the improvements in and upon the Common Area exceeds the available insurance proceeds and the responsible Owner's payment under Section 5.2, and in the event that the Members fail to approve a special assessment to cover the deficiency, the Board shall cause any remaining portion of the improvement that is not usable (as determined by the Board in its sole discretion) to be removed and the area cleared and landscaped in a manner consistent with the appearance of the remainder of the Project. In the event that a Detached Dwelling Unit or other structure on any Lot is substantially destroyed by fire or other casualty, the Owner of the Lot shall repair or replace the Detached Dwelling Unit or other structure. If the replacement is not commenced and completed within a reasonable period of time by the Owner, the Board may elect to demolish and remove the damaged Detached Dwelling Unit or structure and clean or landscape the applicable portion of the Lot until the Owner elects to repair or replace the Detached Dwelling Unit or structure. The cost of the demolition and other work performed by or at the request of the Association shall be added to the assessments charged to the Owner of that Lot and shall be promptly paid to the Association by that Owner.

6.4 Other Duties and Powers. The Association, acting through the Board and if required by this Declaration or by law or if deemed necessary or beneficial by the Board for the operation of the Association or enforcement of this Declaration, shall obtain, provide, and pay for any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, or insurance, or pay any taxes or assessments. If, however, any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, taxes, or assessments are specifically provided or apply to particular Lots, the cost shall be specially assessed to the Owners of these Lots. The Association may likewise pay any amount necessary to discharge any lien or encumbrance levied against any or all the Lots that, in the sole discretion of the Board, may constitute a lien against the Common Area. If, however, one or more Owners is responsible for the existence of a lien against the Common Area, they shall be jointly and severally liable for the cost of discharging it, and any costs incurred by the Association by reason of the lien or liens shall be specially assessed to the responsible Owners. The Association may exercise any other right or privilege given to it by the Project Documents and every other right or privilege implied from the existence of the Project Documents.

6.5 Association Rules. By a majority vote of the Board, the Association, from time to time and subject to the provisions of this Declaration, may adopt, amend, and repeal rules and regulations for the Project. The Association Rules may restrict and govern the use of any area by any Owner or the Owner's Permittees or the Owner's pets and additionally may establish a system

of fines and charges for violations of the Project Documents; however, the Association Rules may not discriminate among Owners. A copy of the Association Rules shall be available for inspection by the Members at reasonable times. The Association Rules shall not be interpreted in a manner inconsistent with this Declaration or the Articles or Bylaws, and, upon adoption, the Association Rules shall have the same force and effect as if they were set forth in full and were a part of this Declaration.

ARTICLE VII

FENCES AND WALLS

7.1 Fences and Walls. Except as may be installed by the Declarant, no boundary or enclosure fence or wall, other than the wall of the Detached Dwelling Unit constructed on the Lot, may be constructed on any Lot without the prior approval of the Architectural Committee. In addition, no fence or wall of the type described in the previous sentence shall be more than six (6) feet in height. For purposes of this Article VII, the fences or walls described above shall be called a "Fence" or "Fences". Notwithstanding the foregoing, any prevailing governmental regulations shall take precedent over these restrictions if the governmental regulations are more restrictive. Unless otherwise approved by the Architectural Committee, all Fences and any materials used for Fences dividing, or defining the Lots must be of new block construction and must be erected in a good and workmanlike manner and in a timely manner.

7.2 Encroachments. Declarant shall endeavor to construct all Fences upon the dividing line between the Lots. By virtue of accepting a deed for a Lot (whether or not it is expressed in the deed or conveying instrument) or otherwise becoming an "Owner", all Owners acknowledge and accept that the Fences installed by Declarant may not be exactly upon the dividing line, but rather may be near or adjacent to the dividing line because of minor encroachments or minor engineering errors or because existing easements or utility lines prevent a Fence from being located on the dividing line. With respect to any Fence not located exactly on a dividing line between Lots but located near or adjacent to the dividing line, an Owner of a Lot shall have and is granted a permanent and exclusive easement over any property immediately adjoining the Owner's Lot up to the center line of the Fence for the sole use and enjoyment of that Owner.

7.3 Maintenance and Repair of Fences. All Fences constructed upon or near the dividing line between the Lots shall be maintained in good condition and repaired at the joint cost and expense of the adjoining Lot Owners. Fences constructed upon the back of any Lot that do not adjoin any other Lot shall be maintained and repaired at the sole cost and expense of the Lot Owner upon whose Lot (or immediately adjacent to whose Lot) the Fence is installed. In the event any dividing line Fence is damaged or destroyed by the act or acts of one of the adjoining Lot Owners or the adjoining Lot Owner's Permittees (whether or not such act is negligent or otherwise culpable), the adjoining Lot Owner shall be responsible for the damage and shall promptly rebuild and repair

the Fence to its prior condition, at that Owner's sole cost and expense. All gates shall be no higher than the adjacent Fence. Except as may otherwise be provided in this Declaration, the general rules of law regarding party walls and fences shall be applied to any dispute or problem.

7.4 Easement for Repair. For the purpose of repairing and maintaining any Fence located upon the dividing line between Lots (or located near or adjacent to the dividing line), a permanent and non-exclusive easement not to exceed five (5) feet in width is created and reserved over the portion of every Lot or Common Area immediately adjacent to any Fence.

7.5 Fence Design and Color. The exterior appearance, color, or finish of the side of any Fence that is visible from any street located within or adjacent to the Property may not be modified from the condition originally constructed by the Declarant unless approved by the Architectural Committee. The design, material, or construction of any Fence may not be altered or changed without the approval of the adjoining Owners, if any, and the Architectural Committee. Without limiting the preceding portions of this Section 7.5, a Fence may not be painted or stuccoed without the prior approval of the Architectural Committee.

ARTICLE VIII

USE RESTRICTIONS

In addition to all other covenants and restrictions contained in this Declaration and the other Project Documents, the use of the Common Area, Lots, Detached Dwelling Units, and Ancillary Units is subject to the following:

8.1 Restricted Use. Except as otherwise permitted under this Declaration, a Lot shall be used only by a Single Family and only for Single Family Residential Use. All construction on any Lot shall be restricted to single-family houses and related improvements. No permanent or temporary prefabricated housing, modular housing, or manufactured housing may be placed on a Lot as a Detached Dwelling Unit or an Ancillary Unit. No Ancillary Unit, Commercial or Recreational Vehicle, or Family Vehicle may be used as living or sleeping quarters on a permanent or temporary basis while located at any time within the Project.

