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When recorded return to:

Shea Homes
8800 North Gainey Drive, Suite 350
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**HOLD FOR PICK-UP
FIRST AMERICAN TITLE
BUILDER SERVICES**

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
NEELY COMMONS COMMUNITY ASSOCIATION**

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THIS DECLARATION is made on the date hereinafter set forth by Shea Homes Limited Partnership, a California limited partnership ("Declarant"), and Standard Pacific of Arizona, Inc. ("Standard").

WITNESSETH:

WHEREAS, Declarant and Standard (collectively, "Signatories") are the owners of certain real property ("Property") located in the City of Gilbert ("City"), County of Maricopa, State of Arizona, described on Exhibit A attached hereto.

WHEREAS, Signatories desire to provide for development of the Property pursuant to an integrated plan of development.

NOW, THEREFORE, Signatories hereby declare that the Property shall be subject to the following reservations, easements, limitations, restrictions, servitudes, covenants, conditions, charges and liens (hereinafter sometimes collectively termed "Covenants and Restrictions") which are for the purpose of protecting the value and desirability of, and which shall run with, the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner of any portion of the Property.

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ARTICLE I
DEFINITIONS

Section 1.1. "Annexable Property" shall mean the real property described on Exhibit B attached hereto that is subject to annexation into the Property pursuant to Article XIV.

Section 1.2. "Annexation Declaration" shall mean the declaration of annexation described in Section 14.1.

Section 1.3. "Architectural Committee" means the committee established by the Board pursuant to Section 3.4 of this Declaration.

Section 1.4. "Architectural Committee Rules" means the rules adopted by the Architectural Committee.

Section 1.5. "Articles" means the Articles of Incorporation of the Association which have been or will be filed in the Office of the Corporation Commission of the State of Arizona, as said Articles may be amended from time to time.

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

Section 1.7. "Assessments" means the annual and special assessments levied and assessed against each Lot pursuant to Article IV of the Declaration and the annual and special assessments levied against the Annexable Property following annexation under Section 14.2.

Section 1.8. "Association" means the Arizona nonprofit corporation organized or to be organized by the Declarant to administer and enforce the Project Documents and to exercise the rights, powers and duties set forth therein, and its successors and assigns. Declarant intends to organize the Association under the name of "Neely Commons Community Association", but if such name is not available, Declarant may organize the Association under such other name as the Declarant deems appropriate.

Section 1.9. "Association Rules" means the rules and regulations adopted by the Association, as the same may be amended from time to time.

Section 1.10. "Board" means the Board of Directors of the Association.

Section 1.11. "Bylaws" means the bylaws of the Association, as such bylaws may be amended from time to time.

Section 1.12. "Common Area" ^{Unofficial Document} consists of Tracts A through Q of Neely Commons – Phase 1, a subdivision recorded at Book 492 of Maps, page 14, recording no. 99-0094084, records of Maricopa County, Arizona, any other portions of the Property transferred to the Association and accepted by the Association for maintenance and any additional common areas described in an Annexation Declaration under Section 14.3.

Section 1.13. "Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.

Section 1.14. "Declarant" shall mean Shea Homes Limited Partnership, a California limited partnership, and its successors and assigns if such successors or assigns should acquire two or more undeveloped lots from the Declarant for the purpose of development and resale and such acquisition includes a transfer of the Declarant's rights herein. No successor Declarant shall have any liability resulting from any actions or inactions of any preceding Declarant unless expressly assumed by the successive Declarant, in which event the preceding Declarant shall be released from liability.

Section 1.15. "Declaration" shall mean the provisions of this document and any amendments hereto.

Section 1.16. "First Mortgage" means any mortgage or deed of trust on a Lot which has priority over all other mortgages or deeds of trust on the same Lot.

Section 1.17. "First Mortgagee" means the holder of any First Mortgage.

Section 1.18. "Improvement" means buildings, roads, driveways, parking areas, fences, walls, rocks, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

Section 1.19. "Lot" or "lot" shall mean any subdivided lot shown on the Plat or any subdivided lot in the Annexable Property annexed pursuant to Article XIV provided such subdivided lot in the Annexable Property is restricted to Single Family Residential Use; Lot does not include

Section 1.20. "Member" means any person, corporation, partnership, joint venture or other legal entity who is a member of the Association.

