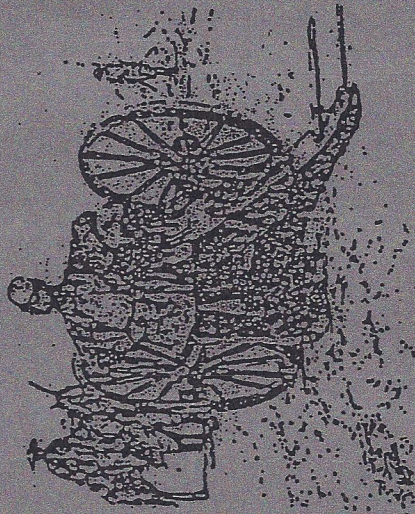


# HERITAGE PATIO HOMES

## Indenatures



REVISED JUNE 2005

REVISION OF  
DECLARATION OF TRUST AND RESTRICTIONS OF  
HERITAGE PATIO HOMES  
AND  
ORIGINALLY DECLARED AS HERITAGE AMENDED PLAT 2

This Declaration (hereinafter sometimes referred to as the "Re-Statement Declaration" or "Declaration") amends and restates in its entirety the original Declaration of Trust and Restrictions of Heritage Patio Homes and Amendments thereto (hereinafter "Original Declaration and Amendments"), all as recorded in the St. Charles County Recorder of Deeds Office as follows:

Document	Book	Pages
Declaration of Trust & Restrictions of Heritage Patio Homes	717	1762-1802
Amendment	1054	1518-1522
Amendment	1216	580

ARTICLE I - STATEMENT OF INTENTION AND TRANSFER OF CONTROL

1.1 Purpose. The purpose of this Re-Statement Declaration is three-fold:

(a.) To consolidate into one instrument the Original Declaration and Amendments as identified hereinabove.

(b.) To effectuate further amendments to the Original Declaration and Amendments as consolidated.

(c.) To provide a common scheme of development, maintenance, use, and control of the land herein described and the improvements constructed thereon.

1.2 Controlling Instrument. As the result of the three-fold purpose as hereinabove set forth, this Re-Statement Declaration shall be the controlling instrument in all respects for the land herein described and the improvements constructed thereon. All differences between this Re-Statement Declaration and the Original Declaration and Amendments are intentional and this Re-Statement Declaration shall control. Further, this Re-Statement Declaration is not intended to be and is not a revocation of the Original Declaration and Amendments requiring the approval of 85% of the Unit Owners and the holders of all first deed of trust as set forth in the Original Declaration and Amendments. If, however, this Re-Statement Declaration shall ever be finally determined by a court of competent jurisdiction to be such a revocation not approved by the requisite majorities or invalid for any other

reason, then the Original Declaration and Amendments shall be deemed to be controlling and fully enforceable and the conveyances, transfers, and other actions undertaken and accomplished pursuant to Section 1.5 of this Article shall be deemed to be void ab initio except to the extent ratified by the Board of Managers.

1.3 Not a Condominium. Heritage Patio Homes (the land described herein and the improvements constructed thereon) is not a condominium, and, therefore, is not subject to or governed by the provisions of Chapter 448 of the Revised Statutes of Missouri (1966) and as thereafter amended.

a. 1.4 Re-Styled Declaration. The Development and every part thereof is held and shall be held, conveyed, devised, leased, rented, encumbered, used, occupied and improved subject to the provisions of this Re-Styled Declaration, each and all of which provisions are hereby declared to be in furtherance of the general plan and scheme of development referred to herein and are further declared to be for the benefit of the entire Development and every part thereof and for the benefit of each owner. All provisions hereof shall be deemed to be covenants running with the land or as equitable servitudes as the case may be, and shall constitute benefits and burdens to the Association, its successors and assigns, and to all parties hereafter owning any interest in the Development.

1.5 Transfer of Control.

(a.) Conveyance of Common Elements. The Board of Managers of Heritage Patio Homes hereby releases, remises, and forever quit claims all of its right, title, and interest in and to the common elements of the Development to the Association, its successors and assigns as such common elements were conveyed to them by quit claim deed recorded in Book 873, Page 134, of the St. Charles County Recorder of Deeds Office.

(b.) Assignment of Personal Property. The Board of Managers of Heritage Patio Homes hereby assigns all right, title, and interest in all checking and savings accounts, insurance policies, books and records of Heritage Patio Homes, and all other personal property of whatsoever kind or nature, whether tangible or intangible, to the Association, its successors, and assigns.

(c.) Delegation of Duties. The Board of Managers of Heritage Patio Homes hereby delegates all rights, powers, and duties under the original Declaration and Amendments to the Association, its successors, and assigns.

(d.) Board of Directors. The initial Board of Directors of the Association shall be the same individuals serving as the Board of Managers of Heritage Patio Homes at the time of the recordation hereof. The initial Board of Directors

of the Association shall serve for the same terms as elected to for the Board of Managers.

ARTICLE II - DEFINITIONS

2.1 Definitions. The terms used herein shall have the following meanings:

2.2 Association "Association" means the Heritage Patio Homes Association, a Not-For-Profit Corporation organized and existing under the laws of the State of Missouri, together with its successors and assigns.

2.3 The Development. The "Development" means that tract of land described on Exhibit "A" recorded in Plat Book 19, Page 89, in the St. Charles County Recorder of Deeds office.

2.4 Common Elements. "Common Elements" shall be all the parts of the Development not included within the unit boundaries.

2.5 Shared Elements. "Shared Elements" means all utility pipes and conduits and other building elements serving more than one Unit.

2.6 Unit. "Unit" means an individual lot together with the improvements constructed thereon including, but not limited to a townhouse structure. Certain Units have garages which are not constructed on the lot on which the townhouse structure which such garage serves is constructed. All garages are shown on plats of Heritage Patio Homes as identified by the designation "Garage Lot", and bear the same lot number as the lot on which the townhouse served by such garage bears. All such lots, together with the garage constructed thereon, shall be conveyed jointly as part of the Unit bearing the same numerical lot designation as such "Garage Lot".

2.7 Owner. "Owner" means any person or other legal entity, at any time owning a Unit. The term "Owner" shall not refer to any mortgagee unless such mortgagee has acquired title pursuant to foreclosure or any proceeding in lieu of foreclosure.

2.8 Mortgage. "Mortgage" means any mortgage, deed of trust, or other security instrument by which a Unit or any part thereof is encumbered excepting a security instrument affecting personal property or chattels.

2.9 Mortgagee. "Mortgagee" means any person named as the Mortgagee or beneficiary under any Mortgage under which the interest of any Owner is encumbered, or any successor to the interest of such person under such Mortgage.

2.10 Master Indenture. "Master Indenture" is the Declaration of Trust and Restrictions of Heritage recorded in Book 707, at Page 23 of the St. Charles County Records.

2.11. Majority of the Unit Owners. "Majority of the Unit Owners" means the owners of more than fifty percent (50%) in the aggregate of Units in the Development. Garage lots shall not be counted as a separate Unit.

2.12 Board of Directors. "Board of Directors" means the Directors of the Heritage Patio Homes Association elected in accordance with the provisions of Article XIV hereof to manage the Development.

2.13 Assessment Share. "Assessment Share" means that part of an assessment payable by an individual Unit Owner which shall be determined by dividing the total assessment by the total number of Units.

2.14 Board of Managers. That group of six persons who serve as trustees of the Heritage Patio Homes, an unincorporated association.

