

---

**COVENANTS, CONDITIONS  
&  
RESTRICTIONS**

**Copy**

THIS DOCUMENT IS BEING REFILED TO CORRECT  
PAGE 12, ITEM B(i) RATE OF ANNUAL ASSESSMENT.

2001- 0029029

**FIRST AMENDED AND RESTATED  
DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HERITAGE RANCH**

**Riddle & Williams, P.C.  
1050 Turtle Creek Center  
3811 Turtle Creek Boulevard  
Dallas, Texas 75219**

## TABLE OF CONTENTS

	Page
<b>ARTICLE I</b>	
<b>DEFINITIONS</b> .....	2
Section 1.1. "Articles" .....	2
Section 1.2. "Association" .....	2
Section 1.3. "Board of Directors" or "Board" .....	2
Section 1.4. "Bylaws" .....	2
Section 1.5. "Class B Control Period" .....	2
Section 1.6. "Committee" .....	2
Section 1.7. "Common Area" .....	2
Section 1.8. "Declarant" .....	2
Section 1.9. "Design Guidelines" .....	3
Section 1.10. "Development" or "Community" .....	3
Section 1.11. "Dwelling" .....	3
Section 1.12. "Eligible Mortgage Holder" .....	3
Section 1.13. "First Mortgage" .....	3
Section 1.14. "First Mortgagee" .....	3
Section 1.15. "General Land Plan" .....	3
Section 1.16. "Golf Course" .....	3
Section 1.17. "Governing Documents" .....	3
Section 1.18. "Lot" .....	3
Section 1.19. "Member " .....	4
Section 1.20. "Owner" .....	4
Section 1.21. "Properties" .....	4
Section 1.22. "Rules and Regulations" or "Rules" .....	4
 <b>ARTICLE II</b>	
<b>PURPOSE OF THE ASSOCIATION</b> .....	4
Section 2.1. Operation, Maintenance and Repair of Common Area .....	4
Section 2.2. Rights of the Town of Fairview .....	5
Section 2.3. Expansion of the Common Area .....	6
Section 2.4. Enforcement of Governing Documents .....	6
 <b>ARTICLE III</b>	
<b>AGE-QUALIFIED COMMUNITY</b> .....	6
Section 3.1. Housing for Older Persons .....	6
Section 3.2. Occupancy of Lots .....	6
 <b>ARTICLE IV</b>	
<b>MEMBERSHIP, VOTING RIGHTS AND TURNOVER</b> .....	9

Section 4.1. Entitlement to Membership .....	9
Section 4.2. Classes of Membership; Votes .....	9
Section 4.3. Turnover Procedure .....	10

**ARTICLE V**

<b>COVENANT FOR MAINTENANCE ASSESSMENTS .....</b>	<b>11</b>
Section 5.1. Creation of the Lien and Personal Obligation for Assessments .....	11
Section 5.2. Purposes of Assessments .....	12
Section 5.3. Annual Assessments .....	12
Section 5.4. Declarant Subsidy .....	13
Section 5.5. Special Assessments .....	13
Section 5.6. Special Individual Assessments .....	13
Section 5.7. Villa Assessment .....	14
Section 5.8. Declarant's Assessment .....	15
Section 5.9. Working Capital Contribution .....	15
Section 5.10. Date of Commencement of Annual and Villa Assessments; Due Dates .....	15
Section 5.11. Effect of Nonpayment of Assessments; Remedies of the Association .....	16
Section 5.12. Lien for Assessments .....	16
Section 5.13. Homestead .....	17
Section 5.14. Exemption from Assessments .....	17
Section 5.15. Sub-association(s) .....	17

**ARTICLE VI**

<b>RIGHTS AND OBLIGATIONS OF THE ASSOCIATION .....</b>	<b>17</b>
Section 6.1. Responsibilities .....	17
Section 6.2. Manager .....	18
Section 6.3. Personal Property for Common Use .....	18
Section 6.4. Insurance .....	18
Section 6.5. Replacement or Repair of Property .....	18
Section 6.6. Implied Rights .....	19
Section 6.7. Use of Recreational Facilities .....	19
Section 6.8. Association's Maintenance Responsibility .....	20
Section 6.9. Owner's Maintenance Responsibility .....	21
Section 6.10. Standard of Performance .....	22

**ARTICLE VII**

<b>RIGHTS TO COMMON AREAS .....</b>	<b>22</b>
Section 7.1. Owners' Easements of Enjoyment .....	22
Section 7.2. Delegation of Use .....	23
Section 7.3. Occupants Bound .....	23
Section 7.4. Prohibition of Certain Activities .....	23
Section 7.5. Rules and Regulations .....	24
Section 7.6. Title to Common Area .....	24

Section 7.7. Picketing .....	24
Section 7.8. Monitoring Services .....	24

## ARTICLE VIII

<b>EASEMENTS</b> .....	24
Section 8.1. Ingress/Egress .....	24
Section 8.2. Utilities .....	25
Section 8.3. Future Utility Easements and Agreements .....	25
Section 8.4. Declarant's Ingress-Egress .....	25
Section 8.5. Encroachments .....	25
Section 8.6. Easement for Entry .....	26
Section 8.7. Easements to Serve Additional Property .....	26
Section 8.8. Easements for Lakes and Pond Maintenance and Flood Water .....	26
Section 8.9. Easement for Screening Walls .....	27

## ARTICLE IX

<b>USE RESTRICTIONS</b> .....	27
Section 9.1. Residential Use .....	27
Section 9.2. Lot Upkeep .....	28
Section 9.3. Maintenance of Improvements .....	28
Section 9.4. Lawns .....	28
Section 9.5. Failure to Maintain .....	28
Section 9.6. Use of Accessory Structures .....	28
Section 9.7. Nuisance .....	29
Section 9.8. Walls, Fences and Hedges .....	29
Section 9.9. Trash Receptacles and Collection .....	29
Section 9.10. Pets .....	29
Section 9.11. Signs .....	29
Section 9.12. Antennae .....	30
Section 9.13. Vehicle Parking .....	30
Section 9.14. Clotheslines, Garbage Cans, Tanks, etc .....	30
Section 9.15. Landscaping and Irrigation System .....	30
Section 9.16. Lighting .....	31
Section 9.17. Flagpoles, Exterior Sculpture and Similar Items .....	31
Section 9.18. Wetlands, Lakes and Other Water Bodies .....	31
Section 9.19. Playground and Recreational Equipment .....	31
Section 9.20. Single Family Occupancy .....	31
Section 9.21. Drainage .....	32
Section 9.22. Utilities .....	32
Section 9.23. Removal of Plants and Trees .....	32
Section 9.24. Subdivision of Lots .....	32

**ARTICLE X**

<b>ARCHITECTURAL STANDARDS</b> .....	33
Section 10.1. General .....	33
Section 10.2. Architectural Review .....	33
Section 10.3. Guidelines and Procedures .....	33
Section 10.4. No Waiver of Future Approvals .....	35
Section 10.5. Variances .....	35
Section 10.6. Limitation of Liability .....	35
Section 10.7. Fees; Assistance .....	35
Section 10.8. Enforcement .....	35
Section 10.9. Notice of Violation .....	36

**ARTICLE XI**

<b>ADDITIONAL PROPERTY</b> .....	36
Section 11.1. Additions Generally .....	36
Section 11.2. Procedure for Making Additions to the Properties .....	37
Section 11.3. General Provisions Regarding Additions to the Properties .....	38
Section 11.4. Voting Rights of the Declarant as to Additions to the Properties .....	38
Section 11.5. Assessment Obligation of the Declarant as to Additions to the Properties. ....	38
Section 11.6. Voting Rights of Owners other than the Declarant as to Additions to the Properties .....	38
Section 11.7. Assessment Obligation of Owners other than the Declarant as to Additions to the Properties .....	38

**ARTICLE XII**

<b>MORTGAGEE PROVISIONS</b> .....	39
Section 12.1. Notices of Action .....	39
Section 12.2. No Priority .....	39
Section 12.3. Notice to Association .....	39
Section 12.4. Failure of Mortgagee to Respond .....	39
Section 12.5. Applicability of Article XII .....	39

**ARTICLE XIII**

<b>GOLF COURSE</b> .....	40
Section 13.1. General .....	40
Section 13.2. View Impairment .....	40
Section 13.3. Rights of Access and Parking .....	40
Section 13.4. Easements for Golf Course .....	40
Section 13.5. Assumption of Risk and Indemnification .....	41
Section 13.6. Golf Carts .....	42
Section 13.7. Access .....	42
Section 13.8. Flood Plain .....	42

**ARTICLE XIV**

**DECLARANT'S RIGHTS** ..... 42

Section 14.1. Assignment ..... 42

Section 14.2. Marketing and Sales Activities ..... 42

Section 14.3. Additional Covenants ..... 42

Section 14.4. Use of Name of Development ..... 43

Section 14.5. Obligations of Cooperation by Association ..... 43

Section 14.6. Declarant Loans to the Association ..... 44

Section 14.7. Deed Restrictions ..... 44

Section 14.8. Termination of Rights ..... 44

**ARTICLE XV**

**GENERAL PROVISIONS** ..... 44

Section 15.1. Term ..... 44

Section 15.2. Amendment ..... 44

Section 15.3. Enforcement ..... 45

Section 15.4. Severability ..... 46

Section 15.5. Interpretation ..... 46

Section 15.6. Security ..... 46

Section 15.7. Litigation ..... 46

Section 15.8. Dispute Resolution ..... 47

**ACKNOWLEDGMENT** ..... 50

**EXHIBITS:**

- Exhibit "A" - Property Initially Subject to Declaration
- Exhibit "B" - Property Subject to Annexation
- Exhibit "C" - Bylaws of The Homeowners Association of Heritage Ranch, Inc.
- Exhibit "D" - Articles of Incorporation of The Homeowners Association  
of Heritage Ranch, Inc.
- Exhibit "E" - The Villas of Heritage Ranch Lots

**FIRST AMENDED AND RESTATED DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HERITAGE RANCH**

STATE OF TEXAS           §  
                                  §           **KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF COLLIN       §

**THIS FIRST AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERITAGE RANCH ("Declaration")** is made on March 1, 2001, by U. S. HOME CORPORATION, a Delaware corporation, whose address is 13111 North Central Expressway, Suite 200, Dallas, Texas 75243 (hereinafter referred to as "Declarant").

**WITNESSETH:**

**WHEREAS**, Declarant prepared and recorded an instrument entitled "Declaration of Covenants, Conditions and Restrictions for Heritage Ranch" (the "Original Declaration") under Clerk's File Number 2000-011054 of the Deed Records of Collin County, Texas, which created a residential community known as HERITAGE RANCH on the land described on Exhibit "A" and such other land as may be added thereto pursuant to the terms and provisions of this Declaration (collectively, the "Properties");

**WHEREAS**, Article XV, Section 15.2a of the Original Declaration provides that the Declarant may unilaterally amend the Original Declaration until termination of the Class B membership; and

**WHEREAS**, the Class B membership has not terminated as of the date of the recording of this Declaration and the Declarant desires to amend and restate the Original Declaration as hereinafter provided.

**NOW, THEREFORE**, the Original Declaration is hereby replaced and superceded by this Declaration, and from and after the recording of this instrument in the Deed Records of Collin County, Texas, the real property described within Exhibit "A" attached hereto, and such phases or additions thereto as may hereafter be made subject to the terms hereof, shall be held, sold and conveyed subject to the following easements, restrictions, covenants and conditions which are for the purpose of protecting the value and desirability of, and which shall run with, the Properties and be binding on all parties having any right, title or interest in the Properties or any part thereof, their heirs, personal representatives, successors and assigns, and shall inure to the benefit of each Owner thereof.



**ARTICLE I**  
**DEFINITIONS**

The terms in this Declaration and the exhibits to this Declaration shall generally be given their ordinary, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

Section 1.1. "Articles" shall mean and refer to the Articles of Incorporation of the Association filed with the Texas Secretary of State, attached hereto as Exhibit "D" and incorporated by reference, including any and all amendments or modifications thereto.

Section 1.2. "Association" shall mean and refer to THE HOMEOWNERS ASSOCIATION OF HERITAGE RANCH, INC., a Texas non-profit corporation, its successors and assigns.

Section 1.3. "Board of Directors" or "Board" shall mean and refer to the Association's Board of Directors.

Section 1.4. "Bylaws" shall mean and refer to the Bylaws of the Association, attached hereto as Exhibit "C" and incorporated by reference, including any and all amendments or modifications thereto.

Section 1.5. "Class B Control Period" shall mean the period of time during which the Class B Member is entitled to appoint a majority of the members of the Board. The Class B Control Period shall expire on the first to occur of the following:

- a. Ninety (90) days after the date as of which one hundred percent (100%) of the Lots permitted by the General Land Plan have been conveyed to Class A Members;
- b. December 31, 2023; or
- c. When, in its discretion, the Class B Member so determines.

Section 1.6. "Committee" shall mean the Architectural Review Committee established in accordance with Article X of this Declaration.

Section 1.7. "Common Area" shall mean all real and personal property (including the improvements thereto) now or hereafter owned or controlled by the Association for the common use and enjoyment of the Owners, and not otherwise comprising Lots, including, without limitation, the clubhouse and related facilities, the Golf Course, lakes, amenities and roadways.

Section 1.8. "Declarant" shall mean and refer to not only U.S. Home Corporation, a Delaware corporation, but also any successor, alternate or additional Declarant as appointed by U. S. Home Corporation as a successor, alternate or additional Declarant by written instrument,

specifically setting forth that such successor, alternate or additional Declarant is to have, together with U. S. Home Corporation, the Declarant's rights, duties, obligations and responsibilities, in whole or in part, for all or any portion of the Properties. The term "Declarant" shall not include any person or party who purchases a Lot from Declarant unless such purchaser is specifically assigned by a separate recorded instrument some or all of the Declarant's rights under this Declaration with regard to the conveyed property.

Section 1.9. "Design Guidelines" shall mean and refer to those particular standards, restrictions, guidelines, recommendations and specifications applicable to most of the aspects of construction, placement, location, alteration, maintenance and design of any improvements to or within the Properties, and all amendments, bulletins, modifications, supplements and interpretations thereof.

Section 1.10. "Development" or "Community" shall mean and refer to the HERITAGE RANCH development, including all of the Properties, Common Areas and Lots.

Section 1.11. "Dwelling" shall mean a residential structure constructed on a Lot which is intended to be used and occupied as a residence for a single family.

Section 1.12. "Eligible Mortgage Holder" shall mean those holders of First Mortgages secured by Lots in the Development who have requested notice of certain items as set forth in this Declaration.

Section 1.13. "First Mortgage" shall mean any Mortgage which is not subject to any lien or encumbrance except the taxes or other liens which are given priority by statute or agreement.

Section 1.14. "First Mortgagee" shall mean the beneficiary or holder of a First Mortgage.

Section 1.15. "General Land Plan" shall mean the general plan of development as described in Article XI, Section 11.1(b) of this Declaration, including any amendments or modifications thereto.

Section 1.16. "Golf Course" shall mean that certain real property, and improvements and facilities thereon, located within the Properties, which is operated by the Association as a golf course.

Section 1.17. "Governing Documents" shall refer to this Declaration, the Bylaws, the Articles of Incorporation, the Rules and Regulations and the Design Guidelines (as adopted pursuant to Article X), as each may be supplemented and amended from time to time.

Section 1.18. "Lot" shall mean and refer to any plot of land shown upon any recorded subdivision map of the Properties with the exception of the Common Area. The Lots may contain detached or attached housing. The term shall refer to the land, if any, which is part of the Lot, as well as any improvements thereon. In the case of a parcel of vacant land or land on which improvements

are under construction, the parcel shall be deemed to contain that number of Lots shown on the General Land Plan for the parcel until such time as a plat is recorded subdividing all or a portion thereof. Thereafter, the portion encompassed by such plat shall continue to be treated in accordance with this section.

Section 1.19. "Member" shall mean a person subject to membership in the Association pursuant to Section 4.1.

Section 1.20. "Owner" shall mean and refer to the record Owner, whether one or more persons or entities, of fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. The term "Owner" shall include Declarant.

Section 1.21. "Properties" shall mean and refer to that certain real property described on the attached Exhibit "A" and such additions thereto as may hereafter be brought within the jurisdiction of the Association and made subject to this Declaration.

Section 1.22. "Rules and Regulations" or "Rules" shall mean any written rules or regulations adopted, implemented or published by the Association or its Board at any time and from time to time, as may be amended, with respect to the use and enjoyment of the Common Areas and the conduct of its Members and their guests, invitees, agents and contractors within the Properties.

Section 1.23 "The Villas of Heritage Ranch" shall refer to that certain group of Lots described on Exhibit "E" attached hereto and incorporated herein by reference, and such additional Lots as may hereafter be included within such property by designation as such on the Supplement(s) annexing such Lots to the Declaration or by amendment of Exhibit "E" to include such additional Lots

Section 1.24 "Villa Assessments" shall mean assessments levied against the Lots in The Villas of Heritage Ranch to fund Villa Expenses, as described in Section 5.7 hereof.

Section 1.25 "Villa Expenses" shall mean and include the actual and estimated expenses which the Association incurs or expects to incur for the benefit of Owners of Lots within The Villas of Heritage Ranch, as may be authorized by this Declaration. Villa Expenses may include a reasonable reserve for capital repairs and replacements and a reasonable administrative charge, including any additional management fees attributable to the operation and maintenance of The Villas of Heritage Ranch.

## **ARTICLE II**

### **PURPOSE OF THE ASSOCIATION**

Section 2.1. Operation, Maintenance and Repair of Common Area. The Declarant, in order to insure that the Common Area and other land for which it is responsible hereunder will continue to be maintained in a manner that will contribute to the comfort and enjoyment of the Owners and provide for other matters of concern to them, and for such other purposes as set forth herein, has

organized the Association. The primary purpose of the Association shall be to operate, maintain and repair the Common Area, including, but not limited to roadways, alleys and retention areas, the Golf Course, the surface water management system and related appurtenances such as lakes, retention/detention areas, ditches, swales, creeks or culverts, privacy gates and any improvements thereon; to maintain certain decorative entranceways and features, including those within public rights-of-way to and within the Properties as designated by the Declarant or the Board; to pay for the costs of street lighting for the Common Area and streets and roadways, if necessary; to maintain and share in the costs of maintaining and repairing, among other things, streets, roadways, medians and landscaping located outside the Development, but serving or benefitting such Development, under an agreement with the adjoining landowners or municipalities to pay or share in such costs; and to take such other action as the Association is authorized to take with regard to the Properties pursuant to its Governing Documents, and with regard to any other areas as designated by the Board. The Association shall operate, maintain and repair areas referred to in this Section and any other areas designated by Declarant as Common Area, whether or not title to those areas has been or ever will be formally conveyed to the Association. In addition to the foregoing, the Association shall also perform maintenance to the Lots located within The Villas of Heritage Ranch to the extent provided in Section 6.8.