Section 1.21. "Owner" or "owner" shall mean the record owner, except as provided below, whether one or more persons or entities, of fee simple title to any lot or any portion of the Annexable Property that is annexed to the Project, including without limitation, one who is buying property under a recorded contract, but excluding others having an interest merely as security for the performance of an obligation. In the case of property where fee simple title is vested of record in a trustee under a deed of trust, legal title shall be deemed to be in the trustor. In the case of property where fee simple title is vested in a trustee pursuant to a trust agreement, the beneficiary entitled to possession shall be deemed to be the Owner.

Section 1.22. "Plat" shall mean the Plat of Neely Commons – Phase 1 recorded in Book 492 of Maps, Page 14, Recording Number 99-0094084, Records of Maricopa County, Arizona, any other recorded subdivision plat affecting any portion of the Property, and/or any subdivision plat of any portion of the Annexable Property annexed pursuant to Article XIV, and all amendments to any of the foregoing.

Section 1.23. "Project" means the Property and any Annexable Property annexed to this Declaration pursuant to Article XIV, together with all buildings and other Improvements located thereon and all easements, rights and privileges appurtenant thereto.

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

Section 1.25. "Purchaser" means any person other than a Signatory, who by means of a voluntary transfer becomes the Owner of any portion of the Property except for (i) an Owner who purchases a portion of the Property and then leases it to a Signatory for use as a model in connection with the sale of other Lots or (ii) an Owner who, in addition to purchasing a Lot or a portion of the Annexable Property, is assigned any or all of a Signatory's rights under this Declaration.

Section 1.26. "Residential Unit" means any building situated upon a Lot and designed and intended for independent ownership and for use and occupancy as a residence by a Single Family.

Section 1.27. "Single Family" shall mean an individual living alone, a group of two or more persons each related to the other by blood, marriage or legal adoption, or a group of not more than three persons not all so related, together with their domestic servants, who maintain a common household in a dwelling.

Section 1.28. "Single Family Residence" shall mean a building, house or dwelling unit used as a residence for a Single Family, including any appurtenant garage or storage area.

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

Section 1.30. "Visible from Neighboring Property" or "visible from neighboring property" shall mean that an object is or would be visible to a person six feet (6') tall standing on a neighboring lot or street at an elevation not greater than the elevation of the base of the object being viewed.

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

ARTICLE III
THE ASSOCIATION; RIGHTS AND DUTIES,
MEMBERSHIP AND VOTING RIGHTS

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

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

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

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

Section 3.5. Identity of Members. Membership in the Association shall be limited to Owners of Lots. An Owner of a Lot shall automatically, upon becoming the Owner thereof, be a member of the Association and shall remain a member of the Association until such time as his ownership ceases for any reason, at which time his membership in the Association shall automatically cease.

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

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

Class A. Class A members shall be all Owners, with the exception of the Signatories until the termination of the Class B membership. Each Class A member shall be entitled to one (1) vote for each Lot owned and, in the case of the Owners of the Annexable Property, one vote for each Lot assessment allocated to such Owner's portion of the Annexable Property pursuant to Section 14.2.

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

- (i) When seventy-five percent (75%) of the Lots have been conveyed to Purchasers; or
- (ii) Five (5) years after the conveyance of the first Lot to a Purchaser; or
- (iii) When the Declarant notifies the Association in writing that Class B membership has terminated.

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

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

Section 3.10. Suspension of Voting Rights. In the event any Owner is in arrears in the payment of any Assessments or other amounts due under any of the provisions of the Project Documents for a period of fifteen (15) days, said Owner's right to vote as a Member of the

Association shall be suspended for a period not to exceed sixty (60) days for each infraction of the Project Documents, and shall remain suspended until all payments, including accrued interest and attorneys' fees, are brought current.

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

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

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

Section 3.12. Fines. The Association, acting through its Board of Directors, shall have the right to adopt a schedule of fines for violation of any provision of the Project Documents by any Owner or such Owner's licensees and invitees. No fine shall be imposed without first providing a written warning to the Owner describing the violation and stating that failure to stop the violation within no less than ten (10) days or another recurrence of the same violation within six (6) months of the original violation shall make the Owner subject to imposition of a fine. All fines shall constitute a lien on all lots owned by the Owner and shall be paid within thirty (30) days following imposition. Failure to pay ^{Unofficial Document} subject the Owner to the same potential penalties and enforcement as failure to pay any assessments under Article IV.

