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# DECLARATION OF HOMEOWNER BENEFITS AND COVENANTS, CONDITIONS, AND RESTRICTIONS FOR AVIARA II

(A Single Family Subdivision)

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# DECLARATION OF HOMEOWNER BENEFITS AND COVENANTS, CONDITIONS, AND RESTRICTIONS FOR AVIARA II (A Single Family Subdivision)

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# DECLARATION OF HOMEOWNER BENEFITS AND COVENANTS, CONDITIONS, AND RESTRICTIONS FOR AVIARA II (A Single Family Subdivision)

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

## BACKGROUND

A. Declarant is the owner of certain real property located in the City of Scottsdale, County of Maricopa, State of Arizona, (hereinafter called "Property" or "Project") which is described on the Plat and which is additionally described as follows:



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

B. Declarant desires to provide for the phased construction of a planned 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", but Declarant may, subsequent to the date of this Declaration, include in this Declaration additional phases of Aviara II (i.e., to incorporate additional lots and common area tracts in this subdivision) as provided below.

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

NOW, THEREFORE, Declarant declares that the lots and tracts described on the Plat, together with any other lots and tracts which, 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 termed "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, or 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 1

## DEFINITIONS

1.1 "Architectural Committee" shall mean the committee established pursuant to Article 11 of this Declaration and the provisions of any other Project Documents.

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

1.3 "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.



1.4 "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 4.

1.5 "Association" shall mean North Scottsdale Villas II Community 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.

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

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

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

1.9 "Common Area" shall mean all that real property described on the Plat as a common area tract for the common use and enjoyment of the Owners and shall not include the real property identified on the Plat as individual Lots or public streets. The "Common Area" shall include all other real property which in the future may be owned by the Association for the common use and enjoyment of the Owners. The "Common Area" shall include all structures, facilities, furniture, fixtures, improvements, and landscaping, if any and if permitted, located on the real property owned by the Association, and all rights, easements, and appurtenances relating to the real property owned by the Association. Tracts "A", "B", and "C", as depicted on the Plat and all of which are part of the Common Area, shall be referred to as the "Landscape/Drainage Tracts".

1.10 "Declarant" shall mean Beazer Homes Arizona Inc., a Delaware corporation, doing business in Arizona as Hancock Homes, and its successors and assigns, if the successors or assigns acquire more than one undeveloped Lot from the Declarant for the purpose of resale and execute and record a supplemental declaration declaring itself as a succeeding Declarant under this Declaration. "Declarant" does not include any Mortgagee.

1.11 "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.



1.12 "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.

1.13 "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), or 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.

1.14 "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 which in the future may be included in this Declaration 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 City of Scottsdale. "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 City of Scottsdale.

1.15 "Member" shall mean an Owner of a Lot which is or has become subject to this Declaration by an Annexation Amendment or Supplemental Declaration as described under Article 15 below.

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

1.17 "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 which is the first and most senior of all Mortgagees upon the applicable Lot.



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

1.19 "Nonrecurring And Temporary Basis" shall mean that the event or act referred to does not last more than twenty-four (24) total hours and does not occur more than twice in any six (6) month period.

1.20 "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 portions of the Project with the implied or express consent of an Owner.

1.21 "Person" and "person" shall mean a natural person, a corporation, a partnership, a trust, or other legal entity.

1.22 "Plat" will refer to the subdivision plat for Aviara II recorded in Book 366 of Maps, Page 19, Official Records of Maricopa County, Arizona, as it may be amended from time to time pursuant to this Declaration.

1.23 "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.

1.24 "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 devises. The Architectural Committee will be the sole judge as to what constitutes an object being Screened From View.

1.25 "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 three (3) adult persons not all so related who maintain a common household in a Detached Dwelling Unit located on a Lot.



1.26 "Single Family Residential Use" shall mean the occupation 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.

1.27 "Visible From Neighboring Property" shall mean, with respect to any given object, that such 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) abutting the Lot or other portion of the Property in question.

1.28 "Yard" or "yard" shall mean all portions of the Lot other than the portions of the Lot upon which the Detached Dwelling Unit or an ancillary structure of the type described in Section 8.5 below is constructed. "Private Yard" means the portion of the Yard that is not Visible From Neighboring Property, and "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. "Side Yard" means the portion of a Yard that is located behind (when viewed from the street) any side boundary wall located on a Lot and that

is no deeper 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 a Side Yard.

## ARTICLE 2

## 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 Areas, 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 public agency, municipality, governmental authority, public or private utility, or private person for the purposes, and subject to the conditions, which 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 by Declarant under Article 12 of this Declaration, no dedications or grants of easements over all or any part of the Common Area to any public agency, municipality, governmental authority, public or private utility, or private person shall be effective unless the dedication or grant is approved by two-thirds (2/3) of 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 Areas to the Owner's Permittees.