#### ARTICLE III - NATURE AND INCIDENTS OF OWNERSHIP

3.1 Estates of an Owner. The Development is hereby divided into Units each consisting of a fee simple interest in a Unit. Subject to the limitations contained in this Declaration, any owner shall have the non-exclusive right to use and enjoy the Common Elements and the Shared Elements, and shall have the exclusive right to use and enjoy his Unit, subject to the easements and other rights herein reserved to the Association and other Unit Owners.

3.2 Title. Title to a Unit may be held or owned by any entity and in any manner in which title to any other real property may be held or owned in the State of Missouri, including but without limitation, joint tenancy and tenancy in common.

3.3 Inseparability. No part of a Unit may be separated from any other part thereof during the period of ownership prescribed herein, and each Unit and any rights appurtenant thereto shall always be conveyed, devised, encumbered, and otherwise affected only as a complete Unit. Every gift, devise, bequest, transfer, encumbrance, conveyance or other disposition of a Unit or any part thereof shall be construed to be a gift, devise, bequest, transfer, encumbrance or conveyance, respectively, of the entire Unit, together with all appurtenant rights created by law or by this Declaration.

3.4 The Common Elements. Fee simple title to the Common Elements has previously been conveyed by the developer to the Board of Managers by separate conveyance of record. By this instrument, the Board of Managers is conveying the common elements to the Association, its successors and assigns. The title to each part of the common elements has been vested in the Association, its successors, and assigns under this instrument and under the Original Declaration and Amendments for a period of

Seventy-Five (75) Years from the 20th day of November 1975. At the expiration of such initial seventy-five (75) year period, fee simple title to such land shall then vest in the record owners as tenants in common, but the rights of such tenants in common shall be only appurtenant to and in conjunction with the ownership of a Unit, and any conveyance or change in ownership of any Unit shall carry with it ownership in such Common Elements so that none of the Owners of Units shall have such rights of ownership so as to permit conveyance to be made of an interest in the Common Elements except as an incident to ownership of a Unit; and in the event any conveyance is made of any Unit without any mention of ownership in such Common Elements, it shall be conclusively presumed that the conveyance was intended to and did intend to include the conveyance of such interests in such Common Elements.

(a.) In the event the Majority of Owners shall desire to extend the term of the ownership of such Common Elements, by the Association beyond the initial seventy-five (75) year period specified above, such Owners may, by written instrument recorded in the St. Charles County Recorder of Deeds office, extend the initial term of ownership for additional terms of twenty-five (25) years each, provided that such written instruments are recorded prior to the expiration of the original term or extended term, and the ownership by the Association of such Common Elements heretofore described shall thereupon continue for additional periods of twenty-five (25) years from the date of expiration of the initial or extended term, as the case may be. Upon the expiration of a term in which no written instrument has been recorded extending such term of ownership, the title to such Common Elements shall vest in the record Owners as provided in this paragraph.

(b.) In the event that title to the Common Elements shall at any time become vested in the Owners of Units, no owner may bring any action for partition thereof and the acceptance of a conveyance of a Unit by any Owner shall constitute a waiver of the part of such Owner and his heirs, representatives, successors and assigns of any right to maintain any action for partition of the Common Elements.

3.5 Easement across Common Elements. Each Unit Owner is hereby granted an easement of ingress and egress across the Common Elements of the Development.

3.6 Easements for Encroachments. If any part of the Common Elements encroaches or shall hereafter encroach upon a Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. If any part of a Unit encroaches or shall hereafter encroach upon the Common Elements, or upon an adjoining Unit or Units, an easement for such encroachment and for the maintenance of the same shall and does exist. Encroachments referred to herein include, but are not necessarily limited to, encroachments caused by error in the original construction of any Building, by error in a Plat, by

settling, rising, or shifting of the earth, or by changes in a position caused by repair or reconstruction of the Unit or any part thereof.

3.7 Easements of Access for Repair, Maintenance and Emergencies. Each Unit Owner shall have an easement in common with the Owners of other Units to use any pipes, wires, ducts, cables, conduits, public utility lines, structural components and other building elements located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the Owners of other Units to use any pipes, wires, ducts, cables, conduits, public utility lines, structural components and building elements located in such Unit and serving other Units. The Association, its appointees, employees or agents, shall have the right of access to each Unit to inspect same and remove violations therefrom and to inspect, maintain, repair or replace any Shared Elements contained wholly or partially therein. All property shall be subject to a perpetual easement to the Association, its appointees, employees or agents, for ingress and egress to perform its obligations and duties required by this Declaration and By-Laws. Should it be necessary to enter a Unit to inspect and remove a violation or to inspect, maintain, repair or replace any Shared Element the appointees, employees or agents of the Association shall be entitled to entrance by exhibiting to the Unit Owner or occupant an order from the Association. Such entry shall be made with as little inconvenience to the occupant as practicable, but Unit Owner and/or occupant shall not unreasonably interfere with such necessary entry. Forced entry, deemed necessary by the Association, shall not subject the Association, its appointees, employees or agents to trespass, but any damage to the Unit as a result of forced entry or as a result of any repair of a Shared Element from within the Unit shall be repaired by the Association as part of the common expense. In the event any Unit owner or occupant shall fail to provide access to the Unit as herein provided, the Association may (in addition to exercising other lawful remedies) obtain an Order of Court for such access, and the costs and reasonable attorney fees shall be taxed against the Unit Owner or occupant. In the event any Unit air-conditioning compressor or other mechanical equipment is located in any part of the Common Elements, the affected Unit Owner and his authorized agents or employees shall have a perpetual easement to use the site thereof for such purpose and for the maintenance and repair of such air-conditioning compressor or other mechanical equipment.

3.8 Utility Easements. Easements may be shown on plats of land hereafter recorded in the St. Charles County Recorder of Deeds office, which tracts of land are made subject to this Declaration by express instrument hereafter to be recorded, for sanitary and storm sewers, and electricity, gas, water and telephones, and for all other public utility purposes including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, drainage, gas mains, telephone

wires and equipment and electrical conduits and wires over, under, along and on the portions of the Common Elements.

3.9 Party Wall Easement. Any wall between two Units is hereby declared to be a party wall for the joint use and benefit of the Owners of Units on both sides thereof and both such Owners are granted the right and easement to use such party wall for the purpose of maintaining the structural integrity of each Unit and for repairing and maintaining each such Unit and any gas, electric, water, sewer lines or other appurtenances thereto. No Owner shall make any use of a party wall which would lessen its strength or efficiency or impair any rights of the adjoining Unit Owner thereto. Subject to the rights and obligations of the Association to maintain the Shared Elements as herein provided, any Unit Owner who shall make use of a party wall for the maintenance or repair of his Unit or any appurtenance thereto shall have the obligation to repair and replace such party wall in as good condition as it was prior to such repair or maintenance work.

#### ARTICLE IV - MAINTENANCE AND ALTERATION OF UNITS

4.1 The Association shall have the sole and exclusive right and duty to maintain, repair and replace:

(a.) The outside walls of the Building of which the Unit is a part and all fixtures on the exterior thereof, load bearing columns and load bearing walls, the roof and roof trusses, and any footings and the foundation slab, and

(b.) All shared elements.

(c.) Notwithstanding the above provisions, the Association shall not be obligated to inspect for and eliminate termites, or to maintain, repair or replace any part of a unit which has been damaged or caused to deteriorate by the negligent act or omission of a Unit Owner or an occupant of a Unit or by an agent, employee, licensee or invitee of a Unit Owner or occupant. If, however, the Association elects to repair or maintain or replace any part of a Unit so caused to be damaged or deteriorated as defined in this sub-paragraph, the cost thereof shall be charged by the Association to the Unit Owner as a special assessment.