8.2 Business and Related Uses. No Lot shall ever be used, allowed, or authorized to be used in any way, directly or indirectly, for any business, commercial, manufacturing, industrial, mercantile, commercial storage, vending, or other similar uses or purposes; however, Declarant and its agents, successors, or assigns may use the Property or Lots for any of the foregoing uses as may be required, convenient, or incidental to the construction and sale of Detached Dwelling Units, including, without limitation, a business office, management office, storage area, construction yard, signage, model sites, and display and sales office during the construction and sales period. The foregoing restriction shall not prevent an Owner from conducting his or her personal affairs on the

Lot or in the Detached Dwelling Unit and shall not be deemed to prevent an Owner from using the Detached Dwelling Unit for business purposes that: (i) utilize a minimal portion of the Detached Dwelling Unit; (ii) do not result in the use of the Detached Dwelling Unit for business meetings, appointments, gatherings, or day care; (iii) do not result in shipping or receiving from or to the Detached Dwelling Unit; and (iv) do not otherwise violate local zoning and use laws.

8.3 Signs. No emblem, logo, sign, or billboard of any kind shall be displayed on any of the Lots or Common Area so as to be Visible From Neighboring Property, except for: (i) signs used by Declarant to advertise the Lots or living units on the Lots for sale or lease; (ii) signs on the Common Area as may be placed and approved by the Declarant, during the period of Declarant Control, or by the Architectural Committee, after the period of Declarant Control; (iii) one sign having a total face area of five (5) square feet or less advertising a Lot and Detached Dwelling Unit for sale or rent placed in a location designated by the Architectural Committee; (iv) any signs as may be required by legal proceedings; and (v) signs (including political signs and symbols) as may be approved in advance by the Architectural Committee in terms of number, type, and style. The foregoing will not be deemed to prevent the right of an Owner to display religious and holiday signs, symbols, and decorations of the type customarily and typically displayed inside or outside single family residences, subject to the authority of the Board or the Architectural Committee to adopt reasonable time, place, and manner restrictions for the purpose of minimizing damage and disturbance to other Owners (including disturbance from pedestrian and vehicle traffic coming on the Project to view the signs, symbols, and decorations).

8.4 Noxious or Offensive Activities. No noxious or offensive activity shall be engaged in (or permitted to be engaged in) on any Lot. No act or use may be performed on any Lot that is or may become an annoyance or nuisance to the neighborhood generally or other Owners specifically, or that interferes with the use and quiet enjoyment of any of the Owners and of the Owner's Lot. No Owner shall permit any thing or condition to exist upon any property that induces, breeds, or harbors infectious plant diseases or infectious or noxious insects.

8.5 Restricted Residences. Except as originally constructed by the Declarant as part of the original construction of the Detached Dwelling Unit and related improvements, no Ancillary Units shall be constructed or maintained on any Lot at any time, unless the type, size, shape, height, location, style, and use of the Ancillary Unit, including all plans and specifications and materials for the Ancillary Unit, are approved by the Architectural Committee pursuant to Article IX below prior to the commencement of construction. All Ancillary Units approved by the Architectural Committee for construction on a Lot must be constructed solely from new materials and must be constructed in compliance with all local and municipal codes, ordinances, and stipulations applicable to the Project and all restrictions contained in the Project Documents. Any Ancillary Unit that has been constructed without the prior approval of the Architectural Committee or in violation of any provision of the Project Documents or any local or municipal codes, ordinances, and stipulations must be removed upon notice from the Association at the sole loss, cost, and expense of the constructing Owner.

8.6 Roofs and Roof Mounted Equipment. All original and replacement roofs for all Detached Dwelling Units located within the Property must be made of tile, slate, fired clay, concrete, or similar material, unless otherwise approved by the Architectural Committee. Solar energy panels, solar energy devises, swamp coolers, air conditioning units, or other cooling, heating, or ventilating systems may not be installed on the roof of any Detached Dwelling Unit or Ancillary Unit or in any other area of a Lot that is Visible From Neighboring Property, except where originally installed by the Declarant, unless otherwise approved by the Architectural Committee.

8.7 Animals. No animals, livestock, horses, birds, or poultry of any kind shall be raised, bred, or kept on or within any Lot or structure on a Lot; however, an Owner may keep up to two (2) dogs or two (2) cats or two (2) other common household pets or two (2) of any combination of dogs, cats, or other common household pets in the Detached Dwelling Unit or in an enclosed Private Yard if permitted under local zoning ordinances. Additional pets are prohibited unless approved in advance by the Board. The foregoing restriction will not apply to fish contained in indoor aquariums. These permitted types and numbers of pets shall be permitted for only so long as they are not kept, bred, or maintained for any commercial purpose and for only so long as they do not result in an annoyance or nuisance to other Owners. No pets shall be permitted to move about unrestrained in any Public Yard of the Owner's Lot or any other Lot, Common Area, or any public or private street within the Project. Each Owner shall be responsible for the immediate removal and disposal of the waste or excrement of all the Owner's pets from the Public Yard of the Owner's Lot or any other Lot, Common Area, or public or private streets. Owners shall be liable for all damage caused by their pets. The Board may establish a system of fines or charges for any infraction of the foregoing, and the Board will be the sole judge for determining whether a pet is a common household pet or whether any pet is an annoyance or nuisance.

8.8 Drilling and Mining. No oil or well drilling, oil development operations, oil refining, quarrying, or mining operations of any kind shall be permitted upon or in any Lot. No oil wells, tanks, tunnels, mineral excavations, or shafts shall be permitted upon the surface of any Lot. No derrick or other structure designed for use in boring for water, oil, or natural gas shall be erected, maintained, or permitted upon any Lot.