2.3 Conveyance of Common Area. Immediately prior to the time as 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.

## ARTICLE 3

## MEMBERSHIP AND VOTING RIGHTS

3.1 Membership. Every Owner of a Lot, by accepting a deed for that Lot (whether or not it is 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 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 which 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, and shall be entitled to one (1) vote for each Lot owned. When more than one

person holds an interest in any Lot, all such persons shall be Members; however, for all voting purposes and quorum purposes, they shall together be considered to be one (1) Member. The vote for such Lot shall be exercised as they 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 which 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 which 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 control of the Association is transferred from the Declarant to the Owners pursuant to Section 3.2, 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 past, present, or future acts or omissions with respect to the operation of the Association and administration of the Property.

## ARTICLE 4

## COVENANT FOR MAINTENANCE ASSESSMENTS

4.1 Creation of the Lien and Personal Obligation for Assessments. Each Owner of any Lot, by accepting a deed for that Lot (whether or not it is expressed in the deed or conveying instrument) or otherwise becoming an "Owner", is deemed personally to covenant and agree to be bound by all duties, obligations, and provisions of the Project Documents and to pay to the Association:

(a) Annual assessments or charges;

(b) Special assessments for capital improvements under Section 4.4, unexpected or extraordinary expenses for repairs of Common Area, or other matters;

(c) An amount sufficient to, on demand, indemnify and hold the Association harmless 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;

(d) An amount sufficient to reimburse the Association for the cost of performing any obligation of an Owner under the Project Documents which the Owner has failed to timely pay or perform; and



(e) 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 as an "assessment" or the "assessments". The assessments shall be a charge and a continuing lien upon the Lot against which the assessment is made or with reference to which each assessment is incurred. Each assessment also shall be the personal obligation of the person who was the Owner of the Lot at the time when the assessment became due or charge was incurred, or, in the case of more than one Owner, the personal obligation of each person, jointly and severally. The personal obligation for delinquent assessments shall not pass to the particular Owner's successors in title unless expressly assumed by them; however, the prior Owner's personal obligation 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 charge 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, priority, or enforcement.

4.2 Purpose of Assessments. The assessments levied by the Association shall be used for the purpose of:

(a) promoting the recreation, health, safety, welfare, and desirability of the Owners, Common Areas, and Lots;

(b) operating of the Common Areas (including payment of all taxes, utilities, maintenance, and rubbish collection fees, if any, and if not individually billed to the Owners);

(c) insuring (including a reserve fund for insurance deductibles), maintaining, repairing, painting, and replacing improvements in the Common Areas (including any reserve fund for the foregoing); and



(d) enhancing and protecting the value, desirability, and attractiveness of the Lots and Common Areas generally.

The annual assessment may include a reserve fund for taxes, insurance, maintenance, repairs, and replacements of the Common Area and other improvements which the Association is responsible for maintaining.

4.3 Initial and Annual Assessments. Until December 31, 1994, the maximum annual assessments shall be Three Hundred Eighty Four and No/100 Dollars ($384.00) per Lot. From and after the "base year" ending December 31, 1994, the maximum annual assessment shall be as determined by the Board of Directors. The percentage increase in the regular annual assessment in any given year over the assessment in the previous year may not be increased by more than the Permitted Percentage Increase (as defined below), unless any further additional increase is approved by an affirmative vote of two-thirds (2/3) of the votes cast in person or by proxy of each class of Members at a regular or special meeting duly called for that purpose. From and after December 31, 1994, 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) by the Consumer Price Index for the October one (1) year prior (identified by a "B" in the formula), minus one (1) (i.e., CPI percentage = A/B - 1). By way of example only, the percentage increase in the assessment for 1995 cannot be increased by more than the greater of: (I) ten percent (10%); or (II) the increase in the Consumer Price Index for October, 1994, divided by the Consumer Price Index in October, 1993), 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 for Capital Improvements. The Association may, 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, levy a special assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement (whether or not due to destruction, governmental taking, or otherwise) of a capital improvement upon the Common Areas (including fixtures and personal property related to the Common Area) or the cost of any other unexpected or extraordinary expenses for repairs of Common Area or other matters; however, any special assessment shall have the assent of two thirds (2/3) of the votes cast in person or by proxy of the Members at a regular or special meeting duly called for that purpose. Notwithstanding the foregoing, no approval of the Members shall be needed to levy assessments on an Owner which 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 5.3 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 fifty percent (50%) of all the 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 one-third (1/3) of all the 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 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. Assessments may be collected on an annual basis or on such more frequent basis as the Board of Directors from time to time shall 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 Lot Owner or the Owner's Permittees, the Association may specially assess the expense exclusively against such 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. The Association acting through the Board of Directors, upon written demand and for a reasonable charge, shall furnish 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. 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.