4.2 The responsibility of a Unit Owner shall be:

(a.) To maintain, repair and replace at his expense all portions of his Unit including the furnace, air-conditioning unit, hot water heater, conduits, ducts, plumbing, wiring, doors, garage doors, windows, and any other appurtenances furnished directly for the benefit of an individual Unit, except the portions to be maintained, repaired and replaced by the Association.

(b.) Not to paint or otherwise decorate or change the appearance of any portion of the exterior of a Unit; provided however, that a Unit Owner shall paint, maintain, repair and replace, if necessary, any structural or decorative gridwork, lathing, or other covering over the patio of a Unit.

(c.) To maintain any flower beds or landscaping installed on any such Owner's lot except such landscaping as may from time to time be installed by the Association.

(d.) Not to plant or install any landscaping other than on his own lot without the express written consent of the Association and, if such consent is given, thereafter to maintain such landscaping or other planting materials.

(e.) To inspect for and eliminate termites.

(f.) To promptly report to the Association any defect or need for repair, which is the responsibility of the Association.

4.3 Neither a Unit Owner nor the Association shall make any alterations in the portions of a Unit or building which are to be maintained by the Association, or remove any portion thereof, or make any additions thereto, or do anything which would jeopardize the safety or soundness of the building, or impair any easement, without first obtaining approval in writing of Owners of all Units in which such work is to be done and the approval of the Association. A copy of plans for all of such work shall be filed with the Association prior to the start of such work and, if required by law or ordinance, such plans shall be prepared by an architect licensed to practice in this State.

#### ARTICLE V - MECHANIC'S LIEN RIGHTS

5.1 Mechanic's Liens. No labor performed or materials furnished for use in connection with any Unit with the consent or at the request of an Owner or his agent or subcontractor shall create any right to file a statement of mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same (in which event the consent of such other Unit Owner's mortgagee shall also be required) or against any interest in the Common Elements. Each Owner shall indemnify and hold harmless each of the other Owners from and against liability or loss arising from the claim of any lien against the Unit, or any part thereof, of any other Owner for labor performed or for materials furnished at the request of such indemnifying Owner. At the written request of any Owner the Association shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, and obtaining a discharge of the lien. Such collection shall be made by a special assessment.

#### ARTICLE VI - RESTRICTIONS

6.1 Residential. Each Unit shall be used for single family residential purposes only, and no trade or business of any kind may be carried on therein.

6.2 Use of Certain Areas. There shall be no obstruction of the Common Elements, nor shall anything be kept or stored on any part of the Common Elements without the prior written consent of the Association, except as specifically provided herein. Nothing shall be altered on, constructed in, or removed from the Common Elements, except upon the prior written consent of the Association. No clothes, laundry or other articles shall be hung, exposed or stored in any portion of the Common Elements or on or about the balconies, porches, lanais, patios, terraces, windows or exteriors of buildings; except that garden furniture may be stored on porches, balconies, lanais, patios and terraces.

6.3 Prohibition of Damage and Certain Activities. Nothing shall be done or kept in any Unit or in the Common Elements or any part thereof which would result in the cancellation of the insurance on the Unit or any part thereof, or increase the rate of insurance on the Unit or any part thereof over what the Association, but for such activity, would pay, without the prior written consent of the Association. Nothing shall be done or kept in any Unit or in the Common Elements: or any part thereof which would be in violation of any statute, rule, ordinance, regulation, permit or other validly imposed requirement of any governmental body. No damage to, or waste of, the Common Elements or any part thereof shall be committed by any Owner or any invitee of any Owner, and each Owner shall indemnify and hold the Association and the other Owners harmless against all loss resulting from any such damage or waste caused by him or his invitees. No noxious, destructive or offensive activity shall be carried on in any Unit or in the Common Elements or any part thereof, nor shall anything be done therein which may be or may become an annoyance or nuisance to any other Owner or to any person at any time lawfully residing in the Unit.

6.4 Appearance of Unit. Each Unit Owner shall be responsible on behalf of himself and the Unit occupants to keep his Unit in a clean and orderly condition.

6.5 Animals. No animals, reptiles, birds, rabbits, livestock, fowl or poultry of any kind shall be kept, raised or bred in any portion of the property, except that one dog, or one cat, or one of any other household animals or two birds may be kept, as a pet, in a Unit subject to approval by the Association. There shall be no structure for such animal at any time unless prior written approval is received from the Association. Fish maintained in a household aquarium shall not be deemed to be "animals" as defined herein.

6.6 Awnings and Antennas. No awnings, canopies, birdhouses, shutters, or radio or television antennas shall be affixed to or placed upon an exterior wall or roof of any building or Unit without prior written consent of the Association.

6.7 Rules and Regulations. No owner shall violate the rules and regulations for the use of the Units and of the Common Elements as adopted from time to time by the Association.

6.8 Structural Alterations. No structural alterations to any Unit shall be made by any Owner without prior written consent of the Association.

6.9 Signs and Commercial Activities. No signs, including "For Rent" or "For Sale" signs, billboards, objects of unsightly appearance, or nuisances shall be erected, placed or permitted to remain on any Unit or part of any building, nor shall any Unit be used in any way or for any purpose which may endanger the health or unreasonably disturb other Owners of the Unit. No commercial activities of any kind shall be conducted in any part of the Unit except activities intended primarily to serve residents thereof; provided, however, that the foregoing restrictions shall not apply to the Association in furtherance of its powers and purposes.

6.10 Vehicles. No trailer, camper, motorcycle, boat, boat trailer, recreational van or vehicle, truck or other motor vehicle, except an automobile, shall be stored or parked overnight in any parking lot, street, driveway or carport or in any other place or location within the Development, except an enclosed garage. No work, labor, repair or maintenance shall be done or performed in, on, about, or upon any motor vehicle, boat, machinery or equipment except within an enclosed garage or a Unit; provided, however, that this restriction shall not impair the right of the Association to repair and maintain the various Units and other improvements situated within the Development. All abandoned, all vehicles not bearing a current Missouri registration plate, and all inoperative vehicles shall be removed from the land within ten days following their abandonment or becoming inoperative or failure to bear a current Missouri registration plate.

6.11 Waste Disposal. Except temporarily during construction by any authorized builder, no lot or any part of the Common Elements shall be used or maintained as a dumping ground for rubbish, trash, garbage, or other waste shall be kept in sanitary containers, which shall be stored at all times within a garage or other enclosed structure except on such days that any public agency or private contractor is scheduled to pick up the contents of such containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

6.12 Restrictions of Master Indenture. All restrictions set forth in the Master Indenture of Heritage are made applicable to the Development.

ARTICLE VII - INSURANCE

7.1 Insurance. Insurance policies upon the Development covering the items described in paragraph 7.2 of this Article shall be purchased by the Association for the benefit of the Association and the Unit Owners and their mortgagees as their interests may appear. Provision shall be made for the issuance of certificates of mortgage endorsements to the mortgagees of Unit Owners.

7.2 Types of Insurance. Insurance shall cover the following:

(a.) All buildings and improvements upon the Land and all personal property included in the Common Elements in an amount equal to the maximum insurable replacement value, excluding foundation and excavation costs, as determined annually by the Association. Such coverage shall afford protection against loss or damage by fire and other hazards covered by a standard extended coverage endorsement, and such other risks as are customarily covered with respect to buildings similar to the buildings on the land, such as earthquake damage, vandalism and malicious mischief;

(b.) Public liability in such amounts and with such coverage as shall be required by the Association, including but not limited to hired automobile and non-owned automobile coverages, and with cross liability endorsement to cover liabilities of the Unit Owners as a group to a Unit Owner;

(c.) Workmen's compensation as required by law;

(d.) Such other insurance as the Association shall determine from time to time to be desirable.