Section 2.2. Rights of the Town of Fairview. In the event that the Association, its successors or assigns, shall fail or refuse to adequately maintain the appearance and condition of the Common Area which it is obligated to maintain hereunder, the Town of Fairview, Texas, shall have the right, but not the obligation, to assume the duty of performing all such maintenance obligations of the Association at any time, upon giving written notice to the Owners or at any time after the expiration of sixty (60) days after receipt by the Association, its successors or assigns, of written notice specifying in detail the nature and extent of the failure to maintain without such failure being remedied, whichever notice shall be deemed appropriate by the Town of Fairview. The Town of Fairview may, but is not obligated to, inspect the Common Area, including the public streets, to insure that the same are being maintained to its standards. Upon assuming such maintenance obligations, the Town of Fairview may levy an assessment upon each Lot on a pro rata basis for the cost of such maintenance, notwithstanding any other provisions contained in this Declaration, which assessment shall constitute a lien upon the Lot against which each assessment is made. During the period the Town of Fairview has a right and assumes the obligation to maintain and care for the Common Area, the Association shall have no obligation or authority with respect to such maintenance. The right and authority of the Town of Fairview to maintain the Common Area shall cease and terminate when the Association, its successors or assigns, shall present to the Town of Fairview reasonable evidence of its willingness and ability to resume maintenance of the Common Area. In the event the Town of Fairview assumes the duty of performing the maintenance obligations of the Association as provided herein, then the Town of Fairview, its agents, representatives and employees shall have right of access to and over the Common Area for the purpose of maintaining, improving and preserving the same; and in no event, and under no circumstances, shall the Town of Fairview be liable to the Association or any Owner, resident or Member, or their respective heirs, executors, administrators, devisees, personal representatives, successors and assigns for negligent acts or construction relating in any

manner to maintaining, improving and preserving the Common Area, or to any Owner, resident, Member, the Association or any other Person for failure to perform such maintenance. This Section 2.2 may not be amended without the written consent of the Town of Fairview.

Section 2.3. Expansion of the Common Area. Additions to the Common Area may be made in accordance with the terms of Article XI which provides for additions to the Properties pursuant to the General Land Plan. The Declarant shall not be obligated, however, to make any such additions. The Association must accept any and all additions to the Common Area made by Declarant. The Association, upon request of the Declarant and without further consideration, shall be required to execute any documents necessary to evidence the acceptance of such Common Area. The Declarant has the right, but not the obligation, to add improvements to the Common Area.

Section 2.4. Enforcement of Governing Documents. In addition to its primary purpose, the purpose of the Association is to maintain architectural control within the Development, in accordance with Article X of this Declaration, and to maintain the general appearance of the Development through enforcement of the provisions of the Governing Documents.

### **ARTICLE III AGE-QUALIFIED COMMUNITY**

Section 3.1. Housing for Older Persons. HERITAGE RANCH is intended and shall be operated as a community providing housing for older persons in compliance with the Fair Housing Act, the Fair Housing Amendments Act of 1988 (42 U.S.C. §§3601, et seq.), as may be amended from time to time, and the Texas Fair Housing Act (Tex. Prop. Code §301.001 et seq.), as may be amended from time to time. The Fair Housing Act, the Fair Housing Amendments Act and the Texas Fair Housing Act are collectively referred to herein as the "Acts". The Board shall publish and adhere to policies and procedures which demonstrate the intent to provide housing for older persons, including, but not limited to, reliable surveys and affidavits for verification of occupancy. Consistent with HERITAGE RANCH's purpose to provide housing for older persons, this Declarant and the Board, notwithstanding anything to the contrary contained in the Declaration or otherwise, shall have the authority to, but shall not be obligated to, levy assessments, alter existing facilities or services, and adopt reasonable Rules and Regulations in order to be in compliance with such Acts.

#### Section 3.2 Occupancy of Lots

##### a. General

(i) Residential structures located on a Lot within HERITAGE RANCH are intended for the housing of persons fifty-five (55) years of age or older. The provisions of this Section 3.2 are intended to be consistent with, and are set forth in order to comply with the Acts and the exemptions therefrom regarding discrimination based on familial status. The Declarant or the Association, acting through its Board, shall have the power to amend this Article, without the consent of the Members or any person except Declarant, for the purpose of making this Article consistent with

the Act, the regulations adopted pursuant thereto and any judicial decisions arising thereunder or otherwise relating thereto in order to maintain the intent and enforceability of this Article.

(ii) In addition, the Declarant and the Board, notwithstanding anything to the contrary contained in the Declaration or otherwise, shall have the authority, but shall not be obligated, to levy assessments, alter existing facilities or services, and adopt reasonable Rules and Regulations in order to be in compliance with the Act.

(iii) Nothing in this Section is intended to restrict the ownership of or transfer of title to any Lot; provided, no Owner may occupy a Lot unless the requirements of this Section are met nor shall any Owner permit occupancy of a Lot in violation of this Section. Owners shall be responsible for including the statement that Lots within HERITAGE RANCH are intended for the housing of persons fifty-five (55) years of age or older, as set forth in this Section 3.2, in conspicuous type in any lease or other occupancy agreement or contract of sale relating to such Owner's Lot, which agreements or contracts shall be in writing and signed by the tenant or purchaser and for clearly disclosing such intent to any prospective tenant, purchaser or other potential occupant of the Lot. Every lease of a Lot shall provide that failure to comply with the requirements and the restrictions of this Section shall constitute a default under the lease.

b. Age Restriction.

(i) At least eighty percent (80%) of the occupied Lots within the Properties shall at all times have as a permanent occupant therein at least one (1) person who is fifty-five (55) years of age or older (the "Qualifying Occupant"); provided, in the event of the death or divorce of a person who was the sole Qualifying Occupant of a Lot, the surviving or divorced spouse of such Qualifying Occupant may continue to occupy the Lot if such spouse was permanent occupant prior to the death or divorce so long as the provisions of the Act and the regulations adopted thereunder are not violated by such occupancy. For purposes of this Section 3.2, an occupant shall not be considered a "permanent occupant" unless such occupant resides in the Lot for at least eight (8) weeks in any calendar year.

(ii) No Lot shall be permanently occupied by any person under the age of nineteen (19). The Declarant or the Board shall have the right to promulgate and amend, from time to time, reasonable Rules and Regulations governing the visitation and temporary occupancy of, or use of, the common area facilities by persons under nineteen (19) years of age.

(iii) No Class A Member shall rent or sell a Lot unless at least one Person who will occupy the Lot is a Qualifying Occupant.

(iv) Notwithstanding anything to the contrary contained herein, for so long as Declarant owns a Lot for development and sale in the Development, the Declarant shall have the sole right, but not the obligation, to allow no more than twenty percent (20%) of the Lots to be permanently occupied by non-qualifying occupants who are forty-eight (48) years of age or older; provided, such occupancy does not violate the Acts or the regulations promulgated thereunder.

c. Change in Occupancy; Notification

In the event of any change in occupancy of any Lot, as a result of a transfer of title, a lease or sublease, a birth or death, change in marital status, vacancy, change in location of permanent residence, or otherwise, the owner of the Lot shall immediately notify the Board in writing and provide to the Board the names and ages of all current occupants of the Lot and such other information as the Board may reasonably require to verify the age of each occupant. In the event that an Owner fails to notify the Board and provide all required information within ten (10) days after a change in occupancy occurs, the Association shall be authorized to levy monetary fines against the Owner and the Lot for each day after the change in occupancy occurs until the Association receives the required notice and information, regardless of whether the occupants continue to meet the requirements of this Section, in addition to all other remedies available to the Association under this Declaration and Texas law.

d. Monitoring Compliance; Appointment of Attorney-in-Fact

(i) The Association shall maintain age records on all occupants of Lots. The Board shall adopt policies, procedures and rules to monitor and maintain compliance with this Section, including policies regarding visitors, updating of age records and enforcement. The Association shall periodically distribute such policies, procedures and rules to the owners and make copies available to owners, their tenants and mortgagees upon reasonable request.

(ii) The Association shall have the power and authority to enforce this Section 3.2 in any legal manner available, as the Board deems appropriate, including, without limitation, conducting a census of the occupants of Lots, requiring copies of birth certificate or other proof of age for each occupant of the Lot to be provided to the Board on a periodic basis, and taking action to evict the occupants of any Lot which does not comply with the requirements and restrictions of this Section. **EACH OWNER HEREBY APPOINTS THE ASSOCIATION AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT OR OTHERWISE REMOVE THE OCCUPANTS OF HIS OR HER LOT AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS SECTION 3.2.** Each Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Lot which in the judgment of the Board are reasonably necessary to monitor compliance with this Section.

(iii) Each Owner shall be responsible for ensuring compliance of its Lot with the requirements and restrictions of this Section 3.2 and the Rules of the Association,

the Board and the Declarant, adopted hereunder by itself and by its tenants and other occupants of its Lot. **EACH OWNER, BY ACCEPTANCE OF TITLE TO A LOT, AGREES TO INDEMNIFY, DEFEND AND HOLD THE ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES AND CAUSES OF ACTION WHICH MAY ARISE FROM FAILURE OF SUCH OWNER'S LOT TO SO COMPLY.**

**ARTICLE IV**  
**MEMBERSHIP, VOTING RIGHTS AND TURNOVER**

Section 4.1. Entitlement to Membership. Each Owner of a Lot shall be a Member of the Association, subject to and bound by the Association's Governing Documents. The foregoing does not include persons or entities who hold a leasehold interest or interest merely as security for the performance of an obligation. Ownership, as defined above, shall be the sole qualification for membership. When any Lot is owned of record by two or more persons or other legal entity, all such persons or entities shall be members. An Owner of more than one Lot shall be entitled to one membership for each Lot owned by him or her. Membership shall be appurtenant to, and may not be separated from, ownership of any Lot which is subject to assessment, and it shall be automatically transferred by conveyance of that Lot. The Declarant shall also be a Member so long as it owns one or more Lots.

The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Members' spouse. The membership rights of an Owner which is a corporation, partnership or other legal entity may be exercised by any officer, director, partner or trustee, or by any other individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

Section 4.2. Classes of Membership; Votes. The Association shall have two (2) classes of voting membership: Class A and Class B. All votes shall be cast in the manner provided in the Bylaws. When more than one person or entity holds an interest in any Lot, the vote for such Lot shall be exercised as such persons determine, but in no event shall more than the number of votes hereinafter designated be cast with respect to any such Lot, nor shall split votes be permitted with respect to such Lot. The two (2) classes of voting memberships and voting rights related thereto are as follows:

a. Class A. Class A Members shall be all Owners of Lots, except the Class B Member, if any. Class A Members shall be entitled to one (1) vote for each Class A Lot owned; there shall be only one (1) vote per Lot.

b. Class B. The sole Class B Member shall be the Declarant. The Class B Member shall be entitled to nine (9) votes for each Lot which it owns.



c Termination of Class B Membership. The Class B membership shall cease and be converted to Class A Membership upon happening of any of the following events, whichever occurs earlier:

- (i) When one hundred percent (100%) of the Lots permitted by the General Land Plan have been conveyed to Class A Members; or
- (ii) On December 31, 2023; or
- (iii) When the Declarant waives in writing its right to Class B membership.

Upon termination of the Class B membership, Declarant shall be a Class A Member entitled to one Class A vote for each Lot, if any, which it owns.

Section 4.3. Turnover Procedure. Following the termination of the Class B Control Period, Declarant shall cause control of the Association to be turned over to the general membership of the Association ("Turnover"). Within thirty (30) days of the termination of the Class B Control Period, the President of the Association shall call a special meeting of the Board. At such meeting, the Board shall set a date for a subsequent meeting of the Board at which Turnover will occur ("Turnover Meeting"), which meeting shall be at least thirty (30) but no more than sixty (60) days after the special meeting. The Board shall provide at least thirty (30) days' notice to the Members of the date and location of the Turnover Meeting. Prior to the Turnover Meeting, a representative of the Declarant, a representative of the Manager, if any, and one or more of then-existing resident directors shall meet as necessary to cause the turnover of all records associated with the existence, maintenance and operation of the Association. At the Turnover Meeting, the then-existing directors appointed by Declarant shall submit their written resignations and new directors shall be elected, as necessary, to fill the Board in accordance with the Bylaws; provided, however, that pursuant to Article III of the Bylaws, Declarant shall have the right to appoint at least one (1) member of the Board as long as Declarant owns at least one Lot shown on the General Land Plan. On or before the Turnover Meeting, at Declarant's option, Declarant shall convey to the Association title to all remaining Common Area pursuant to Section 7.6 of this Declaration. From and after the date of Turnover, Declarant shall have no further responsibility or liability associated with the Association, the operations of the Board, the maintenance of any Common Area, or any other matters associated with the Properties. In that regard, at and as of the Turnover Meeting, the Association shall execute and deliver to the Declarant a general release, in form acceptable to Declarant, releasing Declarant from all liability associated with the development, construction, operation and maintenance of the Properties. From and after Turnover, to the extent that any dispute arises between the Association and the Declarant regarding a matter that is allegedly not covered by the release or regarding the release itself, then such dispute, if any, shall be resolved through the dispute resolution procedures provided in Section 15.8.

**ARTICLE V**  
**COVENANT FOR MAINTENANCE ASSESSMENTS**

**Section 5.1. Creation of the Lien and Personal Obligation for Assessments.**

a. **Assessment Obligation.** The Declarant, for each Lot owned within the Properties, hereby covenants to pay to the Association annual assessments or charges, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association (i) Annual Assessments or charges, (ii) Special Assessments for capital improvements and unexpected or unbudgeted costs, and (iii) Special Individual Assessments, as applicable, including, but not limited to, reasonable fines imposed in accordance with the Governing Documents, such assessments to be established and collected as hereinafter provided. Each Owner of a Lot within The Villas of Heritage Ranch is also deemed to covenant and agree to pay Villa Assessments as specified in Section 5.7 hereof.

b. **Lien; Personal Obligation.** The Annual, Special, and Special Individual Assessments, and Villa Assessments, together with interest, costs and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment or charge, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall pass automatically to successors in title.

c. **Estoppel Certificate.** The Association shall, within ten (10) days of the receipt of a written request from an Owner, Owner's agent, or title insurance company or its agent acting on behalf of the Owner, furnish to such person, in addition to any other information that may be required by law, a certificate in writing signed by an officer of the Association, or a duly authorized agent, setting forth the amount of any unpaid assessments against the Owner's Lot. Such certificate shall be conclusive evidence of such Owner's assessment obligation as of the date of the certificate. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

d. **Time of Payment.** Assessments shall be paid in such manner and on such dates as may be fixed by the Board. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Annual Assessment and Villa Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his or her Lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

e. **No Exemption.** No Owner may waive or otherwise exempt himself from liability for any assessments by non-use of Common Area, abandonment of the Lot or any other reason. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken or performed by the Association or for inconvenience or discomfort arising from the making of

repairs or improvements, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority or for any other action taken or failed to be taken by the Association.

Section 5.2. Purposes of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, and welfare of the residents of the Properties and for the improvement and maintenance of the Common Area and the carrying out of the purposes and the other responsibilities and obligations of the Association under the Governing Documents and any maintenance agreement with adjoining land owners or municipalities. Without limiting the generality of the foregoing, such funds may be used for the acquisition, improvement and maintenance of Properties, services and facilities related to the use and enjoyment of the Golf Course, other Common Area and other areas located outside the Development, but benefitting the Development, such as entryways, streets and roadways, including the costs of repair, replacement and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes and assessments made or levied against the Common Area, the procurement and maintenance of insurance, the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful, and such other needs as may arise.

Section 5.3. Annual Assessments.

a. Budget. The Annual Assessment shall be fixed by the Board based upon a budget prepared annually by the Board which reflects the sources and estimated amount of funds to cover the estimated expenses of the Association (including reserve contributions, if any). For so long as the Declarant is electing to pay the operating deficits of the Association as provided in Section 5.8 below, the Declarant shall not be responsible for paying into the Association or establishing any reserve for replacements, operating reserves, depreciation reserves, capital expenditures or Special Assessments. In determining the level of assessments, the Board may consider other sources of funds available to the Association. In the event the Board fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined, the budget and Annual Assessment most recently in effect shall continue in effect until a new budget and Annual Assessment is determined. The Board shall fix the amount of the Annual Assessment to be paid against each Lot at least thirty (30) days in advance of each assessment period. Written notice of the Annual Assessment shall be sent to every Owner subject thereto.

b. Rate of Annual Assessment.

(i) Class A Member Lots. Until January 1 of the year immediately following the conveyance of the first Lot to a Class A Member, the initial Annual Assessment for each Lot owned by a Class A Member, shall not exceed \$1500.00 per Lot. Thereafter, the Annual Assessment rate shall be based upon the annual budget adopted by the Board. The Annual Assessment shall be levied equally against all Lots owned by Class A Members which have been made subject to this Declaration.

(ii) Declarant's Lots. Declarant shall be exempt from the payment of assessments on each Lot which it owns until such time as a document certifying a Dwelling for occupancy (a "Certificate of Occupancy") has been issued for that Lot. The rate of

Annual Assessment for a Lot, owned by the Declarant, on which a Certificate of Occupancy has been issued, shall be fixed at twenty-five percent (25%) of the Annual Assessment rate for Lots owned by Class A Members. Notwithstanding the foregoing, for so long as the Declarant is electing to fund the "deficiency" pursuant to Section 5.8 below, no such assessments shall be due on Declarant's Lots.

c. Budget Revisions. The Board may revise the budget and adjust the Annual Assessment from time to time during the fiscal year, subject to the initial maximum Annual Assessment rate, notice requirements and the right of the Members to disapprove the revised Annual Assessment as set forth above.

Section 5.4. Declarant Subsidy. Declarant may, but shall not be obligated to, pay a subsidy to the Association (in addition to any amounts paid by Declarant under Section 5.8 below) in order to reduce the total Annual Assessment which would otherwise be necessary to be levied against all Lots to cover the estimated expenses of the Association (including reserve contributions, if any). Any such subsidy shall be disclosed as a line item in the income portion of the budget. The subsidy shall be treated by the Declarant as a loan from the Declarant to the Association.

Section 5.5. Special Assessments. In addition to the Annual Assessment authorized above, the Association may levy, from time to time, a Special Assessment for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, and for other purposes such as covering unanticipated or unbudgeted expenses as designated by the Association, provided that any such assessment shall have the vote or written consent, or any combination thereof, of Class A Members representing at least two-thirds (2/3rds) of the total Class A votes (if a Common Expense) or Owners within The Villas of Heritage Ranch (if a Villa Expense), and the consent of the Class B Member, if any. Special Assessments may be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against the Lots within The Villas of Heritage Ranch, if such Special Assessment is for Villa Expenses.

Section 5.6. Special Individual Assessments. The Board shall have the power to levy Special Individual Assessments against a particular Lot as follows:

a. To cover costs incurred in bringing a Lot into compliance with the provisions of the Governing Documents;

b. To cover the costs of providing benefits, items or services not provided to all Lots, such as additional landscape maintenance, pest control service, security and transportation services; such assessments may be levied in advance of the provisions of the requested benefit, item or service as a deposit against charges to be incurred;

- c. For fines levied pursuant to the Governing Documents;
- d. For any other cost or expense authorized by the Governing Documents to be levied against an Owner and his or her Lot.

Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section.

#### Section 5.7 Villa Assessments.

(a) Budget. At least thirty (30) days before the beginning of the first fiscal year following the year in which a Class A Member other than a Builder first occupies a Lot in The Villas of Heritage Ranch and at least thirty (30) days before the beginning of each fiscal year thereafter, the Board shall prepare a separate budget covering the estimated Villa Expenses for the coming year, which may include contributions to a reserve fund for capital items maintained as a Villa Expense.