4.8 Effect of Nonpayment of Assessments - Remedies of the Association. Any assessment not paid within fifteen (15) days after the due date shall be subject to a one-time late charge of Fifty and No/100 Dollars ($50.00) and additionally shall bear interest from the due date at the minimum rate of eighteen percent (18%) per annum, or at any higher legal interest rate as may be determined from time to time by the Board of Directors. Each Owner of a Lot, by accepting a deed for that Lot (whether or not it is 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 of liens, including foreclosure by an action brought in the name of the Association in the same manner as a mortgage of real property, a deed of trust, and/or a mechanic's lien. The Association may make payments on any prior liens including any Mortgage or taxes on the Lot, and all payments shall be added to the lien in favor of the Association. The lien shall be in favor of the Association and shall be for the benefit of all other Owners. The Association shall have the power to bid in any foreclosure, sheriff's sale or similar sale 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 involved and without waiving the lien which secures the unpaid assessments. Any foreclosure may be taken 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 which the Association may have under the Project Documents or under Arizona law.



4.9 Subordination of the Lien to Mortgages. Regardless of whether or not a Notice and Claim of Lien has been recorded, the lien for the assessments established in this Declaration shall be superior to all liens, charges, and encumbrances which, after the date of recordation of this Declaration, are or may be imposed on any Lot or Parcel. The lien for the assessments established in this Declaration, however, shall be automatically subordinate to: (i) the lien of

any First Mortgagee who acquired its First Mortgage in good faith and for value, except for the amount of assessments which accrue from and after the date upon which the First Mortgagee acquires title to or comes in possession of any Lot; and (ii) any taxes, bonds, or assessments which 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 First Mortgage shall extinguish the lien on the Lot that became due prior to the transfer or sale. In the case of a sale or transfer by judicial foreclosure or trustee's sale by a First Mortgagee, the First Mortgagee or other successor Owner shall not be liable for any assessments that become due prior to the sale or transfer by the First Mortgagee. No sale or transfer pursuant to a judicial foreclosure or trustee's sale of any First Mortgagee shall relieve any Lot from the liability or the lien for any assessments which 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 which has been perfected as of the date of recordation of this Declaration, the Association, in addition, 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:

(a) The last known name of the delinquent Owner;

(b) The legal description or street address of the Lot against which the claim of lien is made;

(c) The amount claimed to be due and owing from the Owner and assessed against the Lot; and

(d) A statement that the claim is made by the Association pursuant to the terms of the Declaration and the other Project Documents.

Each default and 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.

## ARTICLE 5

## EXTERIOR MAINTENANCE

5.1 Common Area by Association. Except as provided in Section 5.2, the Association shall be responsible for the maintenance, repair, and replacement of the Common Area, and, without any approval of the Owners, the Association may do any of the following:

(a) Reconstruct, repair, replace, and refinish any landscaping or improvement located on or used in connection with the Common Area; and

(b) Do any other acts deemed necessary to preserve, beautify, and protect the Common Area in accordance with the general purposes specified in the Project Documents.

The Board of Directors of the Association shall be the sole and absolute judge as to the appropriate maintenance of the Common Area. Notwithstanding anything contained in this Section 5.1, the Association will have no obligation to perform any maintenance or repair work which is performed by any public agency, municipality, authority, or public or private utility that is responsible for the maintenance of the improvements located within any Common Area.



5.2 Common Area Necessitated by Owner. In the event that the need for maintenance or repair to any Common Area is caused through the act or omission (including negligent acts or omissions) of an Owner, the Owner's Permittees, or any pet of the Owner, the cost of the maintenance or repairs, including the deductible portion of any applicable insurance policy, shall be added to and become a part of the assessment against the Lot owned by that Owner, less any insurance proceeds available to the Association to pay the cost of such 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 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 Lot Maintenance by Owner. The Lot and all lawns, plants, irrigation systems, sprinklers, shrubs, trees, and the like located on 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 on the Lot and for the removal of all trash, weeds, leaves, and other unsightly material