7.3 Payment of Insurance Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association as a common expense.

7.4 Insurance Claims. Each Unit Owner by acceptance and recording of an instrument of conveyance of a Unit shall be conclusively deemed to have assigned to the Association his insurable interest in the Unit owned by him. The Association is hereby irrevocably appointed agent for each Unit Owner to adjust all claims arising under insurance policies purchased by the Association, and to execute and deliver releases upon the payment of claims.

7.5 Owner's Responsibility. Insurance coverage on the furnishings initially placed in the Unit by the Developer, except to the extent that the Association pursuant to Section 7.2 hereof elects to arrange for casualty insurance, and, regardless of the Association election, insurance coverage against loss from theft on all personal property, and insurance coverage on items of personal property placed in the Unit by Owner, and casualty and public liability insurance coverage within each individual Unit and for activities of the Owner, and casualty and public liability insurance coverage within each individual Unit and for activities of the Owner, not acting by the Association, with respect to the Common Elements shall be the responsibility of the respective Owners.

7.6 Insurance Proceeds. The Association shall receive the proceeds of any casualty insurance payments received under policies obtained and maintained pursuant to this Article. To the extent that reconstruction is required herein, the proceeds shall be used for such purpose. To the extent that reconstruction is not required herein and there is a determination that the Unit shall not be rebuilt, the proceeds shall be distributed in the same manner herein provided in the event of sale of obsolete Units.

7.7 Owner's Own Insurance. Notwithstanding the provisions hereof, each Owner may obtain insurance at his own expense providing coverage upon his Unit, his personal property, for his personal liability, and covering such other risks as he may deem appropriate, but each such policy shall provide that it does not diminish the insurance carrier's coverage for liability arising under insurance policies which the Association obtains pursuant to this Article. All such insurance of the Owner's Unit shall waive the insurance company's right of subrogation against the Association, the other Owners, and the servants, agents, guests of any of them, if such insurance can be obtained in the

normal practice without additional premium charge for the waiver of rights of subrogation.

## ARTICLE VIII - DAMAGE OF DESTRUCTION

8.1 Association as Attorney in Fact. All of the Owners irrevocably constitute and appoint the Association their true and lawful attorney in fact in their name, place and stead for the purpose of dealing with the Development upon its damage or destruction as hereinafter provided. Acceptance by any grantee of a deed from any Owner shall constitute appointment of the Association as such attorney in fact as herein provided.

8.2 General Authority of Association. As attorney in fact, the Association shall have full power and complete authorization, right and power to make, execute and deliver any proof of loss, release, contract, deed, or other instrument with respect to the interest of a Unit Owner which may be necessary or appropriate to exercise the powers herein granted, subject, however, to the rights of any mortgagee that may be granted under any first Deed of Trust or insurance policy. Repair and reconstruction of the improvements as used in succeeding Sections means restoring any damaged building to substantially the same condition in which it existed prior to damage.

8.3 Estimate of Costs. Immediately after a casualty insured under one or more policies of insurance carried by the Association, the Association shall take whatever action may be appropriate to obtain whatever payment is due under such policies of insurance and further to obtain reliable and detailed estimates of the cost to rebuild or repair so as to place the damaged property in a condition as good as that before the casualty, subject to the provisions of Section 8.7 below.

8.4 Assessment for Additional Funds. If the proceeds for insurance are not sufficient to defray the estimated cost of reconstruction and repair by the Association, assessment shall be made against the Unit Owners who own the damaged property, and against all Unit Owners in the case of damage to the Common Elements, in sufficient amounts to provide funds to pay the estimated costs. Additional assessments may be made at any time during, or following the completion of, reconstruction. Such assessments against Unit Owners for damage to units shall be in proportion to the cost of reconstruction and repair of their respective Units as determined by the Association. Such assessments on account of damage to Common Elements shall be in proportion to the Unit Owner's assessment share as heretofore defined.

8.5 Repair or Reconstruction. As soon as practicable after receiving the proceeds of insurance or if in the judgment of the Association further delay is necessary to obtain the sums due from assessments made against Unit Owners, then after the receipt of such assessments necessary in the judgment of the



Association, the Association shall pursue to completion the repair or reconstruction of the part of the Unit damaged or destroyed. No consent or other action by any Unit Owner shall be necessary in connection therewith. Such repair or reconstruction shall be in accordance with the original plans and specifications of the Unit or may be in accordance with any other plans and specifications the Association may approve, provided that in such latter event the number of cubic feet and the number of square feet of any Unit may not vary by more than five percent (5%) from the number of cubic feet and the number of square feet for such Unit as originally constructed pursuant to such original plans and specifications, and the location of the building shall be substantially the same as prior to damage or destruction.

8.6 Application of Funds for Reconstruction. Regardless of any provision in any deed of trust to the contrary, the proceeds of any insurance claim shall be applied first to the costs of repair or reconstruction and shall be the initial funds disbursed for such purpose. If there is any balance of insurance proceeds remaining after such repair or reconstruction, such balance shall become part of the general funds of the Development and expended as part of the annual budget subject, however, to the rights of any mortgage under any first Deed of Trust. If there is any balance of funds obtained from the Owners of Units, such balance shall be refunded to such Unit Owners in proportion to the amount of their original contribution, subject to the rights of any mortgage under any first Deed of Trust.

8.7 Decision Not to Rebuild. If the Association determines not to repair or reconstruct the damage to any building which has been damaged or destroyed then, with the approval of the majority of the Unit Owners (as defined by Article II, paragraph 2.11), such building shall be razed and the proceeds of insurance distributed in the same manner herein provided in the event of sale of obsolete Units.

8.8 Failure of Owner to Pay Assessments. If any Owner or Owners of Units fail to pay when due any assessment made against them under the provisions of this Article, the Association may advance from the general funds of the Development such amount as may be necessary to repair or reconstruct such Units, and further, in such event, may proceed to enforce such assessments in any manner provided in Article XI below, including foreclosure.

#### ARTICLE IX - PARKING AND VEHICLES

9.1 General. The Association may make such reasonable rules and regulations, including assignment of parking spaces, from time to time as it, in its discretion, may determine in order to curtail unreasonable parking, abandonment of vehicles, storage of vehicles, extensive repairing of vehicles, parking of trucks, commercial vehicles, boats, trailers, campers, recreational vehicles, motorcycles, motor bikes or other vehicles

which the Association may, in its discretion, determine objectionable, and other abuses of like nature.

9.2 Parking Spaces. Parking spaces shall remain unallocated until or unless the Association shall determine in its discretion that it is in the best interests of the Unit Owners of the Development to allocate such spaces, in which event the Association shall allocate the spaces to the Unit Owners in such manner as the Association shall deem fair and equitable. Such allocations, if made, may be modified by the Association from time to time.

9.3 Abandoned or Inoperative Vehicles. If any vehicle is abandoned or is inoperative for more than ten days or fails to bear a current Missouri registration plate for more than ten days, the Association shall have the right to remove and dispose of it in any manner which it determines and shall have the right to enter upon any Unit and to use any available means to move such vehicle for such purpose. The Association shall not be liable to the owner of such vehicle or to other Unit Owners for taking such action in good faith and shall not be accountable thereto for the value of such vehicle or any money received from the disposition of such vehicle. The cost of removing such vehicle may be assessed against the offending Unit Owner or his tenants or invitees. It shall be conclusively presumed that: (1) any vehicle not moved under its own power for ten consecutive days is inoperative and, (2) the Unit Owner of such vehicle is responsible for its removal.