8.9 Trash. All rubbish, trash, and garbage shall be regularly removed from the Lots and shall not be allowed to accumulate on any Lot. In the case of an Owner who allows trash to accumulate on the Owner's Lot, the Board, on behalf of the Association, may arrange and contract for the removal and cleanup of the trash, and the costs shall become a special assessment to that Owner. No incinerators shall be kept or maintained on any Lot. Refuse containers may be placed on a Lot so as to be Visible From Neighboring Property only on trash collection days and then only for the shortest period of time reasonably necessary for trash collection. Except as permitted in the previous sentence, refuse containers shall be stored in an enclosed garage or on another portion of a Lot that is not Visible From Neighboring Property.

8.10 Woodpiles and Storage Areas. Woodpiles and open storage areas may not be maintained upon any Lot, unless located in the Private Yard. Covered or uncovered patios may not be used for storage purposes whether or not Visible From Neighboring Property. At no time may an Owner maintain any outside storage of Commercial or Recreational Vehicles or Family Vehicles of the type described in this Declaration in any stage of construction, reconstruction, modification, or rebuilding. No vehicle frames, bodies, engines, or other parts or accessories may be stored on a Lot.

8.11 Antennas. Except as originally installed by the Declarant or as approved by the Architectural Committee, no external radio, television antenna, or satellite dish may be installed or constructed on any Lot or on the roof of any Detached Dwelling Unit or permitted Ancillary Unit in any manner that will make any portion of the external radio or television antenna or satellite dish Visible From Neighboring Property.

8.12 Windows and Window Covering. Sheets, newspapers, and similar items may not be used as temporary window coverings. No aluminum foil, reflective screens, awnings, reflective glass, mirrors, or similar reflective materials of any type shall be placed or installed inside or outside of any windows of a Detached Dwelling Unit or Ancillary Unit without the prior written approval of the Architectural Committee. No air conditioners, swamp coolers, or similar units may be placed in any window of a Detached Dwelling Unit or Ancillary Unit so as to be Visible From Neighboring Property, unless approved by the Architectural Committee.

8.13 Leasing. Nothing in the Declaration shall be deemed to prevent the leasing of a Lot and Detached Dwelling Unit to a Single Family from time to time by the Owner of the Lot, subject to all of the provisions of the Project Documents. Any Owner who leases a Lot and Detached Dwelling Unit shall notify promptly the Association of the existence of the lease and shall advise the Association of the terms of the lease and the name of each lessee and occupant.

8.14 Encroachments. No tree, shrub, or planting of any kind on any Property shall be allowed to overhang or otherwise to encroach upon any neighboring Lot, sidewalk, street, pedestrian way, or other area from ground level to a height of less than ten (10) feet. The restriction described in the previous sentence will not apply to the visibility easement areas described in Section 10.8 below and will not apply in the event a more restrictive height limitation is contained on the Plat.

8.15 Machinery. No machinery of any kind shall be placed, operated, or maintained upon or adjacent to any Lot or Common Area other than machinery that is usual and customary in connection with the use, maintenance, or construction of a Detached Dwelling Unit, appurtenant structures, or other improvements, and other than machinery that Declarant or the Association may require for the operation and maintenance of the Property.

8.16 Restriction on Subdivision and Time Shares. No Lot shall be further subdivided or separated into smaller lots or parcels by any Owner, and no portion less than all of any such Lot shall be conveyed or transferred by any Owner without the prior written approval of the Board. No Owner shall transfer, sell, assign, or convey any time share in any Lot, and any such transaction shall be void.

8.17 Increased Risk. Nothing shall be done or kept in or on any Lot, Detached Dwelling Unit, or Common Area that will increase the rate of insurance on the Common Area without the prior written consent of the Board. No Owner shall permit anything to be done or kept on or in the Owner's Lot, Detached Dwelling Unit, Ancillary Unit, or in the Common Area that will result in the cancellation of insurance on any Detached Dwelling Unit or any part of the Common Area or that would be in violation of any law.

8.18 Drainage Plan. No Detached Dwelling Unit, Ancillary Unit, pool, concrete area, or landscaping shall be constructed, installed, placed, or maintained on any Lot, Common Area, or the Areas of Common Responsibility in any manner that would obstruct, interfere, or change the direction or flow of water in accordance with the drainage plans for the Project or any Lot that are on file with the county or municipality in which the Project is located.

8.19 Clothes Drying Facilities and Basketball Structures. 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 a Private Yard in such a manner as to not be Visible From Neighboring Property. Basketball hoops, backboards, and other elevated sport structures shall not be erected, placed, or maintained on any roof of a Detached Dwelling Unit. Basketball hoops, backboards, and other elevated sport structures may be erected, placed, or maintained in any Public Yard of a Lot (including in front driveways) so long as the structure is removable or on removable sleeves and so long as the structure is up only during actual use (and is otherwise stored so as to not be Visible From Neighboring Property). Basketball hoops, backboards, and other elevated sport structures may be erected, placed, and maintained in any Private Yard of any Lot on a permanent basis.

8.20 Outdoor Burning and Lighting. There shall be no outdoor burning of trash, debris, wood, or other materials. The foregoing, however, shall not be deemed to prohibit the use of normal residential barbecues or other similar outside cooking grills. Without limiting the provisions of Section 8.3 above and except as originally installed by the Declarant or as otherwise approved by the Architectural Committee, no spotlights, flood lights, or other high intensity lighting shall be placed or utilized upon any Lot so that the light is directed or reflected on any Common Area or any other Lot.

8.21 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.

8.22 Hazardous Wastes. Except as may be necessary for normal household, landscaping, or automotive uses, no Owner shall permit any hazardous wastes (as defined under all applicable federal and state laws), asbestos, asbestos containing material, or any petroleum products or by-products to be kept, dumped, maintained, stored, or used in, on, under, or over any Lot. No gasoline, kerosene, cleaning solvents, or other flammable liquids may be stored in the Common Area.