(b) Computation. Villa Expenses shall be allocated equally among all Lots within The Villas of Heritage Ranch; provided, however, that Declarant shall be exempt from the payment of Villa Assessments on each Lot which it owns until such time as a document certifying a Dwelling for occupancy (a "Certificate of Occupancy") has been issued for that Lot. The rate of Villa Assessment for a Lot, owned by the Declarant, on which a Certificate of Occupancy has been issued, shall be fixed at twenty-five percent (25%) of the Villa Assessment rate for Lots owned by Class A Members. Notwithstanding the foregoing, for so long as the Declarant is electing to fund the "deficiency" pursuant to Section 5.8 below, no such assessments shall be due on Declarant's Lots.

(c) Notice. The Board shall send notice of the amount of the Villa Assessment for the coming year to each Owner in The Villas of Heritage Ranch at least thirty (30) days prior to the beginning of each fiscal year, commencing with the first fiscal year following the year in which a Class A Member other than a Builder first occupies a Lot in The Villas of Heritage Ranch.

In the event the Board fails for any reason to determine the budget and Villa Assessment for any year, then and until such time as a budget and Villa Assessment shall have been determined, the budget and Villa Assessment most recently in effect shall continue in effect until a new budget and Villa Assessment are determined.

(d) Budget Revisions. The Board may revise the budget for The Villas of Heritage Ranch and adjust the amount of any Villa Assessment from time to time during the year.

(e) Use of Villa Assessments. All amounts collected by the Association as Villa Assessments shall be expended solely for the benefit of The Villas of Heritage Ranch and shall be accounted for separately from the Association's general funds.

Section 5.8. Declarant's Assessment. Notwithstanding any other provision of this Declaration to the contrary, so long as there is Class B membership in the Association, the Declarant may, on an annual basis, elect either to pay Annual Assessments and Villa Assessments on its unsold Lots or pay the difference between (i) the Association's operating expenses, excluding management fees owed or paid to Declarant, and otherwise to be funded by Annual Assessments and Villa Assessments (after applying all income received by the Association from other sources) and (ii) the sum of the revenues of the Association from all sources. Upon ninety (90) days notice to the Association, the Declarant may change its election hereunder during the fiscal year. "All sources" includes, but is not limited to, revenues from the operation of Common Areas, capital contributions, accounting service fees, property management fees, guest fees, user fees, and the Annual Assessments and Villa Assessments levied against the owners of Lots, other than the Declarant. Such difference, herein called the "deficiency", shall not include any reserve for replacements, operating reserves, depreciation reserves, capital expenditures or Special Assessments, and Declarant shall not be responsible, in any event, for any reserve for replacements, operating reserves, depreciation reserves, capital expenditures or Special Assessments.

Any sums paid by the Declarant to the Association to fund the "deficiency" or any sums paid by the Declarant to the Association in excess of the Annual Assessment and Villa Assessment otherwise due on the Declarant's unsold Lots may be considered by the Declarant to be the payment of a subsidy to the Association pursuant to Section 5.4 of this Article.

Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class B membership, Declarant shall pay assessments on its unsold Lots in the same manner as any other Owner.

Section 5.9. Working Capital Contribution. Notwithstanding any provision of the Governing Documents to the contrary, upon the initial acquisition of record title to a Lot by the first Owner thereof other than the Declarant, a contribution shall be made by or on behalf of the purchaser to the working capital of the Association in an amount to be determined by the Declarant from time to time. This amount shall be in addition to, not in lieu of, the Annual Assessment and Villa Assessment, if any, levied on the Lot and shall not be considered an advance payment of any portion thereof. This amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Association for use in covering operating expenses and other expenses (including, without limitation, any loans to the Declarant) incurred by the Association pursuant to the terms of the Governing Documents.

Section 5.10. Date of Commencement of Annual and Villa Assessments; Due Dates The Annual Assessments and Villa Assessment, if any, provided for herein shall commence as to a Lot subject to this Declaration (i) on the first day of the month following the month in which a Certificate of Occupancy has been issued for that Lot or (ii) the month the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first Annual Assessment and Villa Assessment, if any, due on each Lot shall be adjusted at the time the

obligations for assessments commence according to the number of months remaining in the fiscal year at the time the assessments commence on the Lot.

Section 5.11. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum, provided that such interest or charge shall not exceed the maximum rate allowed by law. A late fee may also be imposed on any unpaid assessment in an amount determined by the Board from time to time. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien, either judicially or non-judicially, against the Lot.

Section 5.12. Lien for Assessments. The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest (subject to the limitations of Texas law), late charges, and costs of collection (including attorney's fees and costs). Such lien shall be prior and superior to all other liens, except (a) the liens of all taxes, bonds, assessments and other levies which by law would be superior thereto, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment and judicial or non-judicial foreclosure in accordance with Texas law. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to Mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessment as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof. This Section may not be amended without the prior written consent of all holders of First Mortgages on Lots.

Although no further action is required to create or perfect the lien, the Association may, as further evidence and notice of the lien, execute and record a document setting forth as to any Lot, the amount of the delinquent sums due the Association at the time such document is executed and the fact that a lien exists to secure the repayment thereof. However, the failure of the Association to execute and record any such document shall not, to any extent, affect the validity, enforceability or priority of the lien. The lien may be foreclosed through judicial or, to the extent allowed by law, nonjudicial foreclosure proceedings in accordance with Section 51.002 et seq of the Texas Property Code (the "Foreclosure Statute"), as it may be amended from time to time, in like manner of any deed of trust on real property. In connection with the lien created herein, each Owner of a Lot hereby grants to the Association, whether or not it is so expressed in the deed, the contract for sale or other conveyance to such Owner, a power of sale to be exercised in accordance with the Foreclosure Statute. At any foreclosure proceeding, any person may bid for the Lot at foreclosure sale and acquire, hold, lease, mortgage and convey the Lot. While the Association owns the Lot following foreclosure: (i) no right to vote shall be exercised on its behalf; (ii) no assessment shall be levied on it; and (iii) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue to recover a money judgment for unpaid assessments and other charges without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any post-sale assessments. However, the sale or transfer of any Lot pursuant to judicial or nonjudicial foreclosure of a first Mortgage shall extinguish the lien as to any installments of such assessments which became due prior to such sale or transfer. Where the Mortgagee holding a first Mortgage of record or other purchaser of a Lot obtains title pursuant to judicial or nonjudicial foreclosure of the Mortgage, it shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses, collectible from Owners of all Lots, including such acquirer, its successors and assigns.

Section 5.13. Homestead. By acceptance of a deed thereto, the Owner and spouse thereof, if married, of each Lot shall be deemed to have waived any exemption from liens created by this Declaration or the enforcement thereof by foreclosure or otherwise, which may otherwise have been available for reason of the homestead exemption provisions of Texas law, if for any reason such are applicable. This section is not intended to limit or restrict in any way the lien or rights granted to the Association by this Declaration, but to be construed in its favor.

Section 5.14. Exemption from Assessments. The assessments, charges and liens provided for or created by this Article shall not apply to the Common Area of this Association or any other homeowner association or condominium association, any property dedicated to and accepted for maintenance by a public or governmental authority or agency, any property owned by a public or private utility company or public or governmental body or agency, or any property utilized for commercial purposes, or any property owned by a charitable or non-profit organization exempt from taxation under Section 501(c) of the Internal Revenue Code.

Section 5.15 Sub-association(s). Each sub-association, if any, having concurrent jurisdiction over any portion of the Properties, shall be responsible for collecting and paying over to the Association all assessments and other charges levied by the Association on individual Lots within the respective sub-association. The sub-association may allocate the assessments levied by the Association against Owners within the sub-association in any manner desired by the Board of the sub-association and authorized by the governing documents of the sub-association. Any Owner within a sub-association may discharge the Association's lien securing payment of the assessment by paying the Association all amounts allocated to his or her Lot, and such payment shall reduce the amount due from the sub-association to the Association by the amount of such payment.

## **ARTICLE VI**

### **RIGHTS AND OBLIGATIONS OF THE ASSOCIATION**

Section 6.1. Responsibilities. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area, and shall keep the same in good, clean and proper condition, order and repair. The Association shall also maintain and care for the other land designated in Article II hereof in the manner therein required and the Lots within The Villas of Heritage Ranch as provided in Section 6.8. The Association shall be responsible for the payment of all costs, charges and expenses incurred in



connection with the operation, administration and management of the Common Area and performance of its other obligations hereunder. The Association shall operate and maintain areas designated by Declarant as Common Area, whether or not title to those areas has been formally conveyed to the Association. Notwithstanding the foregoing to the contrary, the Association shall have the right to delegate some or all of its responsibilities under this Section 6.1 pursuant to the terms of Section 6.2 below.

Section 6.2. Manager. The Association may obtain, employ and pay for the services of any entity or person, hereinafter called the "Manager", to assist in managing its affairs and carrying out its responsibilities hereunder to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable, whether such personnel are furnished or employed directly by the Association or the Manager. The Association shall enter into a management agreement with any such person or entity, which agreement shall delineate the responsibilities and authority of such Manager and the payment of fees to such Manager as compensation for its services. Such fees shall accrue during the entire term of such agreement. However, payment of those fees by the Association may be postponed for any period of time as may be provided in such management agreement therein. No reserve shall be required to be set aside or established by the Association or the Declarant for the future payment of any deferred fees. The initial Manager shall be U. S. Home Corporation, who shall have the right to assign its management obligations and duties to any party or entity, including a subsidiary of the Declarant

Section 6.3. Personal Property for Common Use. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise, subject to such restrictions, if any, as may from time to time be provided in the Governing Documents

Section 6.4. Insurance. The Association shall keep all insurable improvements and fixtures of the Common Area insured against loss or damage by fire for the full insurance replacement cost thereof and may obtain insurance against such other hazards and casualties as the Association may deem desirable. The Association may also insure any other property, whether real or personal, owned by the Association against loss or damage by fire and such other hazards as the Association may deem desirable, with the Association as the owner and beneficiary of such insurance. The insurance coverage with respect to the Common Area shall be written in the name of, and the proceeds thereof shall be payable to the Association. Insurance proceeds shall be used by the Association for the repair or replacement of the property for which the insurance was carried. Premiums for all insurance carried by the Association are common expenses included in the Annual Assessments made by the Association.

Section 6.5. Replacement or Repair of Property. In the event of damage to or destruction of any part of the Common Area, the Association shall repair or replace the same from the insurance proceeds available. If such insurance proceeds are insufficient to cover the costs of repair or replacement of the property damaged or destroyed, the Association may make a Special Assessment against all Owners to cover the additional cost of repair or replacement not covered by the insurance proceeds, in addition to any other assessments made against such Owner. In the event that the

Association is maintaining blanket casualty and fire insurance on the Dwellings, the Association shall repair or replace the same from the insurance proceeds available. All insurance policies shall be reviewed at least annually by the Board in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacement of the property which may have been damaged or destroyed.

By virtue of taking title to any Lot, each Owner acknowledges that the Association has no obligation to provide any insurance for any portion of any Lot, and each Owner covenants and agrees with all other Owners and with the Association that each Owner shall carry property insurance on his Lot and all structures construed thereon and a liability policy covering damage or injury occurring on the Lot in an amount not less than \$100,000 per occurrence. Each Owner shall furnish a copy of such insurance policy or policies to the Association within ten (10) days of the Association's request for same. The property insurance shall cover loss or damage by fire and other hazards commonly insured under an "all-risk" policy, if reasonably available, including vandalism and malicious mischief, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. If all-risk coverage is not reasonably available, Owners shall obtain, at a minimum, fire and extended coverage. The policies required hereunder shall remain in effect at all times. Authority to adjust losses under policies obtained by an owner shall be vested in the Owner. The Association shall have the right, but not the obligation, at the expense of the Owner, to acquire the insurance required to be maintained by the Owner if the Owner fails to provide a valid policy to the Association with a prepaid receipt within thirty (30) days after receipt by the owner of a written request from the Association. If the Association does acquire insurance on behalf of any Owner, the cost thereof shall be assessed against the Owner and the Lot as a Special Individual Assessment pursuant to Section 5.6 hereof.

Section 6.6. Implied Rights. The Association may exercise any other right or privilege given to it expressly by the Governing Documents, or by law and every other right or privilege reasonably implied from the existence of any right or privileges granted herein or therein or reasonably necessary to effectuate any such right or privilege.

Section 6.7. Use of Recreational Facilities. Each Owner acknowledges that certain recreational facilities including, but not limited to, the Golf Course, may be provided within the Common Area for the use and enjoyment of the Owners, their families, tenants, other occupants of a Lot, the guests of any such persons and to the public. Each Owner hereby acknowledges that there are risks associated with the use of any such recreational facilities and that ALL USERS OF SUCH FACILITIES ARE SOLELY RESPONSIBLE FOR SUCH RISK. Each Owner, by accepting a deed to a Lot, acknowledges that he or she has not relied upon the representations of Declarant or the Association with respect to the safety of any recreational facilities or other Common Area within the Community.

The Association may, but shall not be obligated to, contract with, employ or otherwise provide, from time to time, a lifeguard or other monitoring personnel to be present at any recreational

facility within the Community. Each Owner acknowledges that the presence of such personnel shall not create a duty on the part of Declarant or the Association to provide for, insure or guarantee the safety of any user of the facility. Each Owner acknowledges that the presence of such monitoring personnel shall not in any way alter the risks assumed by each Owner, his or her family members, tenants, other occupants of Owner's Lot and guests of any such persons, which risks shall continue to be assumed by the user of the recreational facility. Each Owner agrees that neither the Association, the Board and any committees nor Declarant shall be liable to such Owner or any Person claiming any loss or damage including, without limitation, indirect, special or consequential loss or damage arising from personal injury, destruction of property, trespass, loss of enjoyment or any other wrong or entitlement to remedy based upon, due to, arising from or otherwise relating to the use of any recreational facility or other portions of the Common Area including, without limitation, any claim arising in whole or in part from the negligence of the Association or the Declarant. THE FOREGOING RELEASE IS INTENDED TO RELEASE THE SPECIFIED PARTIES FROM LIABILITY FOR THEIR OWN NEGLIGENCE.

Section 6.8. Association's Maintenance Responsibility. The Association shall maintain and keep in good repair the Common Area. Such maintenance shall include, but need not be limited to:

- a. all portions of and structures and improvements situated upon the Common Area, including any entry features or monuments;
- b. all landscaping and other flora situated upon the Common Area, including any landscaping situated within the medians or islands in the roadways;
- c. landscaping within private or public rights-of-way within or abutting the Properties, and landscaping and other flora within any public utility easement within the Properties (subject to the terms of any easement agreement relating thereto);
- d. such portions of any additional property as may be dictated by this Declaration, any Supplemental Declaration, any covenant to share costs, or any contract or agreement for maintenance thereof entered into by the Association; and
- e. routine maintenance and winterizing (to the extent that the Board deems winterizing necessary) of the irrigation and sprinkler system(s), if any, servicing the Common Area (the Association shall have no responsibility for maintenance and winterizing of, repairs to or replacement of the irrigation system lying within the boundaries of any Lot except to the extent expressly assumed by the Board).

With respect to The Villas of Heritage Ranch, the Association shall maintain and keep in good repair the following items:

- a. landscaping originally planted or provided by the Declarant upon the Lots, except that the Association's responsibility shall be limited to the mowing and fertilizing of lawns, application of herbicides and pesticides, pruning and trimming of trees and shrubs, weeding of shrub and flower

beds, and edging along shrub and flower beds, driveways and sidewalks. Except as specifically set forth herein, the Association shall have no responsibility for maintenance of landscaping installed by the Owner or occupant of a Lot, irrigation of lawns or other landscaping on Lots, or eradication of mosquitos, fire ants or other pests, nor shall the Association be responsible for replacement of landscaping materials, plants or trees which are damaged or destroyed because of pests, disease, weather conditions or other causes except to the extent that the Board expressly agrees to assume responsibility for such maintenance or replacement, respectively;

b. painting and/or staining of all exterior surfaces of Dwellings as deemed necessary by the Board. Except as provided by this Section 6.8, the Association shall have no responsibility for the maintenance or repair of any portion of the Lot or Dwelling, including glass surfaces, roof structures retaining walls or foundations.

The Association shall have the right to enter upon, for the purpose of maintaining, and may maintain, other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. In addition, the Association may enter into contractual agreements or covenants to share costs with other properties or facilities for maintaining and/or operating shared or mutually beneficial properties or facilities. Any maintenance hereunder shall include the costs of repair, replacement and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes and assessments made or levied against the Common Area, the procurement and maintenance of insurance, the employment of attorneys, accountants and other professionals to represent the Association when necessary or useful, and such other needs as may arise.

The maintenance responsibilities of the Association shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of Declarant as long as Declarant owns any property described in Exhibit "A" or Exhibit "B" of this Declaration.

The costs associated with maintenance, repair and replacement of the Common Area shall be a Common Expense and the costs associated with maintenance, repair and replacement of the Lots within The Villas of Heritage Ranch shall be a Villa Expense; provided, the Association may seek reimbursement from the owner(s) of, or other Persons responsible for, maintenance of Common Area or Lots pursuant to this Declaration, a covenant to share costs, other recorded covenants, or agreements with the owner(s) thereof.

Section 6.9. Owner's Maintenance Responsibility. Unless the maintenance responsibility is otherwise assumed by or assigned to the Association pursuant to Section 6.8, each Owner shall maintain the following items:

- a. his or her Lot and all structures, lawn ornaments, fountains, parking areas, sidewalks and other improvements within the boundaries of the Lot;
- b. all portions of the Dwelling, including glass surfaces, roof structures, retaining walls and foundations;

c. the driveway, private walks and patios serving his or her Lot whether or not lying entirely within the Lot boundaries;

d. irrigation and sprinkler systems serving his or her Lot (including winterizing, if necessary);

e. any landscaping or other flora installed by the Owner on his or her Lot;

f. those portions of any party wall facing the Owner's Lot, regardless of any discrepancy in the placement or location of the party wall along the boundary line of the Lot, and regardless of the actual length of the party wall in comparison to the Dwelling on such Lot; and

g. any structure, improvement, landscaping or other item damaged as a result from the repairs or replacements of the foregoing or as a result from the willful or negligent acts of the Owner, or the Owner's family, guests or invitees.

Section 6.10. Standard of Performance Unless otherwise specifically provided in the Governing Documents or in other instruments creating or assigning maintenance responsibility, responsibility for maintenance shall include responsibility for repair and replacement necessary to maintain the property to a level consistent with the Community-Wide Standard. Repair and replacement shall include improvement, if necessary to comply with applicable building codes or other regulations or if otherwise deemed appropriate, in the Board's reasonable discretion. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on such Owner's Lot, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article XI. Alternatively, the Owner shall clear the Lot and maintain it in a neat and attractive, and landscaped condition consistent with the general maintenance standards of the Properties and the Design Guidelines. The Owner shall pay any costs which are not covered by insurance.

## ARTICLE VII RIGHTS TO COMMON AREAS

Section 7.1. Owners' Easements of Enjoyment. Every Owner shall have a right and non-exclusive easement of enjoyment in and to the Common Area, which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

a. The right of the Association from time to time, in accordance with its Bylaws, to establish, modify and rescind reasonable Rules and Regulations regarding use of the Common Areas and Lots, including Rules limiting the number of guests who may use the Common Area, all of which taken together allow the Association to make Rules governing all of the Properties subject to the Declaration;

b. The right of the Association to impose reasonable membership requirements and charge reasonable admission and other use fees for the use of any recreational facility situated upon the Common Area, including the Golf Course;

c. The right of the Association to suspend the voting rights and right to use of the Common Area by an Owner for any period during which any assessment levied under this Declaration against his or her Lot remains unpaid, and for a period not to exceed sixty (60) days for any infraction of its Rules and Regulations; subject to satisfaction of the due process requirements, if any;

d. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board;

e. The right of the Association to grant easements as to the Common Areas or any part thereof as provided in the Governing Documents;

f. The right of the Association to otherwise deal with the Common Area as provided by the Governing Documents;

g. The right of the Association to open the Common Area for use by the general public and other non-Members of the Association, including, without limitation, the Golf Course, clubhouse and any other amenities;

h. The right of the Association to sell, lease or transfer all or any part of the Common Area that has been deeded to the Association, including the Golf Course, as provided by the Governing Documents; and

i. The right of the Association to enter into agreements with neighboring landowners or municipalities for the maintenance of streets, roadways, medians, landscaping and entryways located outside the Development.

j. The right to permit use of any recreational facility situated on the Common Area by persons other than Owners, their families, lessees and guests upon payment of use fees established by the Board and designate other areas and facilities within the Common Area as open for the use and enjoyment of the general public.