#### ARTICLE X - POWERS AND DUTIES OF THE ASSOCIATION

10.1 General. The property shall be administered by the Heritage Patio Homes Association (herein defined and referred to as the "Association"), elected by the Unit Owners in the manner provided in Article XIV. The Association shall have general responsibility to manage and administer the development, prepare the annual budget for submission and approval by the Unit Owners at the annual meeting, in accordance with 13.2.a of this Declaration, provide for and collect monthly and other assessments and arrange and direct the management of the parcel, all as hereinafter more particularly provided. It shall promulgate rules and regulations relating to the use of the Common Elements and facilities, including any recreation facilities, park and any other similar facilities and may limit the use of the same to Unit Owners or Lessees and their families, guests, invitees and servants of either. No person shall use the Common Elements in any manner not in accordance with such rules and regulations. Specifically, and not by way of limitation, the Association shall have power to do all of the following:

10.2 Employment of Manager. To employ a manager and/or a managing agent to carry out the administrative duties given to the Association and pay such manager and/or such managing agent reasonable compensation, if approved in accordance with paragraph

13.2.a of this Declaration by the Unit Owners in the annual meeting or any special meeting. (See 13.2.b and 13.2.c of this Declaration.)

10.3 Expenses. To estimate the cost of the expense of administration and of maintenance and repair of all Common Elements and Shared Elements (whether owned by the Association or the Unit Owners) including the cost of insurance, outside audit, and accounting, legal services, taxes, any special amenities, all water used, sewer charges, trash and garbage pickup and removal, all salaries and fees for employees/contractors, including the manager and/or managing agent, and all other amounts needed in the performance of the duties herein assigned. After determining the total amount needed annually for all such purposes, such amounts shall be paid in the manner hereinafter provided.

10.4 Maintenance and Records. To provide for maintenance, repair and replacement of the Common Elements (whether owned by the Association or the Unit Owners) and Shared Elements, to determine the method of approving payment vouchers, a manner of assessing and collecting from the Unit Owners their respective shares of the estimated expenses and all other expenses lawfully agreed upon at a meeting of the Unit Owners called and conducted as required under Article XIII hereof, conduct a yearly audit, keep detailed, accurate records in chronological order of the receipts and expenditures affecting the Development, specifying and itemizing the maintenance and repair expenses of the Common Elements and any other expenses incurred. Such records shall be available for an examination by Unit Owners at the regular monthly business meeting of the Association, as well as the Annual Meeting of the Unit Owners.

10.5 Unit Owner Assessment Records. The Association shall furnish, upon ten days' written request of any Unit Owner, a statement of that Owner's account setting forth the amount of any unpaid assessments or other charges.

10.6 Employees. To employ and retain persons/contractors necessary for the maintenance, repair and replacement of any part of the Development that the Association is obligated to maintain, repair or replace.

10.7 Easements. To establish, grant and dedicate easements (including easements for public utilities and private sanitary sewer lines) in addition to any shown on the plat, in, over or through the Common Elements, whether for the benefit of the Unit Owners or not; and further to release or abandon any easement granted to the Association or appurtenant to the Common Elements. In connection herewith, the Association is hereby constituted the Attorney in Fact for the Unit Owners to execute documents necessary to carry out the terms of this provision.

10.8 Declaration and Plat. To execute and file any amendment to this Declaration or plat or both which have been adopted by the Unit Owners as set forth in Article XVIII hereof.

10.9 Pet Permits and Fines. To issue pet permits for the keeping of animals permitted under Section 6.5 hereof, provided the Association determines that such animals will not be a disturbance or in any way be or become a nuisance, and to revoke any permit so issued and assess fines should the Association conclude that keeping the animal in or about the Unit will not be in the best interests of the Development. The decision of the Association to issue or revoke a permit and/or assess fines shall be absolute.

10.10 Exterior Improvements by Unit Owners. To issue permits to Unit Owners to make exterior improvements, permanent or temporary decorations or plantings. The decision of approval or disapproval of the Association shall be absolute.

10.11 Sign Permits. To issue permits to Unit Owners for the installation of "For Rent" and "For Sale" signs of such size, duration, location and number per building as the Association shall establish by rule to apply equally to all Unit Owners in order to provide for adequate identification of such Units as may, from time to time, be for sale or for rent to the public without unnecessarily detracting from the appearance of the property.

10.12 Rules and Regulations. To establish traffic regulations and administrative rules and regulations governing the operation and use of the Common Elements (whether owned by the Association or the Unit Owners).

10.13 Personal Property for Common Use. To acquire and hold for the use and benefit of all of the Owners tangible and intangible personal property and to dispose of the same by sale or otherwise, in which event the beneficial interest in any such property shall be deemed to be owned by the Unit Owners in the same proportion as their respective interests in the Common Elements. Such interest shall not be transferable except with the transfer of a Unit. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such property without any reference thereto. Each Owner may use such property in accordance with the purpose for which it is intended, without hindering or encroaching upon the lawful rights of other Owners. The transfer of title to a Unit under foreclosure shall entitle the purchaser to the interest in such personal property associated with the foreclosed Unit.

10.14 Miscellaneous Services. To obtain and pay for the services of personnel as the Association shall determine to be necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any person or entity with whom

fixed, established and collected from time to time in the manner provided in this Article.

11.2 Amount of Total Annual Assessments. The total annual assessments against all Units shall be based upon advance estimates of cash requirements by the Association to provide for the payment of all estimated expenses growing out of or connected with all of the following: Maintenance and operation of the Common Elements and Shared Elements; the expenses of management; taxes and special assessments; premiums for all insurance which the Association is required or permitted to maintain pursuant hereto; common lighting and heating; trash collection; repairs and maintenance; wages for employees/contractors of the Association; legal and accounting fees; charges for electricity, gas, water, and sewer service attributable to the Development or otherwise not directly chargeable to any particular Unit; any deficit remaining from the previous period; the creation of a reasonable contingency reserve, surplus or sinking fund; the cost of any shared services of personnel as provided in Section 10.15 above; the cost of maintaining any driveways and parking lots; and any other expense and liability which may be incurred by the Association for the benefit of the Owners under or by reason of this Declaration.

11.3 Apportionment of Annual Assessments. The Assessment Share of each Unit shall be as defined in Section 2.13 of Article II.

11.4 Notice of Annual Assessments and Time for Payment Thereof.

(a.) Annual assessments shall be made on a January 1 through December 31 basis. The Association shall give written notice to each Owner as to the amount of the annual assessment with respect to his Unit on or before December 1 of each year for the next year commencing on January 1. Such assessment shall be due and payable in one payment on or before January 1, or in installments of one twelfth (1/12th) of the total annual assessment on the first of each month throughout the year. Each annual assessment or, if paid in installments, each payment shall bear a late charge of five dollars (\$5.00) per month from date it becomes due and payable.

(b.) After sixty (60) days, any late assessment may be placed in the hands of a collection agency, hired by the Association, at the delinquent Unit Owner's expense.

(c.) Failure of the Association to give timely notice of any assessment as provided herein shall not affect the liability of the Owner of any Unit for such assessment, but the date when payment shall become due in such case shall be deferred to a date thirty (30) days after such notice shall have been given.