8.23 Commercial and Recreational Vehicles. No commercial truck, recreational vehicle, pickup trucks with campers or camper shells, semitrailer, wagon, freight trailer, boat trailer, automobile trailer, camper, camper shell, mobile home, motor home, boat, dune buggy, all-terrain vehicle, bus, or similar commercial or recreational equipment or vehicle (whether or not equipped with any sleeping quarters) (collectively referred to in this Declaration as "Commercial or Recreational Vehicles") that is owned, leased, or used by an Owner of any Lot within the Project or the Owner's Permittees may be stored or parked upon a Lot within the Project, unless: (i) the Commercial or Recreational Vehicles are located fully within an enclosed garage located on the Owner's Lot; (ii) the Commercial or Recreational Vehicles are located in a Recreational Vehicle Parking Area; (iii) the Commercial or Recreational Vehicles are parked in the driveway of the Lot on a Nonrecurring And Temporary Basis; or (iv) the Commercial or Recreational Vehicles are parked on any public or private street within the Project only on a Nonrecurring And Temporary Basis. The foregoing prohibitions applicable to Commercial and Recreational Vehicles do not apply to Family Vehicles of the type described below. Notwithstanding the foregoing restrictions on Commercial or Recreational Vehicles, no commercial pick-up truck of a one (1) ton capacity or more may be parked at any time within the Project (including the garages, Lots, driveways, or Recreational Vehicle Parking Areas) other than for loading and unloading.

8.24 Garages and Parking of Family Vehicles. Each Lot shall have at least one (1) garage that will be used by the Owner of the Lot for parking of Family Vehicles or Commercial or Recreational Vehicles and for household storage purposes only. The garage door will be maintained by the Owner in good and functioning order and will remain closed except while the garage is in use for cleaning, entry, and exit. No garage may be used for storage or any other use that restricts or prevents the garage from being used for parking Family Vehicles or Commercial or Recreational Vehicles. Additional Family Vehicles that can not be parked in the garage located on the Lot may be parked in the driveway or in any Recreational Vehicle Parking Area so long as the Family Vehicles are operable and are, in fact, operated from time to time. A "Family Vehicle" means any domestic or foreign cars, station wagons, sport wagons, pick-up trucks, vans, mini-vans, jeeps, sport utility vehicles, motorcycles, and similar non-commercial and non-recreational vehicles that are used by the Owner of the applicable Lot or the Owner's Permittees for family and domestic purposes only. A "Family Vehicle" also includes: (i) non-commercial pick-up trucks of a one (1) ton capacity or less (including pick-up trucks with attached camper shells so long as the pick-up truck and camper shell are no more than eight (8) feet in height, measured from ground level); (ii) small motor homes of not more than eight (8) feet in height and not more than eighteen (18) feet in length; and (iii) non-

commercial pick-up trucks of a one (1) ton capacity that the Architectural Committee determines, in advance of use within the Project, to be similar in size and appearance to smaller vehicles. A "Family Vehicle" does not include any of the Commercial or Recreational Vehicles described in Section 8.23 above. Notwithstanding any less restrictive local or municipal codes, ordinances, or stipulations, Family Vehicles may be parked in any public or private street within the Project only on a Nonrecurring And Temporary Basis, and no other on-street parking is permitted within the Project.

8.25 Vehicle Repairs. Routine maintenance and repairs of Family Vehicles or Commercial or Recreational Vehicles may be performed within an enclosed garage but not on the driveway located on a Lot, any Recreational Vehicle Parking Area, any public or private streets within the Project, or any other portion of the Owner's Lot. No vehicles of any type may be constructed, reconstructed, or assembled anywhere on any Lot. Without limiting the provisions of Sections 8.23 or 8.24 above, no Family Vehicle or Commercial or Recreational Vehicle shall be permitted to be or remain anywhere on any Lot (including in an enclosed garage) in a state of disrepair or in an inoperable condition.

8.26 Minimum Dwelling Unit Size. Except for those Detached Dwelling Units originally constructed by Declarant, no Detached Dwelling Unit shall be constructed on the Property so as to contain less than 2,000 net livable square feet. The term "net livable square feet" will mean the area, measured in square feet, of the interior and enclosed living area of a single family residence, excluding any garages and covered patios and balconies.

8.27 Mailboxes. Except when originally installed by the Declarant, no mailboxes, mail posts, or similar items for the receipt of mail will be installed, constructed, or placed on a Lot unless the location, design, height, color, type, and shape are approved by the Architectural Committee.

8.28 Lot Clear Zone. No Ancillary Units, Recreational Vehicle Parking Areas, patios, bay windows, HVAC units, or similar items will be located with a Lot Clear Zone, and the Lot Clear Zone will be limited solely to the installation and maintenance of landscaping for the Lot.

8.29 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, construction trailers, or signs necessary or convenient to the construction, development, identification, sale, or lease of Lots or other property within the Project.

ARTICLE IX

ARCHITECTURAL CONTROL

9.1 Architectural Approval. No Ancillary Unit may be constructed or maintained on a Lot, and no exterior addition, change, or alteration may be made to any Detached Dwelling Unit or approved Ancillary Unit located on a Lot, until all plans and specifications are submitted to and approved in writing by the Architectural Committee. All plans and specifications submitted to the Architectural Committee must show the nature, type, size, style, color, shape, height, location, materials, floor plan, approximate cost, and other material attributes. All plans and specifications will be reviewed by the Architectural Committee for harmony and compatibility of external design and location in relation to surrounding structures, landscaping, topography, and views from neighboring Lots. Without limiting the generality of the preceding sentence, the prior approval of the Architectural Committee also will be necessary for all landscaping installed by the Owner under Section 5.5, all roof mounted equipment of the type described in Section 8.6, all window coverings of the type described in Section 8.12 above, all Recreational Vehicle Parking Areas, and all mailboxes of the type described in Section 8.27 above. Unless a different time period is specified in this Declaration, in the event the Architectural Committee fails to approve or disapprove the plans and specifications within thirty (30) days after complete and legible copies of the plans and specifications have been submitted to the Association, the application shall be deemed approved. All decisions of the Architectural Committee shall be final. All approvals of the Architectural Committee are intended to be in addition to, and not in lieu of, any required municipal or county approvals or permits, and Owner is solely responsible to ensure conformity with municipal and county building codes and building permits, if applicable.

9.2 Appointment of Architectural Committee. The appointment and removal of the Architectural Committee shall be governed by the Bylaws.

9.3 Architectural Committee Rules. The Architectural Committee, by unanimous vote or unanimous written consent, may adopt, amend, and repeal rules and regulations regarding the procedures for the Architectural Committee approval and the architectural style, nature, kind, shape, height, materials, exterior colors, surface texture, and location of any improvement on a Lot. These rules and regulations shall be called the Architectural Committee Rules. The Architectural Committee Rules shall not be interpreted in a manner that is inconsistent with the Declaration, the Articles, the Bylaws, or the Plat, and, upon adoption, the Architectural Committee Rules shall have the same force and effect as if they were set forth in full and were part of this Declaration.