Section 7.2. Delegation of Use. Any Owner may delegate his right of enjoyment to the Common Area and facilities to his or her tenants or contract purchasers who reside at the Owner's Lot, provided the Owner waives his or her use in writing.

Section 7.3. Occupants Bound. Each Owner shall cause all occupants of his or her Lot to comply with the Governing Documents, and shall be responsible for all violations and all losses or damages resulting from violations by such occupants, notwithstanding the fact that such occupants of the Lot are fully liable and may be personally sanctioned for any violation.

Section 7.4. Prohibition of Certain Activities. No damage to or waste of the Common Area or any part thereof shall be committed by any Owner or any tenant or invitee of any Owner. No noxious, destructive or offensive activity shall be permitted on or in the Common Area or any part thereof, nor shall anything be done thereon which may be or may become an unreasonable annoyance

or nuisance to any other Owner. No owner may maintain, treat, landscape, sod or place or erect any improvement or structure of any kind on the Common Area without prior written approval of the Board.

Section 7.5. Rules and Regulations. No Owner or other permitted user shall violate the reasonable Rules and Regulations for the use of the Common Area, as the same are from time to time adopted by the Association.

Section 7.6. Title to Common Area. At any time and from time to time, the Declarant may convey and the Association shall accept title to any Common Area free and clear of encumbrances but subject to such easements, reservations, conditions and restrictions as may then be of record. Declarant may convey to the Association real property and improvements located within the Development at any time and from time to time. The Association shall accept such property free and clear of encumbrances but subject to such easements, reservations, conditions and restrictions as may then be of record and shall thereafter maintain the property as Common Area at the Association's expense for the benefit of the Members, subject to any restrictions set forth in the deed.

Section 7.7. Picketing. No Owner shall engage in any picketing on any Lot, easement, right-of-way or Common Area within or adjacent to the Community, nor shall any Owner park, store or drive any vehicle in or adjacent to the Community which bears or displays any signs, slogans, symbols, words or decorations intended to create controversy, invite ridicule or disparagement, or interfere in any way with the exercise of the property rights, occupancy or permitted business activities of any Owner or the Declarant.

Section 7.8. Monitoring Services. The Association may, but shall not be obligated to, maintain or support or contract for the provision of monitoring services within the Properties. Neither the Association, the original Declarant nor any successor Declarant, shall in any way be considered insurers or guarantors of safety within the Properties, nor shall any of them be held liable for any loss or damage by reason of failure to provide adequate monitoring services or of ineffectiveness of any such measures undertaken. No representation or warranty is made that any fire protection system, burglar alarm system or other monitoring system or measure cannot be compromised or circumvented, nor that any such system or measure undertaken will in all cases prevent loss or provide the detection or protection for which the system is designed or intended. Each Owner acknowledges and understands, and covenants to inform its tenants and residents, that the Association, its Board of Directors and committees, Declarant, and any successor Declarant, are not insurers of safety and that each Person using the Properties assumes all risks of personal injury, death and loss or damage to property, including Dwellings and the contents of Dwellings, resulting from acts of third parties.

## **ARTICLE VIII EASEMENTS**

Section 8.1. Ingress/Egress. Subject to the Rules and Regulations, a non-exclusive easement for the use and benefit of the Owners and occupants of any Lot, their guests and invitees, shall exist for the pedestrian traffic over, through and across sidewalks, paths, walks and other portions of the Common Area as may be from time to time intended and designated for such purpose and use, and

for vehicular and pedestrian over, through and across such portions of the Common Area as may from time to time be paved and intended for such purposes, which easements alone or together with other recorded easements granted by Declarant shall provide reasonable access to the public ways. Nothing herein shall be construed to give or create in any person the right to park upon any portion of the Common Area.

Section 8.2. Utilities. Each Lot and the Common Area shall be subject to the existing easements for public utilities purposes (including, but not limited to, fire and police protection, garbage and trash removal, reclaimed and potable water and sewage systems, electric and gas service, cable television, telephone and irrigation well and pumps) and the utilities and applicable governmental agencies having jurisdiction thereover and their employees and agents shall have the right of access to any Lot or the Common Area in furtherance of such easements. Each Owner shall be obligated to maintain any easement areas contained within such Owner's Lot, whether or not shown on any recorded plat and whether or not required to be maintained by the utility company holding such easement.

Section 8.3. Future Utility Easements and Agreements. The Declarant reserves the right, for itself and its designee (so long as Declarant or said designee owns Lot) and for the Board, without joinder or consent of any person or entity whatsoever, to grant such additional easements including, but not limited to, reclaimed and potable water and sewage systems, irrigation, wells and pumps, cable television, television antennas, electric, gas, water, fire and police protection, telephone or other utility easement, or to relocate any existing utility easement in any portion of the Properties as the Declarant, its designee, or the Board shall deem necessary or desirable for the proper operation and maintenance of the Properties, or any portion thereof, or for general health and welfare of the owners, provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with these find any Lot for permitted purposes. In addition, Declarant reserves the right, for itself and its designee (so long as Declarant or said designee owns a Lot), without the joinder or consent of any person or entity whatsoever, to enter into license, marketing, shared facilities or other agreements with utility provides, operators or owners for the provision of any such utilities to the Properties. Declarant shall be entitled to receive and continue to receive all royalties, fees, compensation or other revenues provided for in such license, marketing, shared facilities or other agreements entered into by Declarant, whether accruing or paid prior to or after the termination of the Class B Control Period pursuant to Section 4.3 hereof, and the Association shall not be entitled thereto.

Section 8.4. Declarant's Ingress-Egress. Declarant retain for itself, its successors in interest, agents, employees and assigns, a non-exclusive easement for ingress and egress over and across all streets, roadways, Common Area, driveways and walkways that may from time to time exist within the Properties.

Section 8.5. Encroachments. All of the Properties and all of the Lots therein shall be and are singularly and collectively subject to easements from encroachments which now or hereafter exist or become into being, caused by settlement or movement of the any structure or other improvements on the Properties, or caused by inaccuracies in construction or reconstruction of any such structure or such improvements upon the Properties or encroachment caused by the intentional or unintentional placement of utility meters and related devices, all of which encroachment shall be



permitted to remain undisturbed, and such easements shall and do exist and shall continue as valid easements so long as such encroachments exist. A valid easement for the maintenance of such encroachments is herein created so long as such encroachments exist.

Section 8.6. Easement for Entry. In addition to the right of the Board to exercise self-help as provided in this Declaration, the Association shall have the right, but shall not be obligated, to enter upon any property within the Development for emergency, security and safety reasons, which right may be exercised by the manager and all policemen, fireman, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner, and the entering party shall be responsible for any damage caused. This right of entry shall include the right of the Association to enter to cure any condition which may increase the possibility of a fire, slope erosion or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

Section 8.7. Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, employees, successors, assigns, licensees and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access and development of property located outside the Development, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns, shall enter into a reasonable agreement with the Association to share the cost of maintenance of any access roadway serving such property.

Section 8.8. Easements for Lakes and Pond Maintenance and Flood Water. The Declarant reserves for itself and its successors, assigns and designees the nonexclusive right and easement, but not the obligation, to enter upon the lakes, ponds, streams and wetlands located within the Common Area to (i) install, keep, maintain and replace pumps and related equipment; (ii) construct, maintain and repair any bulkhead, levee, wall, dam or other structure retaining water, and (iii) remove trash and other debris therefrom and fulfill their maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association and their designees shall have an access easement over an across any of the Community abutting or containing any portion of any of the lakes, ponds, streams or wetlands to the extent reasonably necessary to exercise their rights under this Section.

There is further reserved herein for the benefit of Declarant, the Association and their designees, a perpetual, non-exclusive right and easement of access and encroachment over the Common Area and Lots (but not the Dwellings thereon) adjacent to or within fifty (50) feet of lake beds, ponds and streams within the Community, in order to (i) temporarily flood and back water

upon and maintain water over such portions of the Community, (ii) fill, drain, dredge, deepen, clean, fertilize, dye and generally maintain the lakes, ponds, streams and wetlands within the Common Area, (iii) maintain and landscape the slopes and banks pertaining to such lakes, ponds, streams and wetlands and (iv) enter upon and across such portions of the Community for the purpose of exercising its rights under this Section. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements. Nothing herein shall be construed to make Declarant or any other Person liable for damage from flooding due to heavy rainfall or other natural disasters.

Section 8.9. Easement for Screening Walls. Declarant does hereby perpetually dedicate, establish, create and set aside a non-exclusive ten foot (10') wide easement over, across and upon the Community, such easement to be five feet (5') on either side of the entry features, monuments and screening/retaining walls. Such easements are reserved for the exclusive benefit of Declarant and the Association, and the designees of each (which may include, without limitation, the Town of Fairview and any utility) for the construction, maintenance and repair of entry features, monuments and screening/retaining walls. Owners shall not alter, paint, attach fences to or otherwise use such walls even though certain of such walls and/or the easement reserved herein may be located on such Owner's Lot.

#### **ARTICLE IX USE RESTRICTIONS**

Section 9.1. Residential Use. No Lot may be used for any purpose other than as and for residential purposes except that a resident may conduct business activities within a Lot so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Lot; (b) the business activity conforms to all zoning requirements for the Development; (c) the business activity does not involve regular visitation of the Lot by clients, customers, suppliers of other business invitees or door-to-door solicitation of residents of the Development; and (d) the business activity is consistent with the residential character of the Development and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Development, as may be determined in the sole discretion of the Board.

The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provisions of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: (a) such activity is engaged in full or part time, (b) such activity is intended to or does generate a profit, or (c) a license is required.

The leasing of a Lot shall not be considered a business or trade within the meaning of this subsection.

This restriction shall not apply to any activity conducted by Declarant with respect to its development and sale of Lots or its use of any Lots which it owns within the Development. Notwithstanding the foregoing restrictions, real estate brokers, owners and their agents may show

Lots, for sale or lease, and every person, firm or corporation purchasing a Lot recognizes that the Declarant, its agents and designated assigns, shall have the right to (a) use Lots, and improvements erected thereon, for sales offices, field construction offices, storage facilities and general business offices, (b) maintain fluorescent-lighted or spotlighted model homes which are open to the public for inspection seven (7) days per week for such hours as the Declarant deems appropriate or necessary, and (c) conduct any other activities on Lots to benefit sales efforts.

The Declarant may, from time to time, seek a change in the zoning requirements and/or permitted land uses of all or a portion of the Development. In no event shall the Declarant be required to obtain the consent or approval of the Association or its Members in order to obtain a change in the zoning requirements or land uses of the Development unless otherwise required by law.

Section 9.2. Lot Upkeep. After acquiring title from Declarant, all Owners of Lots, whether or not improved by a Dwelling, shall, as a minimum, keep the grass regularly cut and all trash and debris removed unless such maintenance has been assumed by the Association or is required to be maintained by the Association under this Declaration. All Lots shall at all times be kept in a well-maintained, healthful, sanitary and attractive condition. No Lot shall be used or maintained as a dumping ground for garbage, rubbish, debris, trash, junk or other waste matter.

Section 9.3. Maintenance of Improvements. Each Owner shall maintain in good condition and repair all improvements constructed upon his or her Lot including, without limitation, the Dwelling.

Section 9.4. Lawns. Each Lot acquired from the Declarant on which there is a completed Dwelling shall be maintained in a good and neat condition and repair by the Owner thereof unless such maintenance has been assumed by the Association or is required to be maintained by the Association under this Declaration. In this context, the word "Lot" shall include that portion of the property from the boundary of the Lot to the adjacent paved road surface. "Neat" shall require, at a minimum, that the lawn be regularly cut and fertilized, that mulched areas be regularly remulched and kept weeded and that bushes, hedges and other vegetation be regularly trimmed so that its appearance is in harmony with the neighborhood. All Lots must have grassed front and side lawns and grassed or mulched rear lawns, unless otherwise specifically approved, in writing, by the Committee. Rear yards must be installed within ninety (90) days from the day of closing title to any Lot, unless specifically approved, in writing, by the Committee.

Section 9.5. Failure to Maintain. If the Owner of a Lot shall fail to maintain his or her Lot as required hereby, either the Declarant or the Association, after giving such Owner at least ten (10) days written notice, shall be authorized to undertake such maintenance at the Owner's expense. Entry upon an Owner's Lot for such purpose shall not constitute a trespass. If such maintenance is undertaken by the Association or Declarant, the charge therefor shall be added to and become a Special Individual Assessment against the Owner and shall become a lien against the Lot pursuant to Article V of this Declaration.

Section 9.6. Use of Accessory Structures. No tent, shack, barn, metal utility shed or other buildings, other than the Dwelling and its required garage, shall at any time be placed or erected on

any Lot and used temporarily or permanently as a Dwelling or for any other purpose, except temporary buildings, offices or facilities used by Declarant, builders or contractors, with the written approval of the Declarant.

**Section 9.7. Nuisance.** No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No automobile or other vehicle mechanical repairs or like activity shall be conducted on any Lot other than in a garage and concealed from public view.

**Section 9.8. Walls, Fences and Hedges.** No fence, wall or hedge shall be erected, placed or altered on any Lot without the prior written approval of the Committee and the design of and materials used in the construction of fences shall be subject to the prior written approval of the Committee; provided, however, that the Declarant may erect such walls, fences or hedges as it deems appropriate without the approval of the Committee.

**Section 9.9. Trash Receptacles and Collection.** All garbage cans and similar receptacles and other garbage containers shall be kept inside the garage at all times except that they may be placed on the street curb or alley abutting his Lot on those days designated by the Town of Fairview, Texas, as trash collection days; provided, however, such trash must be kept neatly contained in a sanitary, tightly sealed metal, plastic or other container and are removed from the street/alley within twelve (12) hours following such collection. On Lots served by an alley, garbage containers shall be constructed of a material that is harmonious with the exterior of the home.

**Section 9.10. Pets.** No animals, livestock or poultry of any kind shall be raised, bred or kept on or in any Lot other than cats, dogs and other household pets, provided they are not kept, bred or maintained for any commercial purposes or become a nuisance to the neighborhood. No person owning or in custody of an animal shall allow it to stray or go upon another Lot without the consent of the Owner of such Lot. Dogs shall be on a leash when outside the Owner's Lot. Owners shall be required to clean up his or her dog's defecation on the Common Area. The Board may adopt reasonable Rules and Regulations governing the size, weight, number and keeping of animals, which Rules may include the adoption of fines for violations thereof. Pets which are permitted to roam free, or, in the sole discretion of the Board, are of a known vicious or dangerous breed, make objectionable noise, endanger the health or safety of, or constitute a nuisance or inconvenience to the occupants of other Lots, shall be removed upon request of the Board. If the pet owner fails to honor such request, the Board may remove the pet on behalf of the Owner.

**Section 9.11. Signs.** Except for signs of the Declarant, no signs shall be displayed on the Common Area without the prior written consent of the Board. No signs shall be displayed on any Lot with the exception of (i) one (1) sign of not more than five (5) square feet advertising the property for rent or sale; (ii) signs used by the Declarant to advertise the Community during the development, construction and sales periods; and (iii) political signs advocating the election of one or more political candidates or the sponsorship of a political party, issue or proposal provided that such signs shall not be erected more than a reasonable period of time (in no event to exceed sixty (60) days in advance of the election to which they pertain and are removed within fifty (15) days after the election.

The Committee shall have the right to remove any sign, billboard or other advertising structure that does not comply with the above, and in so doing shall not be subject to any liability for trespass or any other liability in connection with such removal. Notwithstanding anything to the contrary herein contained, Declarant shall have the exclusive right to maintain signs of any type and size on any portions of the Properties it owns and on the Common Area in connection with its development and sale of Lots.

Section 9.12. Antennae. No television, radio or other electronic towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcast or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S, Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association shall be empowered to adopt Rules governing the type of antennae that are permissible hereunder and establish reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae. To the extent that reception of an acceptable signal would not be impaired and the cost of installation would not be unreasonably increased, an antenna permissible pursuant to Rules of the Association may only be installed in a side or rear yard location, not visible from the street or neighboring property, and integrated with the dwelling and surrounding landscape. Antennae shall be installed in compliance with all state and local laws and regulations, including zoning, land use and building regulations.

Section 9.13. Vehicle Parking. No vehicle shall be parked within the Properties except on a paved parking surface, driveway or within a garage. No trucks or vehicles that are primarily used for commercial purposes, other than those temporarily present on business, nor any trailers, may be parked within the Properties other than enclosed garages or other areas concealed from public view. Boats, boat trailers, campers, travel trailers, mobile homes, recreational vehicles and the like, and any vehicles not in operable condition and validly licensed, shall only be permitted to be kept within the Properties if such are kept inside a garage and concealed from public view. Visitors and guests may park on the street for no more than twenty-four (24) hours. The Board may adopt reasonable Rules and Regulations governing the parking and operation of vehicles on the Property, which Rules may include the towing of vehicles parked in violation of this Declaration or the Rules and the levying of reasonable fines for such violations.

Section 9.14. Clotheslines, Garbage Cans, Tanks, etc. Clotheslines and clothesline supports are permitted provided they are approved in accordance with Article X of this Declaration. All garbage cans, above-ground storage tanks, mechanical equipment and other similar items on Lots shall be located or screened so as to be concealed from view of neighboring Lots, streets and property located adjacent to the Lot.

Section 9.15. Landscaping and Irrigation System. No sprinkler or irrigation systems of any type which draw upon water from creeks, streams, rivers, ponds, lakes, wetlands or other surface water within the Properties shall be installed, constructed or operated within the Properties unless

prior written approval has been received from the Board or its designee. However, the Declarant and the Association shall have the right to draw water from such sources for the purpose of irrigating the Common Area. All private wells shall be subject to approval in accordance with Article X of this Declaration.

Each Lot on which a Dwelling is constructed shall have and contain an underground water sprinkler system for the purpose of providing sufficient water to all front yards and all side yards not enclosed by fencing. Weather permitting, each Lot shall be fully landscaped within one hundred twenty (120) days after the date the Dwelling thereon is complete. Each Owner shall be responsible for maintaining his own lawn and landscaping in a healthy and attractive condition unless such maintenance has been assumed by the Association or is required to be maintained by the Association under this Declaration.

Section 9.16. Lighting. Except for traditional holiday decorative lights, which may be displayed for one (1) month prior to and one (1) week after any commonly recognized holiday for which such lights are traditionally displayed, all exterior lights must be approved in accordance with Article X of this Declaration.

Section 9.17. Flagpoles, Exterior Sculpture and Similar Items. No permanent flagpoles shall be permitted on the exterior of any portion of the Properties unless approved in accordance with Article X of this Declaration. No exterior sculpture, fountains, flags, temporary flagpoles, birdhouses, birdbaths, and other decorative embellishments or similar items shall be permitted unless there are in strict compliance with the Design Guidelines.