on the Lot. The Detached Dwelling Unit and all other permitted structures located on the Lot must be maintained in a clean, safe, neat, and attractive condition and repair and must be adequately painted and finished. If an Owner fails to perform this required maintenance and repair, then, upon vote of a majority of the Board of Directors and after not less than thirty (30) days prior notice to that Owner, the Association, in addition to any other remedy, 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 or replacements. Any entry by the Association or its agents shall not be considered a trespass. The cost of these repairs shall be added to the assessments charged to such Owner, shall be promptly paid to the Association by that Owner as a special assessment or otherwise, and shall constitute a lien upon that Owner's Lot. No Owner shall alter, remove, injure, or interfere in any way with any irrigation and sprinkler systems, shrubs, trees, grass, and plantings, if any, placed on the Common Areas without the express written consent of the Declarant, during the period of Declarant Control, or the Architectural Committee after the period of Declarant Control. Without limiting the foregoing, the Owner of each Lot shall be responsible for the following:

(a) All conduits, ducts, plumbing, wiring, and other facilities and utility services which are contained on the Lot;



(b) All service equipment, such as refrigerators, air conditioners, heaters, dishwashers, washers, dryers, ovens, and stoves;

(c) All floor coverings, roofs, windows, doors, paint (internal and external), finishes, siding, and electrical and plumbing fixtures; and

(d) All lawns, plants, irrigation systems, sprinklers, shrubs, trees, and the like.

5.4 Access at Reasonable Hours. For the purpose of performing the maintenance, repairs, or replacements permitted by Section 5.3, 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, the Association's agents or employees may enter onto the Common Area 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. Plans for all landscaping which is to be installed anywhere on the Owner's Lot must be approved by the Architectural Committee under Article 11 of this Declaration.

5.6 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 6

## DUTIES AND POWERS OF THE OWNERS' ASSOCIATION

6.1 Duties and Powers. In addition to the duties and powers enumerated in the Articles, Bylaws, other Project Documents, or elsewhere in the Declaration, the Association 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 a manager or other persons and to contract with independent contractors or managing agents to perform all or any part of the duties and responsibilities of the Association, which such managers, persons, independent contractors, or managing agents may be related to or affiliated with the Declarant;

(e) Purchase Insurance. Purchase insurance for the Common Areas for risks, with companies, and in amounts as the Board shall determine 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 Articles, By-laws, and the other Project Documents including, without limitation, the right to construct improvements on the Lots and Common Areas; and

(g) Enforcement. Enforce the provisions of this Declaration, the Articles, the By-Laws, 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, the Articles, the By-Laws, and the other Project Documents.

6.2 Insurance.

(a) Liability Insurance. Comprehensive general liability insurance covering the Common Areas 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 $500,000 for personal injury to any one person, $1,000,000 for personal injury to any number of persons sustained in any one accident or mishap, and $100,000 property damage. The policy shall name as insureds the Owners, the Association (its directors, officers, employees, and agents 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) Fire and Multi-Peril Insurance - Master Policy for Common Areas. A master or blanket fire 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 ("fire insurance policy"). Once purchased, obtained, or acquired, the fire insurance policy shall be maintained in force at all times. The premiums shall be paid out of the Association's funds. The fire 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 in the fire insurance policy, for the full insurable value of all of the permanent improvements upon the Common Areas. The fire insurance policy shall be in such amounts as shall be determined from time to time by the Board in its sole discretion. The fire

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) Fire Insurance - Detached Dwelling Units. The Association shall not be obligated to obtain property insurance, liability insurance, flood insurance, or any other type of insurance covering the Detached Dwelling Units or the Lots. The procurement and maintenance 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 as the Board may determine to be advisable or necessary including, but not limited to, workmen's compensation insurance, boiler explosion insurance, demolition insurance to remove improvements that are not rebuilt, 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 which 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. 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, the deductible shall be allocated in relation to the amount each party's loss bears to the total loss.

(f) Nonliability of Association. Notwithstanding the duty of the Association to obtain insurance coverage as stated in this Declaration, neither the Declarant (or its

officers, directors, partners, or employees), 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 insurance 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 such additional insurance coverage and protection as the Owner may desire.

(g) Provisions Required. The comprehensive general liability insurance referred to in Subsection 6.2(a) and, if applicable, the fire insurance policy referred to in Subsection 6.2(b) shall contain the following provisions to the extent reasonably 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 which 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 which 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 which gives the carrier the right to elect to restore damage in lieu of a cash settlement must provide that such an 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.

6.3 Damage and Destruction - Reconstruction. In the event of damage or destruction of any improvements upon the Common Areas, 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 which 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 shall, 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, 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 which may, in the sole discretion of

the Board, constitute a lien against the Common Area. If one or more Owners is responsible for the existence of such a lien, however, 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 Owners. The Association may exercise any other right or privilege given to it by the Project Documents and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it in the Project Documents or reasonably necessary to effectuate any such right or privilege.