9.4 Limited Effect of Approval. The approval by the Architectural Committee of any plans, drawings, or specifications for any work done or proposed, or for any other matter requiring prior written approval by virtue of this Declaration or any other Project Documents, shall not be deemed to constitute a waiver of any requirement or restriction imposed by the Town of Gilbert or any other law or requirement or restriction imposed by this Declaration and shall not be

deemed an approval of the workmanship or quality of the work or of the integrity or sufficiency of the plans, drawings, or specifications.

ARTICLE X

CREATION OF EASEMENTS

10.1 Public Utility Easements. Declarant grants and creates a permanent and non-exclusive easement upon, across, over, and under those portions of the Lots and Common Area depicted and described on the Plat as a public utility easement or p.u.e. for the installation and maintenance of utilities servicing the Project, including electricity, telephone, water, gas, cable television, drainage facilities, sanitary sewer, or other utility lines. All public utility easements depicted and described on the Plat may be used by the provider utility company and municipality without the necessity of any additional recorded easement instrument. While it holds a Class B membership, the Declarant may permit, through a recorded instrument, any person to use the public utility easement for the installation and maintenance of utilities servicing any neighboring property. The public utility easement described in this Section 10.1 shall not affect the validity of any other recorded easements affecting the Project, and the term of this public utility easement shall be perpetual. All utilities and utility lines shall be placed underground, but no provision of this Declaration shall be deemed to forbid the use of temporary power or telephone structures incident to the construction of buildings or structures as needed by the Declarant. Public or private sidewalks may be located in the public utility easements.

10.2 Temporary Construction Easements. During the period of Declarant's construction activities within the Project, Declarant reserves a non-exclusive easement for the benefit of itself and its agents, employees, and independent contractors on, over, and under those portions of the Common Area and the Lots that are not owned by the Declarant but that are reasonably necessary to construct improvements on the Common Area or on any adjoining Lots owned by the Declarant. This temporary construction easement will terminate automatically upon Declarant's completion of all construction activities at the Project. In no event will this temporary construction easement be deemed to affect any portion of a Lot upon which a Detached Dwelling Unit, permitted Ancillary Unit, or pool is located. In utilizing this temporary construction easement, Declarant shall not be liable or responsible for any damage to any landscaping or improvements located within the temporary construction easement; however, Declarant shall use (and cause its agents, employees, and independent contractors to use) reasonable care to avoid damage to any landscaping or improvements.

10.3 Easement for Encroachments. Without limitation of the easement created under Section 7.2 above, each Lot and the Common Area shall be subject to a reciprocal and appurtenant easement benefitting and burdening, respectively, the Lot or Common Area for minor encroachments created by construction, settling, and overhangs as originally designed or constructed

by Declarant. This easement is a valid easement and will remain in existence for so long as any encroachment of the type described in the proceeding sentence exists and will survive the termination of the Declaration or other Project Documents. This easement is non-exclusive of other validly created easements. This easement for encroachments and maintenance is reserved by Declarant by virtue of the recordation of this Declaration for the benefit of the encroaching Lot and its Owner or the Association, as applicable.

10.4 Easements for Ingress and Egress. A perpetual and non-exclusive easement for pedestrian ingress and egress is created and reserved by Declarant for the benefit of the Declarant and all Owners over, through, and across sidewalks, paths, walks, and lanes that from time to time may be constructed within the Project. Additionally, a perpetual and non-exclusive easement for vehicular ingress and egress is created and reserved by Declarant for the benefit of the Declarant and all Owners over and across any Common Area, sidewalks, or easements that may be located between the driveway of a Lot and any public or private street within the Project. The right of access described in this Section 10.4 is and will remain at all times an unrestricted right of ingress and egress.

10.5 Water Easement. Without limiting any other provision of this Declaration or the Plat, Declarant grants to the Town of Gilbert a permanent, non-exclusive, and blanket easement on, under, and across the Property for the purpose of installing, repairing, reading, and replacing water meter boxes. In no event will this permanent easement be deemed to affect any portion of a Lot upon which a Detached Dwelling Unit or permitted Ancillary Unit is located. Additionally, Declarant grants to the Town of Gilbert a permanent and exclusive water line easement over the northern twelve (12) feet of Tract "B" and a portion of Tract "F" (as depicted on the Plat) for the purpose of installing, maintaining, and repairing an underground water line servicing the Property or adjoining real property.

10.6 Drainage Easement. Declarant grants to and for the benefit of the Town of Gilbert and the Association a perpetual and non-exclusive easement in, through, across, and under the surface of the Drainage and Retention Tracts for the purpose of delivering, storing, and accepting storm water to and from the Project and installing, maintaining, and repairing underground drainage pipes, lines, drains, and other drainage facilities (together with the right to ingress and egress to perform the installation, maintenance, or repair). No buildings or similar structures may be erected on the Drainage and Retention Tracts. Any landscaping that may be planted in the Drainage and Retention Tracts must be planted so as to not materially impede the flow of water into, through, over, or under the Drainage and Retention Tracts. All landscaping installed in the Drainage and Retention Tracts will be maintained by the Association.

10.7 Vehicular Non-Access. To the extent depicted and described by the Plat, if at all, Declarant grants to the Town of Gilbert a non-exclusive vehicular non-access easement across those portions of the Property described on the Plat. No vehicles may be driven or moved across or

over these easement areas to access any adjoining streets or real property. This easement shall be perpetual unless and until abandoned by resolution of the Town of Gilbert.

10.8 Visibility Easement. Declarant grants to the Town of Gilbert a non-exclusive restricted visibility easement on and over those specific areas of those Lots indicated on the Plat. All structures and landscaping that are located within this restricted visibility easement shall have at all times a height no greater than two (2) feet higher than the highest elevation of any adjoining streets. This easement shall be perpetual unless and until abandoned by resolution of the Town of Gilbert.