Section 9.18. Wetlands, Lakes and Other Water Bodies. Except for recreational fishing from the shoreline, all wetlands, lakes, ponds and streams within the Properties, if any, shall be aesthetic amenities only and no other use thereof, including, without limitation, skiing, swimming, boating, playing or use of personal flotation devices, shall be permitted without the prior approval of the Board. The Association shall not be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of lakes, ponds or streams within the Properties. No docks, piers or other structures shall be constructed on or over any body of water within the Properties, except such as may be constructed by the Declarant or the Association. Portions of the lakes have been designated as wetlands as such term is defined by the U.S. Army Corps of Engineers and must be maintained as such, and cannot be destroyed, altered or maintained in such a way as to change the environmental value without the prior written approval of the U.S. Army Corps of Engineers.

Section 9.19. Playground and Recreational Equipment. No jungle gyms, swing sets, basketball hoops and backboards, similar playground equipment, tennis courts or such other recreational equipment shall be erected or installed on any portion of a Lot that is visible from Common Area without the prior written approval of the Committee in accordance with Article X hereof. Any playground or other play areas or equipment furnished by the Association or erected within the Properties shall be used at the risk of the user. The Association shall not be held liable to any Person for any claim, damage or injury occurring thereon or related to use thereof.

Section 9.20. Single Family Occupancy. Subject to the occupancy restrictions of Article III of this Declaration, no Lot shall be occupied by more than a single family. For purposes of this

restriction, a single family shall be defined as any number of persons related by blood, adoption or marriage living with not more than one person who is not so related as a single household unit, or no more than two persons who are not so related living together as a single household unit, and the household employees of either such household unit.

Section 9.21. Drainage. Neither the Declarant nor its successors or assigns shall be liable for any loss of, use of, or damage done to, any shrubbery, trees, flowers, improvements, fences, walks, sidewalks, driveways, or buildings of any type or the contents thereof on any Lot caused by any water levels, rising waters, or drainage waters. After the Dwelling to be constructed on a Lot has been substantially completed, the Lot will be graded so that surface water will generally flow to streets, alleys, drainage easements, or Common Area, and in conformity with the general drainage plans for the subdivision.

Section 9.22. Utilities. Each Dwelling situated on a Lot shall be connected to the water and sewer lines as soon as practicable after same are available at the Lot line. No privy, cesspool, or septic tank shall be placed or maintained upon or in any Lot. However, portable toilets will be required during the building construction. The installation and use of any propane, butane, LP Gas or other gas tank, bottle or cylinder of any type (except portable gas grills), shall require the prior written approval of the Committee, and, if so approved, the Committee may require that such tank, bottle or cylinder be installed underground. Any control boxes, valves, connections, utility risers or refilling or refueling devices shall be completely landscaped with shrubbery so as to obscure their visibility from the streets within or adjoining the Properties or from any other Lot.

Section 9.23. Removal of Plants and Trees. No trees or shrubs, except for those which are diseased or dead or create a safety hazard, shall be removed except in strict compliance with the Design Guidelines and upon prior approval in accordance with Article X of this Declaration. In the event of an intentional or unintentional violation of this section, the violator may be required by the Committee to replace the removed tree with one or more comparable trees of such size and number and in such locations as the Committee may determine necessary, in its sole discretion, to mitigate the damage.

Section 9.24. Subdivision of Lots. No Lot shall be subdivided into two or more Lots, nor shall the boundary lines of any Lot be altered after a subdivision plat including such Lot has been approved and filed in the Collin County Deed Records except with the prior written approval of the Declarant. Declarant, however, hereby expressly reserves the right to subdivide, change the boundary line of and replat any Lot(s) owned by Declarant. Notwithstanding the combination of two or more Lots into a single Lot by a Class A Member, the Owner of the combined Lot(s) shall be obligated to pay the Annual Assessment, or any Special Assessment, based upon the number of Lots originally comprising the Lot as shown on the original approved and recorded plat of the portion of the Community including such Lots.

No Lot shall be made subject to any type of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the Lot rotates among members of the program on a fixed or floating time schedule over a period of years.

**ARTICLE X**  
**ARCHITECTURAL STANDARDS**

Section 10.1. General. No structure shall be placed, erected or installed upon any Lot and no improvements (including staking, clearing, excavation, grading and other site work, exterior alteration or modification of existing improvements, and planting or removal of landscaping materials) (collectively, the "Work") shall take place except in compliance with this Article X and the Design Guidelines. Notwithstanding the above, an Owner may repaint the exterior of a structure in accordance with originally approved color scheme and rebuild in accordance with originally approved plans and specifications without first seeking approval. No approval shall be required to remodel, repaint or redecorate the interior of structures on his Lot. However, modifications to the interior of screened porches, patios and similar portions of a Lot visible from outside the Lot shall be subject to approval.

All Dwellings constructed on any portion of the Properties shall be designed by and built in accordance with the plans and specifications of a licensed architect, unless otherwise acceptable to the Architectural Review Committee.

This Article X shall not apply to the activities of the Declarant nor to improvements to the Common Area by or on behalf of the Association.

This Article X may not be amended without the Declarant's written consent so long as the Declarant owns any portion of the Property.

Section 10.2. Architectural Review. Responsibility for administration of the Design Guidelines, as defined below, and review of all applications for construction and modifications under this Article X shall be handled by the Architectural Review Committee (the "Committee"). The members of the Committee may, but need not, include architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the Board. The Committee shall consist of three persons. Until one hundred percent (100%) of the Lots shown on the General Land Plan have been conveyed to Class A Members, the Declarant retains the right to appoint all members of the Committee who shall serve at the discretion of the Declarant. There shall be no surrender of this right prior to that time except in a written instrument executed by Declarant and recorded in the Collin County Deed Records. Upon the expiration of such right, the Board shall appoint the members of the Committee, who shall serve and may be removed at the discretion of the Board.

Section 10.3. Guidelines and Procedures.

a. Design Guidelines. The Declarant shall prepare the initial design and development guidelines and application and review procedures (the "Design Guidelines") which shall be applicable to all construction activities within the Property. Declarant shall have the sole and full authority to amend them as long as it owns any portion of the Property unless Declarant assigns such right to the Board at an earlier time. Thereafter, the Board shall have the authority to amend the



Design Guidelines. Any amendments to the Design Guidelines shall be prospective only and shall not apply or require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; Declarant or the Board, as appropriate, is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive. The Design Guidelines may contain general provisions applicable to all of the Property, as well as specific provisions which vary from one portion of the Property to another depending upon location and unique characteristics.

The Association shall make the Design Guidelines available to Owners and contractors who seek to engage in development or construction within the Property, and all such Persons shall conduct their activities in accordance with such Design Guidelines.

b. Procedures. No Work shall commence on any Lot until an application for approval has been submitted to and approved by the Committee. Such application shall be in the form required by the Committee and shall include plans and specifications ("Plans") showing the site layout, structural design, exterior elevations, exterior materials and colors, signs, landscaping, drainage, lighting, irrigation, utility facilities layout and screening therefor, and other features of proposed construction, as applicable. The Committee may require the submission of such additional information as it deems necessary to consider any application. The Plans shall be in such form and shall contain such information as may reasonably be required pursuant to the Design Guidelines. The Committee may permit a set of plans to be submitted for consideration and approval with respect to multiple Lots at one time.

In reviewing each submission, the Committee may consider (but shall not be limited to consideration of) visual and environmental impact, ecological compatibility, natural platforms and finished grade elevations, the quality of workmanship and design, harmony of external design with surrounding structures and environment, location in relation to surrounding structures and plant life, architectural merit and compliance with the general intent of the Design Guidelines and the general scheme of development for the Property. Decisions of the Committee may be based on purely aesthetic considerations.

A schedule and procedures outlining the specified Plans to be submitted at specific times shall be established by the Committee and may be set forth in the Design Guidelines. The Committee shall, within forty-five (45) days after receipt of each required submission of Plans, advise the party submitting the same, in writing, at an address specified by such party at the time of submission of (i) the approval of Plans or (ii) the disapproval of Plans, specifying the segments or features of the Plans which are objectionable and suggestions, if any, for the curing of such objections. In the event the Committee fails to advise the submitting party by written notice within the time set forth above of either the approval or disapproval of the Plans, the applicant may give the Committee written notice of such failure to respond, stating that, unless the Committee responds within ten (10) days of receipt of such notice, approval shall be deemed granted. However, no Plans, whether expressly approved or deemed approved pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing pursuant to Section 10.5.

Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed and postage prepaid, is deposited with the United States Postal Service, registered or certified mail, return receipt requested. Personal delivery of such written notice shall also be sufficient and shall be deemed to have been given at the time of delivery.

All work shall be completed within one (1) year of commencement of construction or such shorter period as the Committee may specify in the notice of approval, unless completion within such time is delayed due to causes beyond the reasonable control of the Owner, as determined in the sole discretion of the Committee.

Section 10.4. No Waiver of Future Approvals. The Committee's approval of any Plans for any Work done or proposed, or in connection with any other matter requiring the approval and consent of such Committee, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar Plans or other matters subsequently or additionally submitted for approval.

Section 10.5. Variances. The Committee may authorize variances from compliance with the Design Guidelines and any required procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations so require. Such variances shall not, however, (i) be effective unless in writing; (ii) be contrary to the restrictions set forth in this Declaration; or (iii) estop the Committee from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not constitute hardships.

Section 10.6. Limitation of Liability. Review and approval of any application pursuant to this Article X is made on the basis of aesthetic considerations only, and the Committee shall not bear any responsibility for ensuring (i) structural integrity or soundness of approved construction or modifications, (ii) compliance with building codes and other governmental requirements, or (iii) conformity of quality, value, size or design among Lots. Neither the Declarant, the Association, the Board, the Committee nor member of any of the foregoing, shall be held liable for soil conditions, drainage or other general site work, or for any defects in Plans revised or approved hereunder, or for any injury, damages or loss arising out of the manner or quality of approved construction on or modifications to any Lot.

Section 10.7. Fees; Assistance. The Committee may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers or other professionals, although nothing shall be construed herein as requiring the review of applications by such professionals.

Section 10.8. Enforcement. Any Work performed in violation of this Article X or the Design Guidelines shall be deemed nonconforming. Upon written request from the Board, the Declarant or the Committee, Owners shall, at their own cost and expense, cure such nonconforming Work or remove such structure or improvement and restore the Lot to substantially the same

condition as existed before the nonconforming Work. Should an Owner fail to remove or restore as required hereunder, the Declaration, the Association or their designees, shall have the right to enter the Lot and remove or cure the violation. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the nonconforming Lot and collected as a Special Individual Assessment pursuant to Section 5.6.

In the event that any Person fails to commence and diligently pursue to completion all approved Work, Declarant or the Association shall be authorized, after providing notice and an opportunity to cure to the Owner, to enter upon the Lot and remove or complete any incomplete Work and to assess all costs incurred against the Lot and the Owner thereof as a Special Individual Assessment pursuant to Section 5.6.

In addition to the foregoing, the Association and Declarant shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article X and the decisions of the Committee.

Section 10.9. Notice of Violation. To evidence any violation of this Article X or Article IX by any Owner, the Board may file, but is not required to file, in the Deed Records of Collin County, Texas, a notice of violation setting forth (i) the violation, (ii) the name of the Owner and Lot, and (iii) a sufficient legal description of the Lot. Such notice shall be signed and acknowledged by an officer or duly authorized agent or attorney of the Association. The cost of preparing and recording such notice may be assessed against the non-conforming Lot and collected as a Special Individual Assessment pursuant to Section 5.6.

## **ARTICLE XI**

### **ADDITIONAL PROPERTY**

#### Section 11.1. Additions Generally.

a. Additions to the Properties. Additional land may be brought within the jurisdiction and control of the Association in the manner specified in Section 11.2 of this Article and made subject to all the terms of this Declaration as if part of the Properties initially included within the terms hereof, provided such is done within twenty-five (25) years from the date this instrument is recorded. Notwithstanding the foregoing, however, under no circumstances shall the Declarant be required to make such additions, and until such time as such additions are made to the Properties in the manner hereinafter set forth, no other real property owned by the Declarant or any other person or party whomsoever, other than the Properties, shall in any way be affected by or become subject to the Declaration. All additional land which, pursuant to this Article, is brought within the jurisdiction and control of the Association and made subject to the Declaration shall thereupon and thereafter be included within the term "Properties" as used in this Declaration. Notwithstanding anything contained in this Section 11.1, the Declarant neither commits to nor warrants or represents that any such additional development shall occur.

b. General Land Plan. The present general plan of development shall not bind the Declarant to make any such additions or adhere to the general plan of development. Such general plan of development may be amended or modified by the Declarant, in whole or in part, at any time, or discontinued. As used herein, the term "General Land Plan" shall mean such general plan of development, together with any amendments or modifications thereof hereafter made.

Section 11.2. Procedure for Making Additions to the Properties. Additions to the Properties may be made, and thereby become subject to this Declaration, by, and only by, one of the following procedures.

a. Additions by Declarant. The Declarant shall have the right from time to time, whether prior to or after termination of the Class B Control Period, for so long as the Declarant owns a Lot for development and sale as part of the Properties, in its discretion and without need for consent or approval by either the Association or its Members, to bring within the jurisdiction and control of the Association and make subject to the scheme of this Declaration, any additional land. In the Declarant's sole discretion, portions of this land may be designated as Common Area and/or as part of The Villas of Heritage Ranch. The additions authorized under this subsection shall be made by the Declarant filing of record a Supplement to Declaration of Covenants, Conditions and Restrictions with respect to the additional land. Such Supplement need only be executed by the Declarant and shall not require the joinder or consent of the Association or its Members. Such Supplement may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added land or permitted use thereof. In no event, however, shall such Supplement revoke, modify or add to the covenants established by this Declaration as such affect the land described on the attached Exhibit "A".

b. Additions by the Association. Following the expiration of the Declarant's right to annex property as set forth in Section 11.2a and subject to the consent of the owner thereof, the Association may annex any property described on Exhibit "B" to this Declaration, to the provisions of this Declaration and the jurisdiction of the Association. Such annexation shall require the affirmative vote of Members representing a majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose. The additions authorized under this subsection shall be made by the Association filing of record a Supplement to Declaration of Covenants, Conditions and Restrictions with respect to the additional land. Such Supplement need only be executed by the Board. Such Supplement may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be approved by the Members representing a majority of the Class "A" votes of the Association. In no event, however, shall such Supplement revoke, modify or add to the covenants established by this Declaration as such affect the land described on the attached Exhibit "A".

c. Mergers. Upon a merger or consolidation of the Association with another non-profit corporation as provided in its articles, its property (whether real or person or mixed), rights and obligations may, by operation of law, be transferred to the surviving or consolidated corporation or, alternatively, the property, rights and obligations of the other non-profit corporation may, by

operation of law, be added to the property, rights and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the Properties together with the covenants and restrictions established upon any other land as one scheme. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants established by this Declaration with the Properties.

**Section 11.3. General Provisions Regarding Additions to the Properties.**

a. Regardless of which of the foregoing methods is used to add additional land to that subject to the terms and provisions of this Declaration, no addition shall revoke or diminish the rights of the Owners of the Properties to the utilization of the Common Area as established hereunder except to grant to the Owners of the land being added to the Properties the right to use the Common Area according to the terms and conditions as established hereunder, and the right to vote and be assessed as hereinafter provided.

b. Nothing contained in this Article shall obligate the Declarant to make additions to the Properties.

**Section 11.4. Voting Rights of the Declarant as to Additions to the Properties.** The Declarant shall have no voting rights as to the land added to the Properties or any portion thereof until such land or portion thereof is actually added to the Properties in accordance with the provisions of this Article. Upon such land or portion thereof being added to the Properties, the Declarant shall have the Class B voting rights as to the Lots thereof as is provided by Section 4.2 of this Declaration.

**Section 11.5. Assessment Obligation of the Declarant as to Additions to the Properties.** The Declarant shall have no assessment obligation as to the land or any portion thereof added to the Properties until such land or portion thereof is actually added to the Properties in accordance with the provisions of this Article. At such time, the Declarant shall have, but only as to such of the additional land as is added, the assessment obligation set forth in Article V of this Declaration.

**Section 11.6. Voting Rights of Owners other than the Declarant as to Additions to the Properties.** Any Lots of land added to the Properties which are owned by Owners other than the Declarant, or its assignees by separate written document, shall be entitled to voting rights identical to those granted by Section 4.2 of this Declaration to other Class A Members.

**Section 11.7. Assessment Obligation of Owners other than the Declarant as to Additions to the Properties.** Any Lots added to the Properties which are owned by Owners other than the Declarant, or its assignees by separate written document, shall be subject to assessments, both annual, special and otherwise in accordance with the terms and provisions of the Declaration in the same manner as all other Class A Members within the Properties.

**ARTICLE XII**  
**MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of First Mortgages on Lots in the Development. The provisions of this Article apply to both this Declaration and to the Bylaws, notwithstanding any other provisions contained therein.

Section 12.1. Notices of Action. An institutional holder, insurer or guarantor of a First Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer or guarantor and the Lot number, therefore becoming an "Eligible Mortgage Holder") will be entitled to timely written notice of:

- a. Any condemnation loss or any casualty loss which affects a material portion of the Development or which affects any Lot on which there is a First Mortgage held, insured or guaranteed by such Eligible Mortgage Holder;
- b. Any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a First Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by the Owner of the encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; or
- c. Any lapse, cancellation or material modification of any insurance policy maintained by the Association.

Section 12.2. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the First Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 12.3. Notice to Association. Upon request, each Lot Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

Section 12.4. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request; provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

Section 12.5. Applicability of Article XII. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws or Texas law for any of the acts set out in this Article.

**ARTICLE XIII**  
**GOLF COURSE**

Section 13.1. General. Neither membership in the Association nor ownership or occupancy of a Lot shall confer any ownership interest in the Golf Course. The Declarant shall convey the Golf Course to the Association as part of the Common Areas. Rights to use the Golf Course will be on such terms and conditions as may be determined from time to time by the Association.

Section 13.2. View Impairment. Neither the Declarant nor the Association guarantees or represents that any view over and across the Golf Course from Lots adjacent to the Golf Course will be preserved without impairment. The Association shall have no obligation to prune or thin trees or other landscaping and shall have the right, in its sole and absolute discretion, to add trees and other landscaping to the Golf Course from time to time. In addition, the Association may, in its sole and absolute discretion, change the location, configuration, size and elevation of the tees, bunkers, fairways and greens from time to time. Any such additions or changes may diminish or obstruct any view from the Lots and any express or implied easements for view purposes or for the passage of light and air are hereby expressly disclaimed.

Section 13.3. Rights of Access and Parking. There is hereby established for the benefit of the Association a right and non-exclusive easement of access and use over those portions of the Community (whether Common Area or otherwise) reasonably necessary to the operation, maintenance, repair and replacement of the Golf Course. Without limiting the generality of the foregoing, guests and invitees of the Association shall have the right to park their vehicles on the roadways located within the Community at reasonable times before, during and after tournaments and other similar functions held by or at the Golf Course to the extent that the Golf Course has insufficient parking to accommodate such vehicles.