6.5 Association Rules. By a majority vote of the Board, the Association may, from time to time and subject to the provisions of this Declaration, adopt, amend, and repeal rules and regulations. The Association Rules may restrict and govern the use of any area by any Owner or the Owner's Permittees 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 and shall not be inconsistent with this Declaration, the Articles, or Bylaws. A copy of the Association Rules, as they may from time to time be adopted, amended, or repealed, shall be available for inspection by the Members at reasonable times. 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 7

## UTILITIES

7.1 Utility Service. Notwithstanding anything to the contrary contained in any of the Project Documents, no sewers, electrical lines, water lines, gas lines, CATV, or other utilities may be installed or relocated on the Property except as initially installed and approved by the Declarant or except as approved by the Declarant, during the period of Declarant Control, or the Architectural Committee, after the period of Declarant Control.

7.2 Underground Utilities. No wires, lines, or other devices for the communication or transmission of electric current or power, including telephone, television, cable television, and radio signals, shall be erected, placed, or maintained anywhere in or upon any Detached Dwelling Unit or Lot within the Property unless the lines, wires, or other devices are contained in conduits or cables installed and maintained underground or concealed in or on buildings or structures approved by the Architectural Committee. No provision of this Declaration shall be deemed to forbid the erection of temporary power or telephone structures incident to the construction of buildings or structures as needed by the Declarant.

## ARTICLE 8

## USE RESTRICTIONS

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

8.1 Restricted Use. Except as otherwise provided in 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.

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 use, manufacturing, industrial use, mercantile, storage, vending, or other similar purposes; however, Declarant and/or 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 yards, signs, a model site or 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 which: (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 to the public view on any of the Lots or Common Areas, except for:

(a) Signs used by Declarant to advertise the Lots or living units on the Lots for sale or lease;

(b) Signs on the Common Area as may be placed and approved by the Declarant or the Board;

(c) One sign not more than twenty-four (24) inches by twenty-four (24) inches in size, advertising a Lot and Detached Dwelling Unit for sale or rent placed in a location designated by the Board for such signs;

(d) Any signs as may be required by legal proceedings; and

(e) Signs as may be approved in advance by the Architectural Committee in terms of number, type, and style.

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 which is or may become an annoyance or nuisance to the neighborhood generally or other Owners specifically, or which interferes with the use and quiet enjoyment of each of the Owners and of the Owner's Lot. No Owner shall permit any thing or condition to exist upon any property which shall induce, breed, or harbor 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 basements, cellars, guest houses, hobby houses, storage sheds (wood, aluminum, or otherwise), stables, wood sheds, outbuildings, shacks, garages, barns, living quarters, gazebos, or structures similar to any of the foregoing shall be temporarily or permanently constructed or maintained on any Lot at any time, unless the type, size, location, style, and use of the structure, including all plans and specifications for the structure, are approved by the Architectural Committee in writing prior to the commencement of construction. Any basement, cellar, guest house, hobby house, storage shed, stable, wood shed, outbuilding, shack, garage, barn, living quarters, gazebos, or similar structure 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 structure of the type described in this Section 8.5 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. The restrictions contained in this Section 8.5 shall not prohibit additions to the Detached Dwelling Unit which have been approved by the Architectural Committee under Article 11 of this Declaration.



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 be installed on any roof, but only in the roof area as originally installed by the Declarant, unless otherwise approved by the Architectural Committee.

8.7 Animals. No animals, livestock, horses, 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 common household pets in the Detached Dwelling Unit or in an enclosed Private Yard if permitted under local zoning ordinances. 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. Notwithstanding the foregoing, no animals, livestock, horses, or poultry may be kept on any Lot which results in an annoyance to, or which are obnoxious to, other Owners in the opinion of the Board. No permitted pets shall be permitted to move about unrestrained in any Public Yard of the Owner or any other Owner, Common Area, or any public or private street. 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 or any other Owner, Common Area, or public or private streets. Owners shall be liable for all damage caused by their pets. The Association may establish a system of fines or charges for any infraction of the foregoing.



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, or 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 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 on a Lot at all times so that they are not Visible From Neighboring Property.

8.10 Screening and Fencing. Woodpiles and uncovered or open storage areas may not be maintained upon any Lot, unless located in the Private Yard.

8.11 Antennas. Except as may be 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 in any manner that will make the external radio or television antenna or satellite dish Visible From Neighboring Property.

8.12 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 on any windows of a Detached Dwelling Unit without the prior written approval of 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 his Lot and Detached Dwelling Unit shall promptly notify the Association and shall advise the Association of the terms of the lease and the name of each lessee.