10.9 Landscape Tracts. Subject to the easement for public utilities created in Section 10.1 above and the easement for drainage created in Section 10.6 above, Declarant grants to the Association and all Owners a non-exclusive and perpetual easement for landscape and open space over all of the Common Area other than the Median Island Tract. All landscaping within the Common Area will be maintained by the Association upon its conveyance to the Association.

10.10 Median Island. Declarant grants to the Association and all Owners a non-exclusive and perpetual easement for a median island and related landscaping over and under the Median Island Tract. All landscaping within the Median Island Tract will be maintained by the Association upon its conveyance to the Association.

10.11 Equestrian Trail. Declarant grants to the Town of Gilbert, the Association, and all Owners a non-exclusive and perpetual easement over all or a portion of the Equestrian Trail Tract for an equestrian trail. All landscaping within the Equestrian Trail Tract will be maintained by the Association, and any equestrian trail constructed within the Equestrian Trail Tract will be maintained by the Association unless and until the responsibility for the maintenance is accepted by the Town of Gilbert.

10.12 SRP Easement. Pursuant to the Plat, Declarant's predecessor granted to the Salt River Project Agricultural Improvement and Power District ("SRP") an easement to construct and maintain irrigation facilities over Tracts "Y" and "Z", the south twenty (20) feet of Tract "S", and a portion of Nielson Street, all as depicted on the Plat. The terms, conditions, and restrictions applicable to the SRP easement are more fully set forth on the dedication language of the Plat. To the extent not maintained by SRP in connection with the exercise of its easement rights, the Association will maintain, repair, and install all landscaping within Tracts "Y" and "Z", which, although not part of the Common Area owned by the Association, will be "Areas of Common Responsibility".

10.13 Areas of Common Responsibility. Declarant grants to the Association a perpetual and non-exclusive easement for the purpose of maintaining, repairing, and installing landscaping on, under, and across: (i) those portions of Lots 104, 112, 129, 140, 160, and 161 that adjoin Nielson Street and that are located between the dedicated right-of-way for Nielson Street and

the Fence located on the particular Lot; (ii) those portions of Lot 60 that adjoin Ivanhoe Street and that are located between the dedicated right-of-way for Ivanhoe Street and the Fence located on Lot 60; and (iii) those portions of Lot 48 that adjoin Southwind Street and that are located between the dedicated right-of-way for Southwind Street and the Fence located on Lot 48. The areas of the Lots described above will be part of the "Areas of Common Responsibility" for which the Association has assumed maintenance responsibility. Additionally, the Association will maintain, repair, and install all landscaping that may be located from time to time within the dedicated right-of-way of that portion of Ray Road adjacent to Tracts "C" and "D", and these landscape maintenance areas will be known additionally as "Areas of Common Responsibility".

10.14 E.S.S.E. Easement. Declarant grants to the Association and, if applicable, the Town of Gilbert a perpetual and non-exclusive easement for the purpose of installing, maintaining, and repairing private or public sewer lines and facilities on, under, and across those portions of Tracts "F" and "G" that are depicted on the Plat.

ARTICLE XI

GENERAL PROVISIONS

11.1 Enforcement. The Association, in the first instance, or any Owner, should the Association fail to act within a reasonable time, shall have the right to enforce by any proceeding at law or in equity all covenants and restrictions now or hereafter imposed by the provisions of this Declaration or the other Project Documents. Failure of the Association or any Owner to enforce any covenant and reservation in this Declaration or in the other Project Documents shall not be deemed a waiver of the right to do so thereafter. No act or omission by Declarant shall act as a waiver or defense to the enforcement of this Declaration by the Association or any Owner. Deeds of conveyance of the Property, or any part of the Property, may incorporate the covenants and restrictions by reference to this Declaration; however, each and every covenant and restriction shall be valid and binding upon the respective grantees whether or not any specific or general reference is made in the deed or conveying instrument. Violators of any one or more of the covenants and restrictions may be restrained by any court of competent jurisdiction and damages awarded against the violators. The remedies established in this Declaration may be exercised jointly, severally, cumulatively, successively, and in any order. A suit to recover a money judgment for unpaid Assessments, interest, rent, costs, attorney fees, or an other amount due, to obtain specific performance, or to obtain injunctive relief may be maintained without the foreclosing, waiving, releasing, or satisfying the liens created under this Declaration.

11.2 General Provisions on Condemnation. If an entire Lot is acquired by eminent domain or if part of a Lot is taken by eminent domain leaving the Owner with a remnant that may not be used practically for the purposes permitted by this Declaration (both instances being collectively referred to as a "condemnation" of the entire Lot), the award shall compensate the

Owner for the Owner's entire Lot and the Owner's interest in the Common Area, whether or not any Common Area interest is acquired by the condemning party. Upon the condemnation of an entire Lot, unless the condemnation decree provides otherwise, the affected Lot's entire Common Area interest, vote, and membership in the Association, and all common expense liabilities, will be automatically reallocated to the remaining Lots in the Project in proportion to the respective interests, votes, and liabilities of those Lots prior to the condemnation, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting these reallocations. For purposes of this Section, each Owner, by acceptance of a deed for a Lot or any interest in a Lot, shall be deemed to have appointed the Association, acting by and through the Board, as the Owner's attorney-in-fact for the purposes of executing and recording the above-described amendment to the Declaration. Any remnant of a Lot remaining after a condemnation under this Section 11.2 shall be deemed a part of the Common Areas.

11.3 Partial Condemnation of Lot. If only a portion of a Lot is taken by eminent domain and the remnant is capable of practical use for the purposes permitted by this Declaration, the award shall compensate the Owner for the reduction in value and its interest in the Common Area. Upon a partial taking, the Lot's interest in the Common Area, votes, and membership in the Association, and all common expense liabilities, shall remain the same as that which existed before the taking, and the condemning party shall have no interest in the Common Area, votes, or membership in the Association, or liability for the common expenses.

11.4 Condemnation of Common Area. If a portion of the Common Area is taken by eminent domain, the award shall be paid to the Association and the Association shall cause the award to be utilized for the purpose of repairing and restoring the Common Area, including, if the Board deems it necessary or desirable, the replacement of any common improvements. Any portion of the award not used for any restoration or repair of the Common Area shall be divided among the Owners and First Mortgagees in proportion to their respective interests in the Common Area prior to the taking, as their respective interests may appear.