Section 13.4. Easements for Golf Course. The following easements apply only to the Golf Course:

a. The Association, its respective agents, successors and assigns, shall have non-exclusive easements over the Community as necessary for ingress and egress, utilities and such other purposes as may be reasonably necessary or convenient to the establishment, operation, maintenance, repair and replacement of the Golf Course. The benefitted parties shall be obligated to use due care in the exercise of such easement rights.

b. Every Lot and the Common Area is burdened with an easement permitting golf balls unintentionally to come upon such areas and for golfers at reasonable times and in a reasonable manner to come upon the Common Area or the exterior portions of a Lot to retrieve golf balls; provided, however, if any Lot is fenced or walled, the golfer shall seek the Owner's permission before entry. The existence of this easement shall not relieve golfers of liability for damage caused by errant golf balls. Under no circumstances shall any of the following Persons be held liable for any damage or injury resulting from errant golf balls or the exercise of this easement: Declarant, the

Association or its Members (in their capacities as such), any builder or contractor (in their capacities as such), any officer, director or partner of any of the foregoing, or any officer or director of any partner.

c. Any portion of the Community which is immediately adjacent to the Golf Course is hereby burdened with a non-exclusive easement in favor of the adjacent Golf Course for over spray of water, pesticides and chemicals from the irrigation system serving the Golf Course.

d. The Association, its respective agents, employees, contractors, successors and assigns, shall have a perpetual non-exclusive easement, to the extent reasonably necessary, over the Community for the installation, operation, maintenance, repair, replacement, observation and control of the entire irrigation system and equipment serving all or portions of the Golf Course.

Section 13.5. Assumption of Risk and Indemnification. Each Owner, by his or her purchase of a Lot in the vicinity of the Golf Course, acknowledges the inherent dangers associated with living in proximity to the Golf Course and hereby expressly assumes the risk of personal injury, property damage or other loss caused by maintenance, operation and general use of the Golf Course including, without limitation: (i) noise from maintenance equipment (it being specifically understood that such maintenance typically takes place around or before sunrise or after sunset); (ii) noise caused by golfers and golf carts; (iii) use of pesticides, herbicides and fertilizers; (iv) view restrictions caused by maturation of trees and shrubbery; (v) use of effluent in the irrigation of the Golf Course (which may emit certain undesirable odors); (vi) reduction in privacy caused by constant golf traffic on the Golf Course or the removal or pruning of shrubbery or trees on the Golf Course; (vii) errant golf balls and golf clubs; and (viii) design of the Golf Course.

Each such Owner agrees that neither Declarant, any successor Declarant, any builder, the Association, or their successors, successors-in-title or assigns, any entity managing the Golf Course, any officer, director or partner of any of the foregoing, or any officer or director of any partner, or any organizer or sponsor of any tournament or special event (collectively, for the purposes of this Section 13.5, the "Released Parties") shall be liable to any Owner claiming any loss, injury or damage based upon, due to, arising from, directly or indirectly, or otherwise related to the proximity of such Owner's Lot to the Golf Course, the management of the Golf Course or the exercise of the easement rights set forth in this Article XIII, even if such loss, damage or injury is caused in whole or in part by the negligence of any of the Released Parties. Each Owner hereby agrees to indemnify, defend and hold harmless the Released Parties from and against any and all such claims as set forth in the preceding sentence by Owner or Owner's lessees, licensees, invitees and employees with respect to tenants of such Owner's Lot for injury, loss or damage, whether known or unknown, foreseen or unforeseen, arising from or resulting from, directly or indirectly, acts or omissions of the Released Parties, even if caused in whole or in part by the negligence of the Released Parties. **THE FOREGOING RELEASE AND INDEMNITY IS INTENDED TO RELEASE AND INDEMNIFY THE RELEASED PARTIES FROM AND AGAINST THEIR OWN NEGLIGENCE**



Section 13.6. Golf Carts. Only electrically powered golf carts shall be permitted to be used on the Golf Course and Common Area, except that the Association may use gas powered carts. Such vehicles may only be operated by a licensed driver and only during daylight hours to and from and on the Golf Course, unless the golf cart meets all standards for legal operation on public streets. The Board may adopt Rules and Regulations governing the use and operation of golf carts in the Community.

Section 13.7. Access. Under no circumstances shall an Owner, his or her family, guests or invitees be permitted to start play on the Golf Course from their Lot.

Section 13.8. Flood Plain. A portion of the Golf Course, including, without limitation, hole numbers two (2) through eight (8), inclusive, is situated within a one hundred (100) year flood plain as more particularly shown on the General Land Plan. Each Owner acknowledges that during moderate to heavy rainfall, all or a portion of the Golf Course may be closed due to flooding. Each such Owner agrees that neither Declarant, any successor Declarant, any builder, the Association, or their successors, successors-in-title or assigns, any entity managing the Golf Course, any officer, director or partner of any of the foregoing shall be liable to any Owner claiming any loss, injury or damage based upon, due to, arising from, directly or indirectly, or otherwise related to the closing of the Golf Course for this or any other reason.

#### **ARTICLE XIV DECLARANT'S RIGHTS**

Section 14.1. Assignment. Any or all of the special rights and obligations of the Declarant set forth in the Governing Documents may be transferred to other Persons; provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained in the Governing Documents. Furthermore, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the County Clerk Official Records of Collin County, Texas.

Section 14.2. Marketing and Sales Activities. Declarant may construct and maintain and carry on upon portions of the Common Area, or upon Lots owned by Declarant, such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient or incidental to the construction or sale of such Lots, including, but not limited to, fences, business offices, signs, sales offices and model Lots. Declarant shall have easements for access to and use of such facilities.

Section 14.3. Additional Covenants. No Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent. Any attempted recordation without compliance herewith shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the public records.

Section 14.4. Use of Name of Development. No Person shall use the name "HERITAGE RANCH" or any derivative of such name in any printed or promotional material without Declarant's prior written consent. However, Owners may use the name "HERITAGE RANCH" in printed or promotional material where such term is used solely to specify that particular property is located within the Property and the Association shall be entitled to use the words "HERITAGE RANCH" in its name.

Section 14.5. Obligations of Cooperation by Association. Until such time as Declarant has completed all of the contemplated improvements and has sold all of the Lots within the Development, the following provisions shall apply and control notwithstanding any provisions contained in this Declaration to the contrary:

a. The Association hereby grants the Declarant an easement across all Common Area and additions to Common Area for the construction of water, sewer, drainage, water retention and electric facilities; for the installation of any other services and facilities deemed by Declarant necessary or desirable for the development of the Properties and Common Area; and for the conduct of all construction, sales and marketing activities deemed necessary or desirable by the Declarant.

b. The Association grants the Declarant the right to alter the boundaries of the Common Area whether or not they have been previously deeded to the Association, provided that such alteration does not substantially, materially and adversely affect the function and use of the Common Area. The Association and each Owner hereby irrevocably appoint the Declarant or its officers as their attorney-in-fact to execute and/or deliver any documents, plats, deeds or other written instruments necessary or convenient to accomplish the addition of Common Area and Properties, to create easements as deemed necessary by Declarant and to adjust the boundary or boundaries of the Common Area. Such appointment shall be deemed coupled with an interest and irrevocable.

c. Neither the Association nor its Members, nor the use of the Common Area by the Association or its Members, shall interfere with the completion of the contemplated improvements or the marketing and sale by Declarant of Lots within the Development.

d. Declarant reserves and the Association grants to Declarant the right to make such use of Lots, and the Common Area, as may facilitate completion and sale of Lots by the Declarant. Without limiting the foregoing, Declarant shall have the right to maintain a sales office, model units, administration office and/or construction office (which may be a construction trailer or a temporary or permanent building) on Lots or on the Common Area. Declarant further shall have the right to erect and maintain signs on Lots or on the Common Area, shall have the right to bring prospective purchasers upon the Common Area, shall have the right to use Common Area for any sales purposes, shall have the right to grant the right of use of the Common Area to any prospects or any other individuals or group in its sole discretion and shall be entitled to conduct all other marketing activities desired by Declarant. By way of example and not by way of limitation or definition, such Common Area may include the clubhouse, pool, Golf Course and other amenities

e. Without the express prior written consent of Declarant, no amendments shall be made to the Declaration and no Rules and Regulations shall be adopted by the Association which shall modify the assessments or other charges on Declarant's Lots, or which shall restrict, impair or in Declarant's sole judgment adversely affect Declarant's activities on the Common Area, delegation of use of the Common Area or marketing and sale of the remaining Lots in the Development, whether or not such activities are enumerated in the preceding paragraphs.

Section 14.6. Declarant Loans to the Association. Declarant reserves the right, but not the obligation, to provide from time to time for certain capital improvements or working capital for the benefit of the Association and its Members. In such event, the Declarant may consider the cost of developing such capital improvements as a loan to the Association, repayable by the Association to the Declarant at such time and with such interest as may be reasonably agreed to by the Association and the Declarant prior to the development of such improvement by Declarant. Any such loan shall be evidenced by a promissory note made by the Association in favor of Declarant and such note shall be deemed reasonable upon execution by the Association.

Section 14.7. Deed Restrictions. In addition to this Declaration, the Declarant may record for parts of the Properties specific deed restrictions, declarations of covenants, conditions and restrictions, and community association documents applicable thereto either by master instrument or individually recorded instruments. Such documents may vary as to different parts of the Properties in accordance with the Declarant's General Land Plan and the location, topography and intended use of the land made subject thereto. To the extent that part of the Properties are made subject to such specific documents, such land shall be subject to both the specific documents and this Declaration. The Association shall have the power to enforce all restrictions if expressly provided for therein, and to exercise any authority granted to it by them. Nothing contained in this Section 14.7 shall require the Declarant to impose uniform restrictions, or to impose restrictions of any kind on all or any part of the Properties.

Section 14.8. Termination of Rights. The rights contained in this Article shall not terminate until the earlier of (i) thirty (30) years from the date this Declaration is recorded, or (ii) upon recording by Declarant of a written statement that all sales activity has ceased.

## **ARTICLE XV**

### **GENERAL PROVISIONS**

Section 15.1. Term. The covenants and restrictions of this Declaration shall run with and bind the Properties and shall inure to the benefit of and shall be enforceable by the Association or the Owner of any Lot, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded. After such time, the covenants and restrictions shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to terminate the same, in which case this Declaration shall be terminated.

Section 15.2. Amendment.

a. By Declarant. In addition to the specific amendment rights granted elsewhere in this Declaration, until termination of the Class B membership, this Declaration may be amended

unilaterally at any time and from time to time by the Declarant. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable it to make, purchase, insure or guarantee mortgage loans on the Lots; or (iv) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the Lot Owner shall consent thereto in writing. In addition, so long as the Declarant still owns property for development and/or sale in the Community, the Declarant may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse affect upon the right of any Owner.

b. By Class A Members. Except as provided above and otherwise specifically provided in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing sixty-seven percent (67%) of the total Class A votes in the Association and the consent of the Declarant, so long as the Declarant owns any property for development or sale in the Community.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. To be effective, any amendment must be recorded in the County Clerk Official Records of Collin County, Texas. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority so to consent and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

No amendment may remove, revoke or modify any right or privilege of the Declarant or the Class B Member without the written consent of the Declarant or the Class B Member, respectively (or the assignee of such right or privilege).

Section 15.3. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. If a person or party is found in the proceedings to be in violation of, or attempting to violate, the provisions of this Declaration, he shall bear all expenses of the litigation, including court costs and reasonable attorneys' and legal assistants' fees and costs, for all trial, appellate, bankruptcy and arbitration proceedings or otherwise and in perpetration thereof, incurred by the party enforcing the provisions of this Declaration. Declarant shall not be

obligated to enforce this Declaration by any person other than itself. The Association may levy fines. The Board shall have the authority to adopt reasonable Rules with regard to the levying of a fine and the procedures by which fines will be implemented. No fine may be levied except after giving reasonable notice and opportunity for a hearing to the owner, and if applicable, its licensee or invitee.

Section 15.4. Severability. Invalidation of any one of these covenants or restrictions, or any provision contained herein, by judgment or court order, shall in no way affect any other provisions which shall remain in full force and effect.

Section 15.5. Interpretation. Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including without limitation". The headings used herein are for indexing purposes and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 15.6. Security. The Association may, but shall not be obligated to, maintain or support certain activities within the Development designed to make the Development safer than it otherwise might be. NEITHER THE ASSOCIATION, THE DECLARANT, NOR ANY SUCCESSOR DECLARANT SHALL IN ANY WAY BE CONSIDERED AN INSURER OR GUARANTOR OF SECURITY WITHIN THE COMMUNITY, NOR SHALL THE ASSOCIATION OR THE DECLARANT BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR OF INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY FIRE PROTECTION SYSTEM, BURGLAR ALARM SYSTEM, CONTROLLED ACCESS SYSTEM OR OTHER SECURITY SYSTEM CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND COVENANTS TO INFORM ITS TENANTS THAT THE ASSOCIATION, ITS BOARD OF DIRECTORS, COMMITTEES AND DECLARANT, AND ANY SUCCESSOR DECLARANT, ARE NOT INSURERS AND THAT EACH PERSON USING THE PROPERTY WITHIN THE DEVELOPMENT ASSUMES ALL RISKS FOR LOSS OR DAMAGE TO PERSONS, TO LOTS AND TO THE CONTENTS OF DWELLINGS ON LOTS RESULTING FROM ACTS OF THIRD PARTIES.

Section 15.7. Litigation. No judicial or administrative proceeding (including, without limitation, arbitration proceedings) shall be commenced or prosecuted by the Association unless approved by Class A Members representing at least seventy-five percent (75%) of the total Class A votes and the Class B Member, if any. This Section shall not apply, however, to (a) actions or proceedings brought by the Association to enforce the provisions of this Declaration (including, without limitation, the judicial or nonjudicial foreclosure of liens), (b) the imposition and collection of assessments as provided in Article V hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is approved by Class A Members representing at least seventy-five percent (75%) of the total Class A votes and the Class B Member, if any.

Section 15.8. Dispute Resolution.

a. Right to Correct. Prior to the Association or any Member commencing any proceeding to which Declarant is a party, including but not limited to an alleged defect of any improvement, Declarant shall have the right to be heard by the Members, or the particular Member, and to access, inspect, correct the condition of, or redesign any portion of any improvement as to which a defect is alleged or otherwise correct the alleged dispute.

b. Alternative Method for Resolving Disputes. Declarant, its officers, directors, employees and agents; the Association, its officers, directors and committee members; all Persons subject to this Declaration; any Builder, its officers, directors, employees and agents; and any person not otherwise subject to this Declaration who agrees to submit to this Section 15.8 (each such entity being referred to as a "Bound Party") agree to encourage the amicable resolution of disputes, without the emotional and financial costs of litigation. Accordingly, each Bound Party covenants and agrees to submit those claims, grievances or disputes described in Section 15.8(c) (collectively, the "Claims") to the mandatory procedures set forth in Section 15.8(d).

c. Claims. Unless specifically exempted below, all Claims between any of the Bound Parties regardless of how the same might have arisen or on what it might be based including, but not limited to Claims (i) arising out of or relating to the interpretation, application or enforcement of the Declaration, Bylaws, Design Guidelines and Rules and Regulations promulgated thereunder (the "Governing Documents") or the rights, obligations and duties of any Bound Party under the Governing Documents; (ii) relating to the design or construction of improvements; or (iii) based upon any statements, representations, promises, warranties, or other communications made by or on behalf of any Bound Party shall be subject to the provisions of this Section 15.8.

Notwithstanding the above, unless all parties thereto otherwise agree, the following shall not be considered Claims and shall not be subject to the provisions of this Section 15.8:

(i) any suit by the Association against any Bound Party to enforce the provisions of Article V;

(ii) any suit by the Association or Declarant to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to act under and enforce the provisions of Article IX or Article X;

(iii) any suit between or among Owners, which does not include Declarant, a Builder of the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Governing Documents; and

(iv) any suit in which any indispensable party is not a Bound Party.

d. Mandatory Procedures.

(i) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent") (the Claimant and Respondent referred to herein being individually, as a "Party", or, collectively, as the "Parties") shall notify each Respondent in writing (the "Notice"), stating plainly and concisely:

- (a) The nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (b) The legal basis of the Claim (i.e., the specific authority out of which the Claim arises;
- (c) The proposed remedy; and
- (d) The fact that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

(ii) Negotiation and Mediation.

(a) The Parties shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the Parties in negotiation.

(b) If the Parties do not resolve the Claim within 30 days after the date of the Notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have two days to submit the Claim to mediation under the auspices of the American Arbitration Association ("AAA") in accordance with the AAA's Commercial or Construction Industry Mediation Rules, as appropriate.

(c) If Claimant does not submit the Claim to mediation within such time, or does not appear for mediation, Claimant shall be deemed to have waived the Claim, and Respondent shall be released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to any Person other than the Claimant

(d) Any settlement of the Claim through mediation shall be documented in writing by the mediator and signed by the Parties. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation, or within such other time as determined by the mediator or agreed to by the Parties, the mediator shall issue

a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation Notice shall set forth that the Parties are at an impasse and the date that mediation was terminated.

Each Party shall bear its own costs of the mediation, including attorneys' fees, and each Party shall share equally all charges rendered by the mediator. If the Parties agree to a resolution of any Claim through negotiation or mediation in accordance with this Section and any Party thereafter fails to abide by the terms of such agreement, then any other Party may file suit or initiate arbitration proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the Party taking action to enforce the agreement shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement, including, without limitation, attorneys' fees and court costs.

(iii) Binding Arbitration.

(a) Upon Termination of Mediation, Claimant shall thereafter be entitled to initial final, binding arbitration of the Claim under the auspices of the AAA in accordance with the AAA's Commercial or Construction Industry Arbitration Rules, as appropriate. Such Claims shall not be decided by or in a court of law. Any judgment upon the award rendered by the arbitrator may be entered in and enforced by any court having jurisdiction over such Claim. If the claimed amount exceeds \$250,000, the dispute shall be heard and determined by three arbitrators. Otherwise, unless mutually agreed to by the Parties, there shall be one arbitrator. Arbitrators shall have expertise in the area(s) of dispute, which may include legal expertise if legal issues are involved.

(b) Each Party shall bear its own costs and expenses and an equal share of the arbitrator's and administrative fees of arbitration. Notwithstanding the foregoing, if a Party unsuccessfully contests the validity or scope of arbitration in a court of law, the non-contesting Party shall be awarded reasonable attorneys' fees and expenses incurred in defending such contest. All decisions respecting the arbitrability of any Claim shall be decided by the arbitrator(s).

(c) The award of the arbitrator(s) shall be accompanied by detailed written findings of fact and conclusions of law. Except as may be required by law or for confirmation of an award, neither a Party nor an arbitrator may disclose the existence, content, or results of any arbitration hereunder without the prior written consent of both Parties.



04879 01625

IN WITNESS WHEREOF, the Declarant have executed this Declaration as of the date first above written.

DECLARANT: U. S. HOME CORPORATION

By: George A d'Heme court III  
Its: DIVISION PRESIDENT

ACKNOWLEDGMENT

STATE OF TEXAS       §  
                                  §  
COUNTY OF DALLAS   §

BEFORE ME, a Notary Public in and for the State of Texas, duly authorized to take acknowledgments, personally appeared George A d'Heme court, Div. President of U. S. Home Corporation, a Delaware corporation, and acknowledged that (s)he executed the foregoing document on behalf of said corporation.