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, without the prior approval of the Architectural Committee.



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 which Declarant or the Association may require for the operation and maintenance of the Property.

8.16 Restriction on Further 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 which 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, or in the Common Area which will result in the cancellation of insurance on any Detached Dwelling Unit or any part of the Common Area or which would be in violation of any law.

8.18 Drainage Plan. No Detached Dwelling Unit, permanent improvement, or other similar improvement shall be constructed, installed, placed, or maintained on any Lot or Common Area in any manner that would obstruct, interfere, or change the direction or flow of water in accordance with the drainage plans for the Project, Landscape/Drainage Tracts, or any Lot on file with the county or municipality in which the Project is located.

8.19 Clothes Drying Facilities. Outside clotheslines or other outside facilities for drying or airing clothes shall not be erected, placed, or maintained on any Lot unless they are erected, placed, or maintained in such a manner as to not be Visible From Neighboring Property.

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

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, semi, wagon, trailer, camper, mobile home, motor home, boat, or similar equipment or vehicle owned, leased, or used by an Owner of any Lot within the Project or the Owner's Permittees shall be parked upon a Lot within the Project, unless the equipment or vehicle is located in an enclosed garage located on the Owner's Lot. No vehicle or equipment of the type described above may be parked on any public or private street within the Project other than on a Nonrecurring And Temporary Basis. The provisions of this Section 8.23 do not apply to family vehicles governed under Section 8.24 below.

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 any of the equipment or vehicles described in Section 8.23 above 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 which restricts or prevents the garage from being used for parking family vehicles or for parking any of the equipment or vehicles described in Section 8.23 above. Additional family vehicles that can not be parked in the garage located on the Lot may be parked in the driveway or in any Side Yard parking area located on that Lot so long as the family vehicles are operable and are, in fact, operated from time to time. A Side Yard parking area must be Screen From View and must be located only within the Side Yard of a Lot. All plans and specifications for a Side Yard parking area must be approved in writing by the Architectural Committee prior to any construction or installation of the Side Yard parking area. A "family vehicle" means domestic and foreign cars, pick-up trucks, vans, mini-vans, jeeps, sport utility vehicles, motorcycles, and similar non-commercial vehicles used by the Owner of the applicable Lot or the Owner's Permittees and does not include any of the equipment or vehicles described in Section 8.23 of this Declaration.

8.25 Vehicle Repairs. Routine maintenance and repairs of family vehicles or vehicles or equipment of the type described in Section 8.23 above may be performed within an enclosed garage but not on the driveway located on a Lot or any public or private streets within the Project. 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 vehicle or equipment of the type described in Section 8.23 above shall be permitted to be or remain anywhere on any Lot in a state of disrepair or in an inoperable condition.



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

## ARTICLE 9

## BUILDING ENVELOPES

9.1 Building Envelopes and Setbacks. As used in this Declaration, the term "building envelope" will mean the portion of each Lot that is within the building setback lines (BSL) depicted on the Plat.

9.2 Construction. Every Detached Dwelling Unit, pool, and accessory structures of the type described in Section 8.5 above located on a Lot must be constructed within the building envelope for that Lot. Only landscaping, driveways, sidewalks, and boundary walls will be permitted on a Lot in the area outside of the building envelope for a Lot.

## ARTICLE 10

## FENCES AND WALLS

10.1 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 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 10, 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.



10.2 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 of 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, engineering errors, or because existing easements 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 easement over any property immediately adjoining the Owner's Lot up to the center line of the Fence for the use and enjoyment of that Owner.

10.3 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 which 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.

10.4 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), an access 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.

10.5 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 10.5, a Fence may not be painted or stuccoed without the prior approval of the Architectural Committee.



## ARTICLE 11

## ARCHITECTURAL CONTROL

11.1 Architectural Approval. No exterior addition, change, or alteration may be made in or on any Lot or Detached Dwelling Unit until plans and specifications showing the nature, kind, color, shape, height, materials, floor plan, approximate cost, location, and other material attributes are submitted to and approved in writing by the Architectural Committee as to 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 above, all structures of the type described in Section 8.5 above, all roof mounted equipment of the type described in Section 8.6, all window coverings of the type described in Section 8.12 above, and all Side Yard parking areas of the type described in Section 8.24 above. Unless a different time period is specified in this Declaration, in the event the

Architectural Committee fails to approve or disapprove the design and location within thirty (30) days after complete and legible copies of the plans and specifications have been submitted to it, the application shall be deemed approved. All decisions of the Architectural Committee shall be final. All landscaping, structures, improvements, etc., must be in conformity with city and county building codes and may be commenced if a proper building permit, if applicable, is issued by the appropriate authority.