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or which it contracts. The Association may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration. The Association may arrange with others to furnish lighting, heating, water, trash collection, sewer service and other common services to the Development. The Association is to make every effort to obtain at least three bids on all major jobs for which it contracts.

10.15 Sharing of Facilities and Services. To enter into any leases or contracts, either oral or in writing, with the Heritage Residents Association, the Heritage Garden Condominium Association, or any other person or legal entity regarding the sharing or use of and payment of expenses for any recreational facilities, storage buildings, maintenance equipment, or employees, on such terms and conditions as the Association shall in its sole discretion deem proper from time to time.

10.16 Transfer of Property to and from Association. Any conveyance of land or any interest therein or of any personal or intangible property may be made to the Association and, if so, shall have the same legal effect as if such real estate, property, or other rights were made directly to the Unit Owners. In the event of the sale, grant, pledge, assignment or other transfer of any part of the Common Elements or any other property or interest therein owned by the Unit Owners, the Association shall have the right in its name to execute any deed, deed of trust, easement, bill of sale or other instrument to effect such transfer and the execution of same by the Association shall have the same effect as if such instrument were executed by all Unit Owners of the Development, and such purchasers shall have no obligation to look beyond the acts of the Association.

10.17 Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration or By-Law, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any right or privilege.

#### ARTICLE XI - ASSESSMENTS

11.1 Agreement to Pay Assessment. Each Owner of any Unit by the acceptance of a deed therefor, whether or not it be so expressed in the deed, shall be deemed to covenant and agree with each other and with the Association to pay to the Association annual assessments made by the Association for the purposes provided in this Declaration, and special assessments for capital improvements and other matters as provided in this Declaration. Each and every annual or special assessment shall be approved, in accordance with paragraph 13.2.a of this Declaration, by the Unit Owners in the annual meeting or any special meeting (see 13.2.b and 13.2.c of this Declaration). Such assessments shall be

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shall have been recorded shall be deemed to have consented that such liens shall be inferior to future liens or assessments provided herein, whether or not such consent be specifically set forth in the instrument creating such liens.

To evidence a lien for sums assessed pursuant to this Article, the Association may prepare a written notice of lien setting forth the amount of the assessment, the date due, the amount remaining unpaid, the name of the Owner of the Unit and a description of the Unit. Such a notice shall be signed by the Association and shall be recorded in the Office of the Recorder of Deeds of St. Charles County, Missouri. No notice of lien shall be recorded until there is a delinquency in payment of the assessment. The Association shall have a power of sale to foreclose the lien in the same manner as deeds of trust are foreclosed under a power of sale in accordance with the Revised Statutes of Missouri. After the power of sale is exercised, the holder of the Trustee's Deed may evict the former unit owner or any occupant from possession of the unit pursuant to Chapter 534 of the Revised Statutes of Missouri. In any such foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, the costs and expenses of filing the notice of lien, and all reasonable attorneys' fees. All such costs and expenses shall be secured by the lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Unit which shall become due during the period of foreclosure. The Association, with the approval of the Unit Owners in accordance with paragraph 13.2.a, shall have the right and power to bid at the foreclosure sale or other legal sale and to acquire, hold, convey, lease, rent, encumber, use and otherwise deal with the same as the Owner thereof.

A release of notice of lien shall be executed by the Association and recorded in the Office of the Recorder of Deeds of St. Charles County, Missouri, upon payment of all sums secured by a lien which has been made subject to a recorded notice of lien.

Any encumbrancer holding a lien on a Unit may pay, but shall not be required to pay, any amounts secured by the lien created by this Section, and upon such payment encumbrancer shall be subrogated to all rights of the Association with respect to such lien, including priority.

The Association shall report to any encumbrancer of a Unit any unpaid assessments remaining unpaid for longer than ninety (90) days after the same shall have become due; provided, however, that such encumbrancer shall first have furnished to the Association written notice of such encumbrance.

11.9 Personal Obligation of Owner. The amount of any annual or special assessment against any Unit shall be the personal obligation of the Owner thereof to the Association. Suit to recover a money judgment for such personal obligation

11.5 Special Assessments for Capital Improvements. In addition to the annual assessment authorized by this Article, the Association may from time to time make special assessments for the cost of any construction or reconstruction, unexpected repair or replacement of the development or any part thereof, or for any other expense incurred or to be incurred as provided in this Declaration. This Section shall not be construed as an independent source of authority for the Association to incur expenses, but shall be construed to prescribe the manner of assessing for expenses authorized by other Sections hereof. Any amounts assessed pursuant hereto shall be apportioned among all Owners in accordance with their Assessment Share as heretofore defined. Notice in writing of the amount of such special assessments and the time for payment thereof shall be given promptly to the Owners, and no payment shall be due less than thirty (30) days after such notice shall have been given. A special assessment shall bear interest at the rate of twelve percent (12%) per annum from the date it becomes due and payable if not paid within thirty (30) days after such date.

11.6 Special Assessments Against Individual Unit Owners. If the Association finds that any Unit Owner has failed to comply with the covenants and conditions of this instrument or of any rule or regulation promulgated by the Association or has otherwise caused damage to the development or any Unit or any part thereof, it shall have the right, after written notice to the Unit Owner or Unit Owners affected thereby and a hearing at which such Unit Owner or Owners shall have the right to appear, to make a special assessment against a particular Unit Owner or Unit Owners on account of such breach or damage.

11.7 Attorney's Fees. In the event the Association shall bring suit against any Unit Owner for a violation of any of the provisions hereof or for the performance of any provision hereby by a Unit Owner, the cost of such suit and a reasonable attorney's fee, if such suit is successful, shall be assessed by the Association against the Unit Owner or Owners affected thereby.

11.8 Lien for Assessments. All sums assessed to any Unit pursuant to this Article, together with interest thereon as provided herein, shall be secured by a Lien on such Unit in favor of the Association. Such Lien shall be superior to all other liens and encumbrances on such Unit except only for:

- (a.) Valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; and
- (b.) A lien for all sums unpaid on any first deed of trust duly recorded in the St. Charles County Records, including the periodic principal balance and interest and other sums to be made pursuant to such deed of trust and secured by the lien thereof in accordance with the terms of such instrument. All other lienors acquiring liens on any Unit after this Declaration

other members of the Board of Directors. In the event that judgment is rendered in such proceeding against the Association, the Association shall satisfy such judgment from the assets of the Development, but the Board of Directors shall not be personally liable for the payment thereof. Association shall have the right to pro rate and assess any costs so incurred against those Unit Owners that gave rise to the cause of action, violation and judgment. In the event the Unit Owners do not satisfy the special assessment, the Association may proceed against the Unit Owners under Section 11.0 hereof.

#### ARTICLE XIII - VOTING AND MEETING OF UNIT OWNERS

13.1 Voting Rights. Only one person shall be entitled to vote for the Owners of each Unit and such person shall be known as the "voting member". Should more than one person own a Unit, the voting member shall be designated by all owners in writing and filed with the Association. Should the same person or persons own more than one Unit, the same voting member may be designated for each Unit, and, in this event, he or she shall have one vote for each such Unit. A corporation, if an Owner, shall act through its president or through such other officer or director as the Corporation designates in writing. A Unit Owner more than sixty (60) days past due in monthly or special assessments will be considered delinquent, and all voting rights will be suspended. Membership may be reinstated by paying all back dues and assessments.

#### 13.2 Meeting:

(a.) Quorum: The majority (as defined in Section 2.11 hereof) of all voting members shall constitute a quorum for any meeting. Any action may be taken at any meeting at which a quorum is present upon the affirmative vote of the majority (as defined in Section 2.11) of the members present. If, however, a quorum is not present, any action in accordance with this Declaration may be taken at any meeting upon an affirmative vote of two-thirds (2/3rds) of the voting members present.