Christine Hart  
Notary Public in and for  
the State of Texas



AFTER RECORDING RETURN TO:  
Riddle & Williams, P.C.  
3811 Turtle Creek Blvd., Suite 1050  
Dallas, Texas 75219

EARWINGPUD RESHERITAGERANCH AMENDED

04879 01626

**EXHIBIT "A"**

**Land Initially Subject to Declaration**

EXHIBIT "A"  
LEGAL DESCRIPTION

STATE OF TEXAS)(

COUNTY OF COLLIN )(

BEING A 574.959 ACRE TRACT OF LAND SITUATED IN THE CALVIN BOLES SURVEY, ABSTRACT NO. 28, THE ROBERT FITZHUGH SURVEY, ABSTRACT NO. 317, THE R.H. LOCKE SURVEY, ABSTRACT NO. 517, AND THE GEORGE PILANT SURVEY, ABSTRACT NO. 691, COLLIN COUNTY, TEXAS, AND BEING ALL OF A CALLED 89 ACRE TRACT OF LAND CONVEYED TO WINNIE WATSON RASOR BY DEED RECORDED IN VOLUME 559, PAGE 557, DEED RECORDS, COLLIN COUNTY, TEXAS, BEING PART OF A 600.205 ACRE TRACT OF LAND CONVEYED AS SECOND TRACT TO CARL J. THOMSEN BY DEED RECORDED IN VOLUME 713, PAGE 86, DEED RECORDS, COLLIN COUNTY, TEXAS, AND ALL OF A CALLED 130.90 ACRE TRACT OF LAND, CONVEYED TO MICHAEL J PISTERZI AND WIFE, MARGUERITE M. PISTERZI BY DEED RECORDED IN COUNTY CLERKS FILE NO. 98-0058646, REAL PROPERTY RECORDS, COLLIN COUNTY, TEXAS, SAID 574.959 ACRE TRACT, WITH BEARING BASIS OF GEODETIC NORTH, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING AT TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "CARTER & BURGESS" SET FOR CORNER AT THE EASTERLY NORTHEAST CORNER SAID THOMSEN TRACT AND NOW BEING THE NORTHEAST CORNER OF FAIRVIEW FARMS, SECOND SECTION, ACCORDING TO THE PLAT RECORDED IN CABINET C, SLIDE 124, MAP RECORDS, COLLIN COUNTY, TEXAS, FROM WHICH AN OLD WOOD FENCE CORNER POST BEARS SOUTH 02 DEGREES 10 MINUTES 23 SECONDS WEST A DISTANCE OF 186.7 FEET, SAID POINT BEING IN THE EAST BOUNDARY LINE OF 44.58 ACRE TRACT OF LAND CONVEYED BY DEED TO CHARLES W. STOVER, RECORDED IN VOLUME 794, PAGE 590, REAL PROPERTY RECORDS, COLLIN COUNTY, TEXAS, AND BEING AT THE ELL CORNER OF COUNTY ROAD NO. 266 ALSO KNOWN AS STACY ROAD;

THENCE, SOUTH 89 DEGREES 51 MINUTES 10 SECONDS WEST, ALONG THE NORTH BOUNDARY LINE OF SAID THOMSEN TRACT AND FAIRVIEW FARMS, SECOND SECTION, AND WITH THE GENERAL DIRECTION OF THE CENTERLINE OF SAID ROAD, A DISTANCE OF 668.00 FEET TO A P.K. NAIL WITH SHINER SET FOR CORNER, SAID POINT BEING AT THE NORTHEAST INTERIOR ELL CORNER OF SAID THOMSEN TRACT;

THENCE, NORTH 89 DEGREES 51 MINUTES 17 SECONDS WEST, ALONG THE NORTH

LINE OF SAID FAIRVIEW FARMS, SECOND SECTION, AND WITH THE GENERAL DIRECTION OF THE CENTERLINE OF SAID ROAD, A DISTANCE OF 1698.31 FEET TO A P.K. NAIL FOUND FOR CORNER;

THENCE, NORTH 89 DEGREES 18 MINUTES 03 SECONDS WEST, ALONG THE NORTH LINE OF SAID FAIRVIEW FARMS, SECOND SECTION, AND THE NORTH LINE OF FAIRVIEW FARMS, FIRST SECTION, ACCORDING TO THE PLAT RECORDED IN CABINET C, SLIDE 126, MAP RECORDS, COLLIN COUNTY, TEXAS, AND WITH THE GENERAL DIRECTION OF THE CENTERLINE OF SAID ROAD A DISTANCE OF 962.36 FEET TO A P.K. NAIL FOUND FOR CORNER;

THENCE, NORTH 00 DEGREES 19 MINUTES 41 SECONDS EAST, ALONG THE WEST LINE OF AFORESAID THOMSEN TRACT, A DISTANCE OF 725.47 FEET TO 3/8 " IRON ROD FOUND FOR CORNER;

THENCE, NORTH 00 DEGREES 26 MINUTES 01 SECONDS EAST, CONTINUING ALONG THE WEST LINE OF AFORESAID THOMSEN TRACT, A DISTANCE OF 1545.94 FEET TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SMLS" FOUND FOR CORNER;

THENCE, NORTH 00 DEGREES 59 MINUTES 49 SECONDS EAST, CONTINUING ALONG SAID WEST LINE, A DISTANCE OF 633.72 FEET TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SMLS" FOUND FOR CORNER;

THENCE, NORTH 00 DEGREES 03 MINUTES 39 SECONDS WEST, CONTINUING ALONG SAID WEST LINE, A DISTANCE OF 1551.61 FEET TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SMLS" FOUND FOR CORNER;

THENCE, NORTH 05 DEGREES 37 MINUTES 51 SECONDS EAST, CONTINUING ALONG SAID WEST LINE, A DISTANCE OF 80.97 FEET TO A 5/8" IRON ROD WITH YELLOW PLASTIC CAP STAMPED "SMLS" FOUND FOR CORNER;

THENCE, NORTH 01 DEGREES 54 MINUTES 14 SECONDS EAST, CONTINUING ALONG SAID WEST LINE, A DISTANCE OF 534.14 FEET TO A 14" DIAMETER BOIS-D-ARC TREE FOUND FOR CORNER;

THENCE, NORTH 18 DEGREES 47 MINUTES 34 SECONDS WEST, CONTINUING ALONG SAID WEST LINE, A DISTANCE OF 135.19 FEET TO A POINT FOR CORNER IN THE CENTERLINE OF SLOAN CREEK;

THENCE, ALONG THE CENTERLINE CREEK MEANDERS OF SAID SLOAN CREEK AND THE NORTH LINE OF SAID THOMSEN TRACT, THE FOLLOWING EIGHTEEN

## COURSES AND DISTANCES:

NORTH 67 DEGREES 02 MINUTES 51 SECONDS EAST, A DISTANCE OF 297.37 FEET TO A POINT FOR CORNER;

NORTH 55 DEGREES 06 MINUTES 03 SECONDS EAST, A DISTANCE OF 168.36 FEET TO A POINT FOR CORNER;

NORTH 75 DEGREES 38 MINUTES 45 SECONDS EAST, A DISTANCE OF 113.45 FEET TO A POINT FOR CORNER;

NORTH 56 DEGREES 21 MINUTES 50 SECONDS EAST, A DISTANCE OF 95.98 FEET TO A POINT FOR CORNER;

SOUTH 79 DEGREES 58 MINUTES 05 SECONDS EAST, A DISTANCE OF 100.41 FEET TO A POINT FOR CORNER; ...

NORTH 65 DEGREES 31 MINUTES 16 SECONDS EAST, A DISTANCE OF 128.57 FEET TO A POINT FOR CORNER;

NORTH 81 DEGREES 13 MINUTES 40 SECONDS EAST, A DISTANCE OF 454.54 FEET TO A POINT FOR CORNER;

NORTH 65 DEGREES 27 MINUTES 16 SECONDS EAST, A DISTANCE OF 109.53 FEET TO A POINT FOR CORNER;

SOUTH 70 DEGREES 34 MINUTES 02 SECONDS EAST, A DISTANCE OF 123.68 FEET TO A POINT FOR CORNER;

NORTH 58 DEGREES 37 MINUTES 03 SECONDS EAST, A DISTANCE OF 134.63 FEET TO A POINT FOR CORNER;

NORTH 76 DEGREES 22 MINUTES 12 SECONDS EAST, A DISTANCE OF 229.92 FEET TO A POINT FOR CORNER;

SOUTH 70 DEGREES 12 MINUTES 56 SECONDS EAST, A DISTANCE OF 193.49 FEET TO A POINT FOR CORNER;

NORTH 43 DEGREES 56 MINUTES 51 SECONDS EAST, A DISTANCE OF 119.60 FEET TO A POINT FOR CORNER;

SOUTH 88 DEGREES 01 MINUTES 40 SECONDS EAST, A DISTANCE OF 121.17

FEET TO A POINT FOR CORNER;

NORTH 43 DEGREES 40 MINUTES 46 SECONDS EAST, A DISTANCE OF 128.64 FEET TO A POINT FOR CORNER;

NORTH 80 DEGREES 23 MINUTES 07 SECONDS EAST, A DISTANCE OF 222.05 FEET TO A POINT FOR CORNER;

NORTH 68 DEGREES 04 MINUTES 30 SECONDS EAST, A DISTANCE OF 85.86 FEET TO A POINT FOR CORNER;

NORTH 89 DEGREES 13 MINUTES 17 SECONDS EAST, A DISTANCE OF 114.30 FEET TO A POINT FOR CORNER, SAID POINT BEING THE NORTHEAST CORNER OF SAID THOMSEN TRACT;

THENCE, SOUTH 01 DEGREES 02 MINUTES 53 SECONDS WEST, ALONG THE EAST LINE OF SAID THOMSEN TRACT, A DISTANCE OF 21.30 FEET TO A 4" DIAMETER STEEL POST FOUND FOR CORNER ON THE SOUTH BANK OF SAID SLOAN CREEK, SAID POINT BEING THE NORTHWEST CORNER OF AFORESAID RASOR TRACT;

NORTH 72 DEGREES 47 MINUTES 14 SECONDS EAST, ALONG SAID SOUTH BANK AND THE NORTH LINE OF SAID RASOR TRACT, A DISTANCE OF 150.08 FEET TO A POINT FOR CORNER;

NORTH 84 DEGREES 36 MINUTES 29 SECONDS EAST, CONTINUING ALONG SAID SOUTH BANK AND SAID NORTH LINE, A DISTANCE OF 115.19 FEET TO A POINT FOR CORNER;

THENCE, SOUTH 48 DEGREES 56 MINUTES 10 SECONDS EAST, CONTINUING ALONG THE SAID SOUTH BANK OF SLOAN CREEK AND PASSING A SOUTHERLY CORNER OF A 20.816 ACRE TRACT OF LAND CONVEYED BY DEED TO TRON E. CARTER, ET.UX. RECORDED IN COUNTY CLERK'S FILE NO.93-002127, REAL PROPERTY RECORDS, COLLIN COUNTY, TEXAS, AT 12.45 FEET AND CONTINUING IN ALL ALONG THE SOUTH BOUNDARY LINE OF SAID CARTER TRACT A TOTAL DISTANCE OF 161.55 FEET TO POINT FOR CORNER, SAID POINT BEING A SOUTH PROPERTY CORNER OF SAID CARTER TRACT;

THENCE, ALONG THE SAID SOUTH LINE OF CARTER TRACT AND SAID SOUTH BANK, THE FOLLOWING FOUR COURSES AND DISTANCES:

SOUTH 58 DEGREES 07 MINUTES 43 SECONDS EAST, A DISTANCE OF 96.48 FEET TO A POINT FOR CORNER;

04879 01631

SOUTH 60 DEGREES 06 MINUTES 06 SECONDS EAST, A DISTANCE OF 81.62 FEET TO A POINT FOR CORNER;

SOUTH 43 DEGREES 14 MINUTES 44 SECONDS EAST, A DISTANCE OF 289.98 FEET TO A POINT FOR CORNER;

SOUTH 87 DEGREES 13 MINUTES 35 SECONDS EAST, A DISTANCE OF 69.33 FEET TO WOOD FENCE POST FOUND FOR CORNER, SAID POINT BEING THE SOUTH EAST CORNER OF SAID CARTER TRACT, IN THE WEST LINE OF AFORESAID PISTERZI TRACT AND BEING IN THE EAST LINE OF AFORESAID PILANT SURVEY;

THENCE, NORTH 02 DEGREES 58 MINUTES 44 SECONDS EAST, ALONG THE EAST LINE OF SAID CARTER TRACT AND THE WEST LINE OF SAID PISTERZI TRACT, A DISTANCE OF 1036.80 FEET TO A 1/2" IRON ROD FOUND FOR CORNER, SAID POINT BEING THE NORTHEAST CORNER OF SAID CARTER TRACT AND BEING THE ... SOUTHEAST CORNER OF TRACT OF LAND CONVEYED BY DEED TO TRON E. CARTER, ET.UX., RECORDED IN VOLUME 3143, PAGE 127, DEED RECORDS COLLIN COUNTY, TEXAS;

THENCE, NORTH 02 DEGREES 21 MINUTES 52 SECONDS EAST, ALONG THE EAST LINE OF SAID CARTER TRACT AND THE SAID WEST LINE OF PISTERZI TRACT, A DISTANCE OF 300.14 FEET TO A FENCE CORNER POST FOUND FOR CORNER, SAID POINT BEING THE NORTHEAST CORNER OF SAID CARTER TRACT AND THE SOUTHEAST CORNER OF A TRACT OF LAND CONVEYED BY DEED TO RAYMOND C. BURKE, ET UX, RECORDED IN VOLUME 1064, PAGE 126, DEED RECORDS, COLLIN COUNTY, TEXAS;

THENCE, ALONG THE COMMON LINE OF SAID PISTERZI TRACT AND SAID BURKE TRACT THE FOLLOWING THREE COURSES AND DISTANCES:

NORTH 01 DEGREES 25 MINUTES 16 SECONDS EAST, A DISTANCE OF 384.42 FEET TO WOOD FENCE CORNER POST FOUND FOR CORNER;

NORTH 56 DEGREES 45 MINUTES 07 SECONDS WEST, A DISTANCE OF 423.02 FEET TO A 33" DIAMETER OAK TREE FOUND FOR CORNER;

NORTH 01 DEGREES 28 MINUTES 30 SECONDS EAST, A DISTANCE OF 576.84 FEET TO A 24" DIAMETER ELM TREE FOUND FOR CORNER;

THENCE, NORTH 38 DEGREES 21 MINUTES 25 SECONDS EAST, PASSING AT 20.5 FEET A 14" DIAMETER ELM TREE FOUND FOR WITNESS AND CONTINUING IN ALL

A TOTAL DISTANCE OF 51.18 FEET TO POINT FOR CORNER IN THE CENTERLINE OF WILSON CREEK;

THENCE, SOUTH 73 DEGREES 07 MINUTES 45 SECONDS EAST, DEPARTING SAID CENTERLINE, A DISTANCE OF 518.25 FEET TO A POINT FOR CORNER IN THE SAID CENTERLINE OF SAID WILSON CREEK;

THENCE, ALONG THE SAID CENTERLINE OF WILSON CREEK AND THE NORTHERLY NORTHEAST LINE OF SAID PISTERZI TRACT, THE FOLLOWING FOUR COURSES AND DISTANCES:

SOUTH 69 DEGREES 34 MINUTES 57 SECONDS WEST, A DISTANCE OF 168.59 FEET TO A POINT FOR CORNER;

SOUTH 02 DEGREES 15 MINUTES 33 SECONDS WEST, A DISTANCE OF 192.37 FEET TO A POINT FOR CORNER; ---

SOUTH 02 DEGREES 49 MINUTES 25 SECONDS EAST, A DISTANCE OF 138.98 FEET TO A POINT FOR CORNER; "

SOUTH 43 DEGREES 38 MINUTES 22 SECONDS EAST, A DISTANCE OF 120.36 FEET TO A POINT FOR CORNER;

THENCE, SOUTH 87 DEGREES 36 MINUTES 14 SECONDS EAST, DEPARTING SAID CENTERLINE AND ALONG THE NORTH LINE OF SAID PISTERZI TRACT AND THE SOUTH LINE OF A TRACT OF LAND CONVEYED BY DEED TO ROBERT LANGE, ET AL, RECORDED IN VOLUME 2952, PAGE 931, DEED RECORDS, COLLIN COUNTY, TEXAS, A DISTANCE OF 685.18 FEET TO A 1/2" IRON ROD FOUND FOR THE SOUTHEAST CORNER OF SAID LANGE TRACT, A NORTHEASTERLY CORNER OF SAID PISTERZI TRACT AND THE NORTHWEST CORNER OF A TRACT OF LAND CONVEYED BY DEED TO ROYCE E AYCOCK, RECORDED IN VOLUME 2588, PAGE 759, DEED RECORDS, COLLIN COUNTY, TEXAS;

THENCE, ALONG THE COMMON LINE OF SAID PISTERZI TRACT AND SAID AYCOCK TRACT, THE FOLLOWING TWO COURSES AND DISTANCES:

SOUTH 00 DEGREES 18 MINUTES 12 SECONDS WEST, A DISTANCE OF 164.62 FEET TO A 1/2" IRON ROD FOUND FOR CORNER;

NORTH 81 DEGREES 50 MINUTES 16 SECONDS EAST, A DISTANCE OF 334.07 FEET TO A 1/2" IRON ROD FOUND FOR CORNER;



THENCE, SOUTH 09 DEGREES 31 MINUTES 52 SECONDS EAST, WITH THE WESTERN EDGE OF COUNTY ROAD 317, A DISTANCE OF 477.96 FEET TO A POINT FOR CORNER;

THENCE, SOUTH 13 DEGREES 36 MINUTES 47 SECONDS EAST, CONTINUING ALONG SAID WESTERN EDGE, A DISTANCE OF 359.04 FEET TO A 1/2" IRON ROD FOUND FOR CORNER, SAID POINT BEING THE NORTHWEST CORNER OF A TRACT OF LAND CONVEYED BY DEED TO MYRTLE C. WOODY, TRUST, RECORDED IN COUNTY CLERKS FILE NO. 94-0094815, REAL PROPERTY RECORDS, COLLIN COUNTY, TEXAS;

THENCE, SOUTH 06 DEGREES 25 MINUTES 08 SECONDS WEST, ALONG THE COMMON LINE OF SAID PISTERZI TRACT AND SAID WOODY TRACT AND WITH THE GENERAL DIRECTION OF COUNTY ROAD 323, A DISTANCE OF 790.50 FEET TO A POINT FOR CORNER AT THE CENTERLINE INTERSECTION OF WILSON CREEK AND AN IRON BRIDGE OVER SAID CREEK; ---

THENCE, ALONG THE CENTERLINE MEANDERS OF SAID WILSON CREEK AND BEING THE COMMON LINE BETWEEN SAID PISTERZI TRACT AND SAID WOODY TRACT, THE FOLLOWING THIRTY ONE COURSES AND DISTANCES:

NORTH 85 DEGREES 08 MINUTES 52 SECONDS EAST, A DISTANCE OF 54.74 FEET TO A POINT FOR CORNER;

NORTH 34 DEGREES 42 MINUTES 50 SECONDS EAST, A DISTANCE OF 156.59 FEET TO A POINT FOR CORNER;

NORTH 58 DEGREES 30 MINUTES 19 SECONDS EAST, A DISTANCE OF 53.25 FEET TO A POINT FOR CORNER;

SOUTH 46 DEGREES 41 MINUTES 24 SECONDS EAST, A DISTANCE OF 79.51 FEET TO A POINT FOR CORNER;

SOUTH 18 DEGREES 37 MINUTES 20 SECONDS EAST, A DISTANCE OF 106.19 FEET TO A POINT FOR CORNER;