11.2 Appointment of Architectural Committee. Declarant shall initially appoint the Architectural Committee which shall consist of not less than three (3) persons, who shall hold office whenever there is a Class B member. If an Architectural Committee is not appointed, the Board shall serve as the Architectural Committee. When there is no Class B member, the Architectural Committee shall be composed of the Board or by three (3) or more representatives appointed by the Board. Representatives of the Architectural Committee need not be Members of the Association. In the event of the inability, failure to serve, or the resignation of any member of the Architectural Committee prior to the time when the Board is vested with the authority to appoint the Architectural Committee, Declarant shall have the right to appoint such member's successor.

11.3 Architectural Committee Rules. The Architectural Committee, by unanimous vote or unanimous written consent, may adopt, amend, and repeal rules and regulations regarding 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 which is inconsistent with the Declaration, the Articles, the Bylaws, or the Plat.



11.4 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 City of Scottsdale 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 12

## RESERVATION OF EASEMENTS

12.1 Public Utility Easements. Declarant grants and creates an easement to all applicable public agencies, municipalities, public authorities, or private utilities upon, across, 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 such as electric, telephone, water, gas, cable television, drainage facilities, sanitary sewer, or similar utility lines. This utility easement shall not affect or impair access to or from a Lot to or from any public or private street located within the Project. The term of this utility easement shall be perpetual. All utilities shall be placed underground.

12.2 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 any reasonably necessary portion of the Common Area and the Lots that are not owned by the Declarant 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. Declarant, in utilizing this temporary construction easement, 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.



12.3 Easement for Encroachments. 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 encroachments created by construction, settling, and overhangs as originally designed or constructed by Declarant. 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.

12.4 Easements for Ingress and Egress. Easements for ingress and egress are created and reserved by Declarant for the benefit of the Declarant, the Owners, and the Owner's Permittees for pedestrian traffic over, through, and across sidewalks, Common Area, and public right-of-ways.

12.5 Water Easement. Without limiting any other provision of this Declaration or the Plat, there is granted to the City of Scottsdale a blanket easement on each Lot for the purpose of installing, repairing, reading, and replacing water meter boxes.

12.6 Landscape Tract. Declarant grants to the Association and all Owners a non-exclusive and perpetual easement for landscape and storm water drainage over the Landscape/Drainage Tracts. All landscaping within the Landscape/Drainage Tracts will be maintained by the Association.

## ARTICLE 13

## CONDEMNATION

13.1 General Provisions on Condemnation. If an entire Lot is acquired by eminent domain, or if part of a Lot is acquired by eminent domain leaving the Owner with a remnant which may not practically be used for the purposes permitted by this Declaration, the award shall compensate the Owner for his/her Lot and its interest in the Common Area, whether or not any Common Area interest is acquired by the condemning party. Upon acquisition by 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 taking, and the Association shall promptly prepare, execute, and record an amendment to the Declaration reflecting these reallocations. For purposes of this Section, an Owner, by acceptance of a Lot or any interest in a Lot, shall be deemed to have appointed the Association as their attorney-in-fact for the purposes of amending, executing, and recording the Declaration as provided in this Article 13. Any remnant of a Lot remaining after the taking under this Section 13.1 shall be deemed thereafter a part of the Common Areas.



13.2 Partial Condemnation of Lot. Except as provided in Section 13.1, if a part of a Lot is acquired by eminent domain, the award shall compensate the Owner for the reduction in value and its interest in the Common Areas. Upon such taking, the Lot's interest in the Common Areas, 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 Areas, votes, or membership in the Association, or liability for the common expenses.

13.3 Condemnation of Common Area. If a portion of the Common Areas is acquired by eminent domain, the award shall be paid to the Association. 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 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 Areas prior to the taking, as their respective interests may appear.

## ARTICLE 14

## GENERAL PROVISIONS

14.1 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 any amendment to this Declaration or by the Articles of Incorporation, Bylaws, or 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 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 such 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.



14.2 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.

14.3 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 such term, or any extension, by an affirmative vote of the Owners of ninety percent (90%) of the Lots entitled to vote.

14.4 Amendment. This Declaration and/or the Plat may be amended as provided in this Declaration; however, no amendment may change the ratio of assessments without prior written approval of the then holders of all First Mortgages on not less than two-thirds (2/3) of the Lots. During the first twenty (20) year term of this Declaration and except as otherwise provided in Section 14.8, 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 by the vote of not less than two-thirds (2/3) of the Members cast in person or proxy at a regular or special meeting. After the initial twenty (20) year period, amendments shall be made by a recorded instrument approved and adopted by the vote of not less than two-thirds (2/3) of the Members cast in person or by proxy at a regular or special meeting, 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. Declarant may unilaterally amend this Declaration or Plat or the other Project Documents prior to recordation of the first deed of any Lot to an Owner or the recordation of a contract to sell a Lot to an Owner other than Declarant.