(b.) Annual Meeting: The annual meeting of the members shall be held between the dates of September 12th and October 22nd of each year. All members shall be given thirty (30) days written notice by the Association of such meetings, such notices being sufficient if deposited in the U.S. Mail first class postage prepaid, to the address listed for the Unit Owner in the St. Charles County Assessor's office.

(c.) Special Meeting. Special meetings of voting members may be called at any time for the purpose of considering any matter requiring the approval of the members or for any other reasonable purpose. The majority of the Board of Directors or two-thirds (2/3rds) of the voting members may call any such meeting upon giving ten (10) days written notice in the same manner as provided for notice for annual meetings.

shall be maintainable by the Association without foreclosing or waiving the lien securing the same. No Owner may avoid or diminish any personal obligation by waiver of the use and enjoyment of any of the Common Elements or by abandonment of his Unit.

11.10 Acceleration of Installments. If the Association determines that any annual or special assessment shall be paid in installments and any Unit Owner shall fail to pay any installment thereof when due, the Association may at its option declare the remaining balance of such assessment due and payable at once and may further maintain suit for such entire remaining balance and file a lien therefor as if the Unit Owner had failed to pay each and every installment when due.

11.11 Personal Liability of Purchaser for Assessments. Subject to the provisions of Section 11.9 a purchaser of a Unit shall be jointly and severally liable with the seller for all unpaid assessments against the Unit up to the time of the grant or conveyance, without prejudice to the purchaser's right to recover from the seller the amount paid by the purchaser for such assessments.

#### ARTICLE XII - ASSOCIATION MAY ACT FOR OWNERS-ACTIONS, SERVICE OF PROCESS

12.1 Association May Hold Title. The Association, with approval of two-thirds (2/3rds) of the unit owners eligible to vote, is authorized and empowered to borrow money, and to lease, mortgage, pledge or otherwise grant a security interest in any part of the Common Elements in order to secure any such loan of money and to construct any structures, buildings, recreational facilities of any type, or any other improvements from time to time on the Common Elements as the Association shall deem necessary or convenient.

12.2 Association May Sue. Without limiting the rights of any Unit Owner, actions may be brought by the Association in the name of the Association on behalf of two or more of the Unit Owners, as their respective interests may appear, with respect to any cause of action relating to the Common Elements or more than one Unit.

12.3 Board May Act as Agent for Process. In the event of any violation of any ordinances affecting the Common Elements, service of notice thereof or service of process in any prosecution for ordinance violation may be made on any member of the Board of Directors of the Association in lieu of naming or serving all Unit Owners having an interest in the Common Elements, and such proceedings shall bind all Unit Owners. Service of such process on any three members of the Board of Directors of the Association shall be conclusively deemed to be valid service on the Association. A member of the Board of Directors served with a summons shall immediately notify the

ARTICLE XIV - BOARD OF DIRECTORS

14.1 Number, Term and Election: A Board of Directors of six (6) persons shall be elected with staggered terms, in the following manner: Two Directors shall be elected annually to each serve three (3) year terms. The members of the Board of Directors shall serve without compensation. Each Unit Owner (whether joint, individual or corporate) shall be entitled to one (1) vote.

14.2 Officers of the Board of Directors. The officers of the Board of Directors shall consist of a president, a secretary and a treasurer, each of whom shall be a member of the Board in good standing, and elected by that Board. The president shall preside over all meetings of the Board and of the voting members. The secretary shall keep minutes of all meetings of the Board and of the voting members and, in general, perform all duties incident to the office of secretary. The treasurer shall keep all financial records and books of account, and shall submit an audited yearly report to the Unit Owners and file same with the Secretary. Two members of the Board shall sign each check issued for non-budgeted items. The Board shall purchase a fidelity bond for the treasurer or for any other person or persons handling funds belonging to Unit Owners. The premium for such bond shall be a common expense, apportioned and collected in the same manner as other common expenses. A quorum for the Board shall be comprised of four (4) members. A majority of those present shall be required to adopt any resolution except that in the case of a modification or imposition of any assessment not less than four (4) members of the Board shall be required to affirmatively approve such resolution. Meetings shall be held at regular intervals at the time and place established by the Board, and special meetings may be called on five (5) days' written notice by any two members or by unanimous waiver thereof.

14.3 Removal of Member from Board of Directors. Should any member of the Board cease to be a resident Unit Owner, attend less than seventy-five percent (75%) of a year's Board of Directors meetings, or if he shall resign, die or suffer other disability, his term of office shall thereupon automatically terminate, and the remaining members of the Board shall appoint a replacement to fill the unexpired term of such member until the next Annual Unit Owners' meeting. A member may be removed for cause by a majority vote (as defined in Section 2.11) of the Unit Owners.

XV - HERITAGE RESIDENTS ASSOCIATION BOARD OF DIRECTORS

At each annual meeting of the unit owners, a unit owner shall be elected to serve as a member of the Board of Directors of the Heritage Residents Association. The term of office shall commence in April of the next year for a one-year term. The purpose and function of this position is to represent and

implement the goals and objectives of the Association in the actions and undertakings of the Heritage Residents Association. The unit owner elected shall report regularly to the Board of Directors of the Association all actions taken or contemplated by the Heritage Residents Association and shall cast votes at the meetings of the Heritage Residents Association as directed by the Board of Directors of the Association.

XVI - SALE OF OBSOLETE UNITS

The Owners representing an aggregate ownership interest of eighty-five percent (85%) or more of the Units may agree that the Units are obsolete and that the Development should be sold. Such an agreement must have the unanimous approval of every first Mortgagee of record at the time such agreement is made. In such instance the Association shall forthwith record a notice setting forth such fact or facts, and upon the recording of such notice by the Association, the Development shall be sold by the Association as attorney in fact for all of the Owners free and clear of the provisions contained in this Declaration as it may from time to time be amended or supplemented. The sale proceeds shall be apportioned among the Owners in proportion to their assessment share as heretofore defined, and such apportioned proceeds shall be paid into separate accounts, each such account representing one Unit. Each such account shall remain in the name of the Association, and shall be further identified by the Unit designation and the name of the Owner. From each separate account the Association, as attorney in fact, shall use and disburse the total amount of such accounts without contribution from one account to the other, first to payment of valid tax and special assessment liens on the Unit in favor of any governmental assessing authority; next to the holder of any first mortgage lien on the Unit; next to payment of assessments made pursuant to this Declaration; next to other lienors in the order of priority of their liens; and the balance remaining, if any, to each respective Owner.

ARTICLE XVII - REMEDIES FOR BREACH OF COVENANTS, RESTRICTIONS AND REGULATIONS

17.1 Abatement and Enjoyment. The violation of any restriction or condition or regulation adopted by the Association of the breach of any covenant or provision herein contained shall give the Association the right, in addition to the rights set forth in the next succeeding section:

(a.) To enter upon the property upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Association or its agents shall not thereby be deemed guilty in any manner of trespass, or

19.2 Notice to Mortgagees. Upon written request to the Association the holder of any duly recorded mortgage or deed of trust against any Unit shall thereafter be given copies of any and all notices permitted or required by this Declaration to be given to the Unit Owner or Owners whose Unit Ownership is subject to such mortgage or deed of trust.

19.3 Manner of Giving Notice. Notices required to be given to the Association shall be delivered to any member of the Board of Directors of the Association by certified mail addressed to such member or officer at his Unit, return receipt requested.