SOUTH 05 DEGREES 31 MINUTES 47 SECONDS WEST, A DISTANCE OF 68.47 FEET TO A POINT FOR CORNER;

SOUTH 42 DEGREES 40 MINUTES 09 SECONDS WEST, A DISTANCE OF 279.05 FEET TO A POINT FOR CORNER;

04879 01634

SOUTH 41 DEGREES 42 MINUTES 32 SECONDS EAST, A DISTANCE OF 107.97 FEET TO A POINT FOR CORNER;

NORTH 82 DEGREES 32 MINUTES 55 SECONDS EAST, A DISTANCE OF 79.11 FEET TO A POINT FOR CORNER;

SOUTH 69 DEGREES 00 MINUTES 20 SECONDS EAST, A DISTANCE OF 85.47 FEET TO A POINT FOR CORNER;

SOUTH 82 DEGREES 16 MINUTES 04 SECONDS EAST, A DISTANCE OF 157.79 FEET TO A POINT FOR CORNER;

SOUTH 36 DEGREES 10 MINUTES 07 SECONDS EAST, A DISTANCE OF 47.15 FEET TO A POINT FOR CORNER;

SOUTH 09 DEGREES 57 MINUTES 54 SECONDS WEST, A DISTANCE OF 90.88 FEET TO A POINT FOR CORNER;

SOUTH 27 DEGREES 54 MINUTES 23 SECONDS WEST, A DISTANCE OF 28.17 FEET TO A POINT FOR CORNER;

SOUTH 06 DEGREES 07 MINUTES 36 SECONDS WEST, A DISTANCE OF 54.29 FEET TO A POINT FOR CORNER;

SOUTH 26 DEGREES 23 MINUTES 02 SECONDS EAST, A DISTANCE OF 49.44 FEET TO A POINT FOR CORNER;

SOUTH 61 DEGREES 00 MINUTES 27 SECONDS EAST, A DISTANCE OF 38.51 FEET TO A POINT FOR CORNER;

SOUTH 83 DEGREES 13 MINUTES 18 SECONDS EAST, A DISTANCE OF 120.95 FEET TO A POINT FOR CORNER;

SOUTH 54 DEGREES 29 MINUTES 49 SECONDS EAST, A DISTANCE OF 62.69 FEET TO A POINT FOR CORNER;

SOUTH 34 DEGREES 00 MINUTES 43 SECONDS EAST, A DISTANCE OF 74.63 FEET TO A POINT FOR CORNER;

SOUTH 25 DEGREES 15 MINUTES 09 SECONDS WEST, A DISTANCE OF 78.11 FEET TO A POINT FOR CORNER;

SOUTH 47 DEGREES 08 MINUTES 26 SECONDS WEST, A DISTANCE OF 38.01 FEET TO A POINT FOR CORNER;

SOUTH 23 DEGREES 34 MINUTES 58 SECONDS WEST, A DISTANCE OF 65.90 FEET TO A POINT FOR CORNER;

SOUTH 02 DEGREES 46 MINUTES 49 SECONDS WEST, A DISTANCE OF 75.49 FEET TO A POINT FOR CORNER;

SOUTH 16 DEGREES 51 MINUTES 52 SECONDS EAST, A DISTANCE OF 88.35 FEET TO A POINT FOR CORNER;

SOUTH 35 DEGREES 25 MINUTES 36 SECONDS EAST, A DISTANCE OF 63.24 FEET TO A POINT FOR CORNER;

SOUTH 62 DEGREES 11 MINUTES 35 SECONDS EAST, A DISTANCE OF 187.53 FEET TO A POINT FOR CORNER;

SOUTH 33 DEGREES 51 MINUTES 42 SECONDS EAST, A DISTANCE OF 44.28 FEET TO A POINT FOR CORNER;

SOUTH 19 DEGREES 42 MINUTES 35 SECONDS EAST, A DISTANCE OF 115.09 FEET TO A POINT FOR CORNER;

SOUTH 52 DEGREES 43 MINUTES 38 SECONDS EAST, A DISTANCE OF 65.01 FEET TO A POINT FOR CORNER;

SOUTH 39 DEGREES 50 MINUTES 38 SECONDS EAST, A DISTANCE OF 93.00 FEET TO A POINT FOR CORNER SAID POINT THE EASTERLY NORTHEAST CORNER OF SAID PISTERZI TRACT, THE SOUTHEAST CORNER OF SAID WOODY TRACT AND BEING ON THE WEST LINE OF A TRACT OF LAND CONVEYED BY DEED TO SCOTT M. EUSTICE, RECORDED IN COUNTY CLERKS FILE NO. 97-00270723, REAL PROPERTY RECORDS, COLLIN COUNTY, TEXAS;

THENCE, SOUTH 03 DEGREES 51 MINUTES 42 SECONDS WEST, ALONG THE EAST LINE OF SAID PISTERZI TRACT AND ALONG SAID WEST LINE, A DISTANCE OF 296.34 FEET TO A 5/8" IRON ROD WITH RED PLASTIC CAP FOUND FOR CORNER SAID POINT BEING THE SOUTHEAST CORNER OF SAID PISTERZI TRACT AND THE NORTHEAST CORNER OF A TRACT OF LAND CONVEYED BY DEED TO 4-J STAR INVESTMENTS, INC RECORDED IN COUNTY CLERK'S FILE NO. 96-0090016, REAL PROPERTY RECORDS, COLLIN COUNTY, TEXAS;

THENCE, NORTH 88 DEGREES 36 MINUTES 05 SECONDS WEST, ALONG THE SOUTH LINE OF SAID PISTERZI TRACT AND THE NORTH LINE OF SAID 4-J STAR INVESTMENTS TRACT, A DISTANCE OF 2398.41 FEET TO A 1/2 IRON ROD WITH RED PLASTIC CAP FOUND FOR CORNER, SAID POINT BEING THE SOUTHWEST CORNER OF SAID PISTERZI TRACT AND THE NORTHWEST CORNER OF SAID 4-J STAR INVESTMENTS TRACT AND BEING IN THE EAST LINE OF AFORESAID RASOR TRACT;

THENCE, SOUTH 01 DEGREES 07 MINUTES 50 SECONDS EAST, ALONG THE EAST LINE OF SAID RASOR TRACT AND THE WEST LINE OF SAID 4-J STAR INVESTMENTS TRACT, WITH THE EAST LINE OF AFORESAID FITZHUGH SURVEY, AND WITH THE GENERAL DIRECTION OF SAID BARBED WIRE FENCE UNTIL CROSSING A CREEK AT 230 FEET AND CONTINUING IN ALL A TOTAL DISTANCE OF 725.70 FEET TO BOIS D' ARC FENCE POST AT THE INTERSECTION OF A EAST WEST CROSS FENCE AND THE TERMINATION OF A SOUTH TO NORTH FENCE FOUND FOR CORNER, SAID POINT BEING THE SOUTHWEST CORNER OF SAID 4-J STAR INVESTMENTS, INC. TRACT;

THENCE, SOUTH 01 DEGREES 50 MINUTES 07 SECONDS WEST, CONTINUING WITH SAID EAST LINE OF SURVEY, A DISTANCE OF 1620.95 FEET TO A 1/2" IRON ROD FOUND FOR CORNER, SAID POINT BEING THE NORTHWEST CORNER AFORESAID STOVER TRACT AND BEING AT THE ELL CORNER OF AFORESAID COUNTY ROAD NO. 266;

THENCE, SOUTH 01 DEGREES 56 MINUTES 39 SECONDS WEST, ALONG THE WEST BOUNDARY LINE OF SAID STOVER TRACT, CONTINUING WITH THE EAST LINE OF SAID SURVEY, AND WITH THE CENTERLINE OF SAID COUNTY ROAD, A DISTANCE OF 1666.65 FEET TO THE POINT OF BEGINNING AND CONTAINING 574.959 ACRES OF LAND, MORE OR LESS.

04879 01637

**EXHIBIT "B"**

**Land Subject to Annexation**

All real property lying and being within two miles from any portion of any boundary line outlining the real property described in Exhibit "A" to the Declaration of Covenants, Conditions and Restrictions for Heritage Ranch.

04879 01661

**EXHIBIT "E"**

**The Lots of The Villas of Heritage Ranch**

**Lots 27 through 64, inclusive, of Block Y of Heritage Ranch Addition Phase I, an addition to the Town of Fairview, Collin County, Texas, according to the plat to be recorded in the Map Records of Collin County, Texas.**

04879 01662

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW (COUNTY OF COLLIN) (THE STATE OF TEXAS)  
I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas on

MAR 20 2001

*Helen Starnes*



Filed for Record in:  
Collin County, McKinney TX  
Honorable Helen Starnes  
Collin County Clerk

On Mar 20 2001  
At 12:30pm

Doc/Num : 2001- 0029029

Recording/Type:RS 193.00  
Receipt #: 8715

# RIDDLE & WILLIAMS, P.C.

ATTORNEYS & COUNSELORS

DEAN A. RIDDLE\*  
LANCE E. WILLIAMS  
\*ALSO ADMITTED IN NC & GA

1050 TURTLE CREEK CENTRE  
3811 TURTLE CREEK BOULEVARD  
DALLAS, TEXAS 75219  
TELEPHONE (214) 760-6765  
FACSIMILE (214) 760-6765

DAVID A. SURRETT  
DEANA TUNNELL

July 16, 2002

RECEIVED - CMA  
JUL 17 2002

Mr. George A. d'Hemecourt, III  
U.S. Home Corporation  
13111 N. Central Expressway, Suite 200  
Dallas, Texas 75243

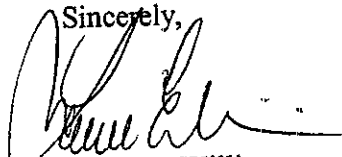
Re: Heritage Ranch  
(Our File No. 4967/6247)

Dear Mr. d'Hemecourt:

Enclosed please find the original of the Supplement to Declaration of Covenants, Conditions and Restrictions for Heritage Ranch (Phase 2A, 2B and 2C) which was recorded on June 18, 2002, in Volume 05192, Page 02717 *et seq.*, of the Deed Records of Collin County, Texas.

Please call me if you have any questions regarding this matter.

Sincerely,



Lance E. Williams

LEW/dlb

Enclosure

✓ cc: Ms. Judy Praytor  
CMA, Inc.  
1800 Preston Park, Suite 101  
Plano, Texas 75093  
(w/enclosure)



05192 02717

2002- 0086960

**SUPPLEMENT**  
**TO**  
**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**  
**FOR**  
**HERITAGE RANCH**

(Phase 2A, 2B and 2C)

STATE OF TEXAS           §  
                                  §     **KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF COLLIN     §

**THIS SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERITAGE RANCH** (this "Supplemental Declaration") is made on the date hereinafter set forth by U.S. Home Development Company (hereinafter referred to as the "Declarant").

**WITNESSETH:**

**WHEREAS**, U.S. Home Corporation prepared and filed an instrument entitled "First Amended and Restated Declaration of Covenants, Conditions and Restrictions for Heritage Ranch" in Volume 4297, Page 2533 of the Deed Records of Collin County, Texas, and re-recorded in Volume 4879, Page 1570 of the Deed Records of Collin County, Texas (the "Declaration"); and

**WHEREAS**, Article XI, Section 11 2(a) of the Declaration authorizes the Declarant to annex additional property to the Properties for so long as the Declarant owns a Lot for development and sale as part of the properties; and

**WHEREAS**, the Declarant desires to annex into the Association the property described on Exhibit "A" attached hereto and incorporated herein by reference (the "Annexed Property"); and

**NOW, THEREFORE**, pursuant to the powers retained by Declarant under the Declaration, the Declarant hereby subjects the property described in Exhibit "A" hereof to the provisions of the Declaration. The Annexed Property shall be sold, transferred, used, conveyed, occupied and mortgaged or otherwise encumbered pursuant to the provisions of the Declaration, which shall run with the title to such Annexed Property and shall be binding upon all persons having any right, title or any interest in the Annexed Property, their respective heirs, legal representatives, successors, successors-in-title and assigns.

**IN WITNESS WHEREOF**, the Declarant has executed this Supplemental Declaration as of the \_\_\_ day of June, 2002.

DECLARANT: U. S. HOME DEVELOPMENT COMPANY

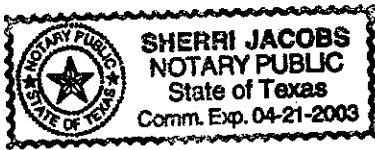
By: George A. d'Hemecourt III  
Title: Division President

**ACKNOWLEDGMENT**

STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

BEFORE ME, a Notary Public in and for the State of Texas, duly authorized to take acknowledgements, personally appeared George d'Hemecourt, Division President of U.S. Home Development Company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this 18 day of June, 2002.



Sherrri Jacobs  
Notary Public in and for  
the State of Texas

**AFTER RECORDING RETURN TO:**  
Riddle & Williams, P.C.  
3811 Turtle Creek Blvd., Suite 1050  
Dallas, Texas 75219

**EXHIBIT A**

1. Being all of Phase 2A of Heritage Ranch, an addition to the Town of Fairview, Collin County, Texas, according to the Plat thereof recorded in Cabinet N, page 880 of the Map Records of Collin County Texas.
2. Being all of Phase 2B of Heritage Ranch, an addition to the Town of Fairview, Collin County, Texas, according to the Plat thereof recorded in Cabinet N, page 878 of the Map Records of Collin County Texas.
3. Being all of Phase 2C of Heritage Ranch, an addition to the Town of Fairview, Collin County, Texas, according to the Plat thereof recorded in Cabinet N, page 882 of the Map Records of Collin County Texas.

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND UNENFORCEABLE UNDER FEDERAL LAW (COUNTY OF COLLIN) (THE STATE OF TEXAS)  
 I hereby certify that this instrument was FILED in the File Number Sequence on the date and the time stamped hereon by me; and was duly RECORDED, in the Official Public Records of Real Property of Collin County, Texas on

JUN 18 2002

*Helen Starnes*



Filed for Record in:  
 Collin County, McKinney TX  
 Honorable Helen Starnes  
 Collin County Clerk

On Jun 18 2002  
 At 12:42pm

Doc/Num : 2002- 0086960  
 Recording/Type:RS 13.00  
 Receipt #: 21751

# RIDDLE & WILLIAMS, P.C.

ATTORNEYS & COUNSELORS

JEAN A. RIDDLE\*  
LANCE E. WILLIAMS  
\*ALSO ADMITTED IN NC & GA

1050 TURTLE CREEK CENTRE  
3811 TURTLE CREEK BOULEVARD  
DALLAS, TEXAS 75219  
TELEPHONE (214) 760-6766  
FACSIMILE (214) 760-6765

OCT 31 2002

DAVID A. SURRETT  
DEANA TUNNELL

October 28, 2002

RECEIVED-CMA

OCT 29 2002

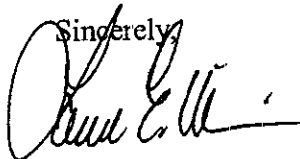
Mr. George A. d'Hemecourt, III  
U.S. Home Corporation  
13111 N. Central Expressway, Suite 200  
Dallas, Texas 75243

Re: Heritage Ranch  
(Our File No. 4967/6247)

Dear Mr. d'Hemecourt:

Enclosed please find the original Supplement to Declaration of Covenants, Conditions and Restrictions for Heritage Ranch (Phase 2D) which was recorded on October 9, 2002, in Volume 05271, Page 04224 *et. seq.*, of the Deed Records of Collin County, Texas.

Please call me if you have any questions regarding this matter.

Sincerely,  
  
Lance E. Williams

LEW/dlb

Enclosure

✓ cc: Ms. Judy Praytor  
CMA, Inc.  
1800 Preston Park, Suite 101  
Plano, Texas 75093  
(w/enclosure)

05271 04224

**SUPPLEMENT  
TO  
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
HERITAGE RANCH**

2002- 0146366

(Phase 2D)

STATE OF TEXAS           §  
                                  §   **KNOW ALL MEN BY THESE PRESENTS:**  
COUNTY OF COLLIN      §

**THIS SUPPLEMENT TO DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERITAGE RANCH** (this "Supplemental Declaration") is made on the date hereinafter set forth by U.S. Home Development Company (hereinafter referred to as the "Declarant").

**WITNESSETH:**

**WHEREAS**, U.S. Home Corporation prepared and filed an instrument entitled "First Amended and Restated Declaration of Covenants, Conditions and Restrictions for Heritage Ranch" in Volume 4297, Page 2533 of the Deed Records of Collin County, Texas, and re-recorded in Volume 4879, Page 1570 of the Deed Records of Collin County, Texas (the "Declaration"); and

**WHEREAS**, Article XI, Section 11.2(a) of the Declaration authorizes the Declarant to annex additional property to the Properties for so long as the Declarant owns a Lot for development and sale as part of the properties; and

**WHEREAS**, the Declarant desires to annex into the Association the property described on Exhibit "A" attached hereto and incorporated herein by reference (the "Annexed Property"); and

**NOW, THEREFORE**, pursuant to the powers retained by Declarant under the Declaration, the Declarant hereby subjects the property described in Exhibit "A" hereof to the provisions of the Declaration. The Annexed Property shall be sold, transferred, used, conveyed, occupied and mortgaged or otherwise encumbered pursuant to the provisions of the Declaration, which shall run with the title to such Annexed Property and shall be binding upon all persons having any right, title or any interest in the Annexed Property, their respective heirs, legal representatives, successors, successors-in-title and assigns.

**IN WITNESS WHEREOF**, the Declarant has executed this Supplemental Declaration as of the \_\_\_ day of August, 2002.

**DECLARANT: U. S. HOME DEVELOPMENT COMPANY**

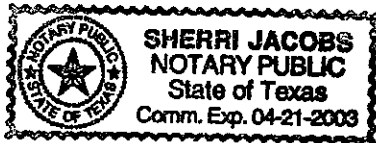
By: George A. d'Hemecourt III  
Title: Authorized Agent

**ACKNOWLEDGMENT**

STATE OF TEXAS §  
  §  
COUNTY OF DALLAS §

BEFORE ME, a Notary Public in and for the State of Texas, duly authorized to take acknowledgements, personally appeared George A. d'Hemecourt, III, Authorized Agent of U.S. Home Development Company, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, in the capacity therein stated and as the act and deed of said corporation.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this \_\_\_ day of August, 2002.



Sherri Jacobs  
Notary Public in and for  
the State of Texas

**AFTER RECORDING RETURN TO:**  
Riddle & Williams, P.C.  
3811 Turtle Creek Blvd., Suite 1050  
Dallas, Texas 75219

05271 04227

ANY PROVISION HEREIN WHICH RESTRICTS THE SALE, RENTAL OR USE OF THE  
DESCRIBED REAL PROPERTY BECAUSE OF COLOR OR RACE IS INVALID AND  
UNENFORCEABLE UNDER FEDERAL LAW  
(THE STATE OF TEXAS) (COUNTY OF COLLIN)  
I hereby certify that this instrument was FILED in the File Number Sequence on the date  
and the time stamped hereon by me; and was duly RECORDED in the Official Public  
Records of Real Property of Collin County, Texas on

OCT 09 2002

*Helen Starnes*



Filed for Record in:  
Collin County, McKinney TX  
Honorable Helen Starnes  
Collin County Clerk

On Oct 09 2002  
At 3:07pm

Doc/Num : 2002- 0146366

Recording/Type:RS 15.00  
Receipt #: 35978