11.5 Severability. Invalidation of any one or any portion of these covenants and restrictions by judgment or court order shall not affect the validity of any other provisions of the Project Documents, which shall remain in full force and effect.

11.6 Term. The covenants and restrictions of this Declaration shall run with and bind the land 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 for so long as the Lots continue to be used for Single Family Residential Uses or unless terminated at the end of the initial or any extended term by an affirmative vote (in person or by proxy) of the Owners of ninety percent (90%) of the total eligible votes in the Association.

11.7 Amendment. This Declaration and/or the Plat may be amended as provided in this Declaration. During the first twenty (20) year term of this Declaration and except as

otherwise provided in Section 11.11, amendments shall be made only by a recorded instrument executed on behalf of the Association by an officer of the Association designated for that purpose or, in the absence of designation, by the President of the Association, and any amendment shall be deemed adopted if approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of seventy-five (75%) or more of the total number of eligible votes in the Association. After the initial twenty (20) year period, amendments shall be made by a recorded instrument approved at a duly called regular or special meeting by the affirmative vote (in person or by proxy) of two-thirds (2/3) or more of the total number of eligible votes in the Association, and the amendment shall be executed on behalf of the Association by an officer of the Association designated for the purpose or, in the absence of designation, by the President of the Association. Subject to any limitation described in Section 11.11 below, Declarant unilaterally may amend this Declaration or Plat or the other Project Documents prior to the recordation of the first deed for any Lot within the Project to an Owner other than Declarant or the recordation of a contract to sell a Lot to an Owner other than Declarant. In addition to and notwithstanding the foregoing, any amendment to the uniform rate of assessments established under Section 4.6 above shall require the prior written approval of two-thirds (2/3) or more of the holders of First Mortgages on the Lots.

11.8 Government Financing. If the financing of any Institutional Guarantor is applicable to the Property, any amendment to the Declaration made by the Declarant pursuant to the last sentence of Section 11.7 and any annexation amendment made by the Declarant pursuant to Section 12.2 shall contain either: (i) the approval of the Institutional Guarantor; or (ii) an affidavit that the Institutional Guarantor's approval has been requested in writing and that it has not either approved or disapproved the amendment or annexation within thirty (30) days of Declarant's request.

11.9 Construction. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan and scheme for the development of a subdivision consisting of Single Family Detached Dwelling Units and Common Area with maintenance as provided in this Declaration and the other Project Documents. The provisions of this Declaration shall be construed in a manner that will effectuate the inclusion of additional lots pursuant to Article XII. Section and Article headings have been inserted for convenience only and shall not be considered or referred to in resolving questions of interpretation or construction. All terms and words used in this Declaration (including any defined terms), regardless of the number and gender in which they are used, shall be deemed and construed to include any other number and any other gender as the context or sense of this Declaration may require, with the same effect as if such number and words had been fully and properly written in the required number and gender. Whenever the words and symbol "and/or" are used in this Declaration, it is intended, if consistent with the context, that this Declaration be interpreted and the sentence, phrase, or other part be construed in both its conjunctive and disjunctive sense, and as having been written twice, once with the word "and" inserted, and once with the word "or" inserted, in the place of words and symbol "and/or." Any reference to this Declaration shall automatically be deemed to include all amendments to this Declaration.

11.10 Notices. Unless otherwise expressly provided in the Declaration, any notice that is permitted or required under this Declaration must be delivered either personally, by mail, or by express delivery service. If delivery is made by mail, it shall be deemed to have been delivered and received two (2) business days after a copy of the notice has been deposited in the United States mail, postage prepaid and properly addressed. If delivery is made by express delivery service, it shall be deemed to have been delivered and received on the next business day after a copy of the notice has been deposited with an "overnight" or "same-day" delivery service, properly addressed. If an Owner fails to provide the Association with an address for purposes of receiving notices, the address of any Detached Dwelling Unit owned by the Owner will be used in giving the notice. For purpose of notice for the Association or the Board, notice must be sent to the principal office of the Association, as specified in the Articles, and the statutory agent for the Association. The place for delivery of any notice to an Owner or the Association may be changed from time to time by written notice specifying the new notice address.

11.11 General Declarant Rights. Declarant specifically reserves the right to construct such improvements to the Lots or Common Area as are consistent with this Declaration or the Plat and to change the unit mix of the Lots described in the Declaration or the Plat, without the vote of any Members. Declarant also reserves the right, during any period of Declarant Control, to amend the Declaration or Plat without the vote of any Members to comply with applicable law or correct any error or inconsistency in the Declaration, provided the amendment does not materially and adversely affect the rights of any Owner. Declarant reserves the right, during any period of Declarant Control, to amend the Declaration to conform with any rules or guidelines of any Institutional Guarantor. Declarant reserves the right, during any period of Declarant Control, without the vote of any Members (but with the consent of the Institutional Guarantor, if applicable), to withdraw the Property or portions of the Property from this Declaration and subdivide Lots, convert Lots into Common Area, and convert Common Area into Lots.

11.12 Management Agreements. Any management agreement entered into by the Association or Declarant may be made with an affiliate of Declarant or a third-party manager and, in any event, shall be terminable by the Association with or without cause and without penalty upon thirty (30) days written notice. The term of any management agreement entered into by the Association or Declarant may not exceed one year and may be renewable only by affirmative agreement of the parties for successive periods of one year or less. Any property manager for the Project or the Association will be deemed to have accepted these limitations, and no contrary provision of any management agreement will be enforceable.

11.13 No Partition. There shall be no partition of any Lot, nor shall Declarant or any Owner or other person acquiring any interest in any Lot, or any part of the Lot, seek any partition.

11.14 Declarant's Right to Use Similar Name. The Association irrevocably consents to the use by any other profit or nonprofit corporation that may be formed or incorporated by

Declarant of a corporate name that is the same or deceptively similar to the name of the Association, provided one or more words are added to the name of the other corporation to make the name of the Association distinguishable from the name of such other corporation. Within five (5) days after being requested to do so by the Declarant, the Association shall sign all letters, documents, or other writings as may be required by the Arizona Corporation Commission (or any other governmental entity) in order for any other corporation formed or incorporated by the Declarant to use a corporate name that is the same or deceptively similar to the name of the Association.