ARTICLE IV COVENANT FOR MAINTENANCE ASSESSMENTS

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

Section 4.2. Purpose of the Assessments. The Assessments levied by the Association shall be used exclusively for (i) the upkeep, maintenance and improvement of the Common Area, (ii) maintenance, repair, replacement, and operation of rights-of-way and easements within or immediately adjacent to the Project (e.g. landscaping and sidewalks within the right-of-way of

adjoining streets) to the extent that such actions are required by government entities or deemed appropriate by the Association's Board of Directors, (iii) promoting the recreation, health, safety and welfare of the Owners and residents of the Property, and (iv) the performance and exercise by the Association of its rights, duties and obligations under the Project Documents.

Section 4.3. Annual Assessment.

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

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

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(C) An Owner other than a Signatory shall be obligated to pay only twenty-five percent (25%) of the annual assessment attributable to such Owner's part of the Project until the earlier of (i) the date on which a certificate of occupancy on similar permit is issued by the appropriate governmental authority, (ii) six (6) months from the date on which a building permit is issued by the appropriate governmental authority for construction on the part of the Project, or (iii) two (2) years after the part of the Project was conveyed by a Signatory to the Owner or his predecessor in title. If a Lot ceases to qualify for the reduced twenty-five percent (25%) rate of assessment during the period to which an annual assessment is attributable, the annual assessment shall be prorated between the applicable rates on the basis of the number of days in the assessment period that the Lot qualified for each rate.

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

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

the obligation to maintain adequate reserve accounts. Notwithstanding the foregoing, neither Declarant nor Standard shall have any obligation to pay any amounts (including assessments under subsection (D) above and amounts payable under this subsection) during any calendar year in excess of the amount that such Signatory would have paid if its payments were made on the same basis as Purchasers of lots. Declarant and Standard shall share the obligation imposed under this subsection in proportion to the number of Lots owned by each of them, with such obligation to be payable to the Association on such time basis (monthly, quarterly, annually) as the Board determines to be necessary or appropriate to maintain the financial integrity of the Association. Any payments made by the Declarant to fund the estimated amounts due under this section in excess of Declarant's actual funding obligation under this section shall, at Declarant's option, be credited toward payment of Declarant's next due assessment payment or refunded to Declarant; for example, if Declarant pays \$25,000 to the Association in the middle of a calendar year to fund an estimated budget shortfall of the Association and the actual shortfall as of the end of the year would have been only \$20,000 in the absence of the Declarant's payment, Declarant shall be entitled to a \$5,000 credit toward its next due assessment payment or a refund of \$5,000.

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

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

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

(i) Until January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment for each Lot shall be \$27.

(ii) From and after January 1 of the year immediately following the conveyance of the first Lot to a Purchaser, the maximum annual assessment will automatically increase during each fiscal year of the Association by the greater of (a) 5% of the maximum annual assessment for the immediately preceding fiscal year or (b) an amount based upon the percentage increase in the Consumer Price Index for All Urban Consumers (All Items) U.S. Town Average, published by the United States Department of Labor, Bureau of Labor Statistics (1982 - 84 = 100) (the "Consumer Price Index"), which amount shall be computed in the last month of each fiscal year in accordance with following formula:

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

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

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

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

(iii) The increase in the maximum annual assessment pursuant to this Subsection (H) shall be calculated without considering the portion of the immediately preceding annual assessment attributable to the payment of utility charges or insurance premiums by the Association. In addition to the increase in the maximum annual assessment pursuant to Subsection (H)(ii) above, the maximum annual assessment shall include an increase for each fiscal year from and after January 1 of the year immediately following the conveyance of the first Lot to a purchaser in an amount equal to the amount in the Association budget for the prior fiscal year applicable to utility charges and insurance premiums, multiplied by the percentage increase in utility charges or the percentage increase in insurance premiums during the prior fiscal year, whichever is greater.

(iv) Notwithstanding the foregoing, the annual assessments shall not be increased more than twenty percent (20%) for one fiscal year to the next fiscal year without the approval of Owners owning a majority of the memberships.

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