14.5 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 14.4 and any annexation amendment made by the Declarant pursuant to Article 15 shall either: (i) contain 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.

14.6 Construction. This Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan and scheme for the development of a planned area development 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 which will effectuate the

inclusion of additional lots pursuant to Article 15. 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.

14.7 Notices. Any notice permitted or required to be delivered may 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, addressed to each person at the address given by such person to the Association for the purpose of service of such notice. 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. This address may be changed from time to time by notice in writing received by the Association. 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 may be used in giving the notice.



14.8 General Declarant Rights. Declarant specifically reserves the right to construct such improvements to the Lots or Common Area as are provided for in this Declaration or the Plat and to change the unit mix of the Lots as provided for 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 Areas, and convert Common Area into Lots.

14.9 Management Agreements. Any management agreement made by the Association or Declarant may be made with an affiliate of Declarant and shall be terminable by the Association with or without cause and without penalty upon thirty (30) days written notice thereof, and the term of any such agreement may not exceed one year, renewable by agreement of the parties for successive periods of one year or less.

14.10 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 thereof, seek any partition.

14.11 Declarant's Right to Use Similar Name. The Association hereby irrevocably consents to the use by any other profit or nonprofit corporation which may be formed or incorporated by Declarant of a corporate name which is the same or deceptively similar to the name of the Association provided one or more words are added to the name of such 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 such 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 which is the same or deceptively similar to the name of the Association.



14.12 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.

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

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

14.15 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.

14.16 Attorney Fees. In the event an action is instituted to enforce any of the provisions contained in the Project Documents, the party prevailing in such 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 such action, the amount of such attorneys' fees and court costs may be deemed all or part of a special assessment against the Lot and Owner involved in the action.

14.17 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) which 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 which 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 15

## DEVELOPMENT PLAN AND ANNEXATION

15.1 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 as Declarant desires to meet its needs or desires or the needs or desires of a potential purchaser.

15.2 Annexation Without Member Approval. During the period of Declarant Control, additional phases of Lots and Common Area within Aviara II may be annexed into and made subject to this Declaration by Declarant, without the consent of any Member, by recording an amendment ("Annexation Amendment") signed by the Declarant that describes the new lots and new common area tracts to be included, refers to this Declaration, and states that all new lots and new common area tracts are being added or annexed into North Scottsdale Villas II. Upon the annexation of any additional Common Area, the 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 first phase.

15.3 Annexation With Approval of Members. After the period of Declarant Control, upon the written consent or affirmative vote of at least two thirds (2/3) of the Class A Members of the Association present in person or by proxy at a meeting duly called for such purpose, 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 15.3 shall by effective upon its recordation.



15.4 Acquisition of Additional Common Area. From time to time, Declarant may convey additional improved or unimproved real estate located within the Property to the Association. Upon conveyance to the Association, the real property shall be deemed to have been accepted by the Association and, after the conveyance, shall be maintained by the Association at its expense as Common Area for the benefit of all its Members.

15.5 Effect of Annexation. When a phase has been included (annexed) under this Declaration, the Owners of the Lots of 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. Any tracts added as Common Area shall be added for the benefit of the Owners of Lots in the first phase and in any previously added phases as well as the Owners of Lots added in the same phase as that tract.

15.6 No Assurance on Annexable Property. Declarant makes no assurances that all or 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 which may be added by annexation of all or any annexed property. Declarant makes no assurances as to the type, location, or price of improvements which 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 20, 1993.

"DECLARANT"

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



By: Greg Hancock
Its: PRESIDENT

STATE OF ARIZONA )
) ss.
County of Maricopa )

The foregoing instrument was acknowledged before me this 20 day of October, 1993, by GREG HANCOCK, the PRESIDENT of Beazer Homes Arizona Inc., 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.

OFFICIAL SEAL
LAURAN G. JOHNSON
NOTARY PUBLIC - STATE OF ARIZONA
MARICOPA COUNTY
My Commission Expires July 26, 1996

Lauran G. Johnson
Notary Public

My Commission Expires:
July 26, 1996

**EXHIBIT "A"**

(legal description)

Lots 1 through 35, inclusive, and Tracts "A" through "C", inclusive, AVIARA II, according to the plat of record as shown in Book 366 of Maps, Page 19, Official Records of Maricopa County, Arizona.