11.15 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 the Declaration and the other Project Documents shall be joint and several.

11.16 Construction. In the event of any discrepancies, inconsistencies, or conflicts between the provisions of this Declaration and the Articles, Bylaws, Plat, Association Rules, or Architectural Committee Rules, the provisions of this Declaration shall prevail in all instances.

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

11.18 Waiver. The waiver of or failure to enforce any breach or violation of the Project Documents shall not be deemed a waiver or abandonment of any provision of the Project Documents or a waiver of the right to enforce any subsequent breach or violation of the Project Documents. The foregoing shall apply regardless of whether any person affected by the Project Documents (or having the right to enforce the Project Documents) has or had knowledge of the breach or violation.

11.19 Attorney Fees. Without limiting the power and authority of the Association to incur and assess attorney fees as part of the creation or enforcement of any assessment, in the event an action is instituted to enforce any of the provisions contained in the Project Documents, the party prevailing in any action shall be entitled to recover from the other party all reasonable attorneys' fees and court costs. In the event the Association is the prevailing party in the action, the amount of attorney fees and court costs may be deemed all or part of a special assessment against the Lot and Owner involved in the action.

11.20 Security. Each Owner understands and agrees that neither the Association (nor its officers, directors, employees, and agents) nor the Declarant (nor its officers, directors, employees, and agents) is responsible for the acts or omissions of any third parties or of any other Owner or the Owner's Permittees resulting in damages or injury to person or property. Any security measures or devices (including security guards, gates, or patrol) that may be used at the Project will

commence and be maintained by the Association solely through a majority vote of the Board, and each Owner understands that any security measures or devices that are in effect at the time he or she accepts a deed for a Lot (or otherwise becomes an "Owner") may be abandoned, terminated, or modified by a majority vote of the Board. The commencement of security devices or controls shall not be deemed to be an assumption of any duty on the part of the Association or the Declarant with respect to the Project and its Owners.

ARTICLE XII

DEVELOPMENT PLAN AND ANNEXATION

12.1 Proposed Development. Each Owner of a Lot, by acceptance of a deed for that Lot (or otherwise becoming an "Owner"), acknowledges that it has not relied upon any representation, warranty, or expression, written or oral, made by Declarant or any of its agents, regarding: (i) whether the contemplated development will be completed or carried out; (ii) whether any land now or in the future owned by Declarant will be subject to this Declaration or developed for a particular use; or (iii) whether any land now or in the future owned by Declarant was once or is used for a particular use or whether any prior or present use will continue in effect. Declarant need not construct Detached Dwelling Units on any Lot subject to the Declaration in any particular order or progression, but Declarant may build Detached Dwelling Units on any Lot subject to this Declaration in any order or progression that Declarant desires to meet its needs or desires or the needs or desires of a potential purchaser.

12.2 Annexation Without Approval. During any period of Declarant Control, additional real property may be annexed into the Project and made subject to this Declaration by Declarant without the consent of any Member or First Mortgagee, but with the approval of any Institutional Guarantor. Declarant's annexation will be evidenced by recording an amendment ("Annexation Amendment") to the Declaration signed by the Declarant that describes the new real property to be included as lots and common area tracts, refers to this Declaration, and states that all new lots and new common area tracts are being added or annexed into the Declaration. Upon annexation, any additional Common Area shall be conveyed to the Association concurrent with the conveyance of the first Lot in the annexed phase to a Class A Member. The Association shall maintain all annexed Common Area, and all Owners shall be assessed for the maintenance and subsequent development of any annexed Common Area as though all Lots and all Common Area then covered by the Declaration had been initially included within the Project.

12.3 Annexation With Approval. Upon the written consent or affirmative vote of at least two thirds (2/3) of the Class A Members of the Association (and further upon the written consent of the Declarant so long as Declarant is a Member of the Association), the Association may annex real property to the provisions of this Declaration by recording in the Official Records of Maricopa County, Arizona, a "Supplemental Declaration" describing the real property being

annexed. Any Supplemental Declaration shall be signed by the President and Secretary of the Association and the owner or owners of the properties being annexed, and any annexation under this Section 12.3 shall be effective upon its recordation.

12.4 Effect of Annexation. When a phase has been included (annexed) under this Declaration, the Owners of the Lots in the additional phase shall have the same rights, duties, and obligations (including the obligation to pay assessments) under this Declaration as the Owners of Lots in the first phase (i.e., the Lots initially covered by this Declaration) and vice versa.

12.5 No Assurance on Annexed Property. Declarant makes no assurances that any property will be annexed into the Project, and Declarant makes no assurances as to the exact type, location, or price of buildings and other improvements to be constructed on any annexed property. Declarant makes no assurances as to the exact number of Lots that may be added by any annexed property. Declarant makes no assurances as to the type, location, or price of improvements that may be constructed on any annexed property; however, the improvements shall be generally consistent in construction quality with the improvements constructed on the real property described in Exhibit "A" attached to this Declaration.

Dated as of October 25, 1996.

"Declarant"

Beazer Homes Holdings Corp.,
a Delaware corporation,
doing business in Arizona as Hancock Homes

By: _____
Its: President

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 25 day of October, 1996, by Joseph Thompson the President of Beazer Homes Holdings Corp., a Delaware corporation, doing business in Arizona as Hancock Homes, who executed the foregoing on behalf of the corporation, being authorized so to do for the purposes therein contained.

Renee K. Sandberg
Notary Public

My Commission Expires:

Nov. 30, 1999

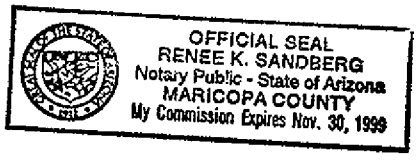

EXHIBIT "A"
TO
DECLARATION OF HOMEOWNERS BENEFITS
AND
COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
SPRINGTREE II

(legal description)

Lots 1 through 189, inclusive, and Tracts "A" through "H", inclusive, Tracts "J" through "N", inclusive, Tracts "P" through "R", inclusive, and Tracts "T" through "W", inclusive, Springtree II, according to the plat of record as shown in Book 421 of Maps, Page 27, Official Records of Maricopa County, Arizona.