19.4 Notice in Event of Death. Notices required to be given any devisee or personal representative of a deceased Unit Owner must be delivered by certified mail to such party at his or its address appearing in the records of the Court wherein the estate of such deceased Unit Owner is being administered.

19.5 Acceptance by Unit Owner. Each Unit Owner, by the acceptance of a deed of conveyance or each subsequent purchaser, accepts the same subject to all restrictions, conditions, covenants, reservations, options, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration or to which this Declaration is subject, and further by the acceptance of such deed shall be deemed to have appointed the Association as such Unit Owner's attorney in fact to take all actions and to execute all documents and instruments which said Association is empowered to take or execute under the terms hereof. All rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in said property and shall inure to the benefit of such Unit Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

19.6 No Waiver. No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

19.7 Saving Clause. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration or any part of the same shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

19.8 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first-class residential development. The use of personal pronouns shall be construed to apply to masculine, feminine or

(b.) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

17.2 Foreclosure. If any Unit Owner (either by his own conduct or by the conduct of any other occupant of his Unit) shall violate any of the covenants or restrictions or provisions of this Declaration or the Regulations adopted by the Association and such violation shall continue for thirty (30) days after notice in writing from the Association or shall occur repeatedly during any thirty (30) day period after written notice or request to cure such violations from the Association, then the Association shall have the power to foreclose the Ownership interest of such Unit Owner as provided under the laws of the State of Missouri for deeds of trust with a power of sale. After the power of sale is exercised, the holder of the Trustee's Deed may evict the former unit owner or any occupant from possession of the unit pursuant to Chapter 534 of the Revised Statutes of Missouri. Reasonable attorneys' fees and all other expenses of the proceeding, and all such items shall be taxed against the defaulting Owner. Any balance of proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens shall be paid to the Unit Owner. Upon the confirmation of such sale, the purchaser thereof shall thereupon be entitled to a deed to Ownership of the Unit and to immediate possession of the Unit sold, and may apply to the Court for a writ of execution for the purpose of acquiring such possession.

17.3 Attorneys Fees. In the event the Association shall bring suit against any Unit Owner for a violation of any of the provision hereof, the costs of suit and reasonable attorneys' fees will be taxed as costs against the Unit Owner upon the Association prevailing.

#### ARTICLE XVIII - REVOCATION OR AMENDMENT TO DECLARATION

18.1 Amendment of Unit Owners. This Declaration may be amended by an instrument duly recorded and executed by at least sixty percent (60%) of the Unit Owners, but such amendment shall not affect the rights of any mortgagee vested prior thereto.

18.2 Revocation. This Declaration may be revoked by an instrument in writing duly recorded and executed by the Owners of eighty-five percent (85%) or more of the Units and the holders of all first deeds of trust encumbering those Units.

#### ARTICLE XIX - GENERAL PROVISIONS

19.1 Captions. The captions of the various Articles and sections are for purposes of reference only and are not deemed to have any substantive effect.

neuter gender as the context may require. Should any provision of this instrument be deemed to violate the Rule Against Perpetuities, then such provisions shall not be stricken but shall be deemed to continue in force and effect for the longest time permitted under Missouri law or for the life or lives in being plus twenty-one years and ten months thereafter. If any provision is deemed to be invalid, then the elimination of such provision shall not affect the remaining provisions.

19.9 Bonds. Before any Unit Owner shall become a member of and serve on the Board of Directors of the Association, he shall be able to be bonded. The Board of Directors of the Association shall procure a blanket fidelity bond on themselves individually and collectively for the benefit of all Unit Owners in the sum of at least Fifty Thousand Dollars (\$50,000.00). The bond shall be written only by a bonding company approved to write fidelity bonds for Executors and Administrators by the St. Charles County Probate Court. The cost of premiums for such blanket bond shall be paid out of the common funds of the Development as a general charge and shall not be borne by the individual members of the Board of Directors.

19.10 Voting by Joint Tenants. If joint Unit Owners fail to designate a voting member under Section 13.1 above, whenever any consent, approval, vote, proxy or other action (whether written or oral) of the Owners is required by the terms of this Declaration, such consent, approval, vote, proxy or other action may be made or given by any one of two or more joint tenants regardless of the type of joint tenants.

#### ARTICLE XX - CONDEMNATION.

20.1 Authority of Association. In the event any corporation or public agency or authority having the power of eminent domain desires to acquire any Unit or Units or part or all of the Shared Elements or Common Elements, the Association is hereby irrevocably constituted and appointed by the Owners as their true and lawful attorney in fact in their name, place and stead to do all of the following:

- (a.) To negotiate the sale thereof in lieu of condemnation.
- (b.) To deliver any warranty deed or other instrument of conveyance.
- (c.) To execute all agreements, instruments, and documents necessary or advisable in connection therewith.
- (d.) To defend any such action and to prosecute a claim for damages therefor as provided by law.
- (e.) To effect settlement of any award or judgment that may be entered therefor.

therefor. (f.) To acknowledge satisfaction of judgment

(g.) To withdraw the amount of any award and to execute a receipt therefor.

20.2 To Whom Award Payable. The proceeds of any settlement or award pursuant to actual or threatened condemnation shall be made payable solely to the Association.

20.3 Holding Proceeds of Award. The Association shall hold the proceeds of any condemnation award, whether made by commissioners appointed by law or by a jury, in a separate savings account until a final judgment is entered in such condemnation action; provided, however, that the Association may in its discretion apportion to a Unit Owner or Owners, subject to the prior written consent of each such Unit Owner's first mortgagee, such part thereof as the Association in its discretion determines necessary to avoid hardship to such Owners in which event such Owners shall indemnify and hold harmless the Association, to the extent of any payment so made to them, for the repayment of any part of the award to the condemning authority if such repayment is later required.

20.4 Distribution of Award or Settlement. The proceeds of any settlement or final judgment made pursuant to, threatened or actual condemnation shall be expended or distributed by the Association in the same manner as is provided in Article VIII for the proceeds of insurance claims and in connection therewith the Association shall have all of the following powers:

- (a.) To decide not to rebuild as provided in Section 8.7 above.
- (b.) To reconstruct any improvements sold or taken pursuant to condemnation in the same manner as provided in Sections 8.2 and 8.6 above.

20.5 Failure of Owner to Pay Assessments. If any Owner or Owners of Units fail to pay when due any assessment made against them under the provisions of this Article, the Association may advance from the general funds of the Development such amounts as may be necessary to reconstruct the Common Elements or Units, and further, in such event, may proceed to enforce such assessments in any manner provided in Article XI above, including foreclosure.



IN WITNESS WHEREOF, The Board of Managers of Heritage Patio Homes, an unincorporated Association, has executed this Declaration this 11th day of December 1989.

HERITAGE PATIO HOME BOARD OF MANAGERS

- (Signed) ROBERT E. DILL, President
- (Signed) FRANK M. WILSON, Vice President
- (Signed) T. DONALD MOORE, Secretary
- (Signed) MARJORIE R. ALLEN, Treasurer
- BARRY A. BRINER, Asst. Treasurer
- (Signed) CHARLES L. BRADDOCK, Insurance

9-08-04  
AMENDMENT TO  
DECLARATION OF TRUST AND RESTRICTIONS OF  
HERITAGE PATIO HOMES

THIS AMENDMENT to the Declaration of Trust and Restrictions of Heritage Patio Homes is made this 16 day of MARCH, 2004 by the Heritage Patio Homes Association ("Association").

WITNESSETH:

WHEREAS, Heritage Patio Homes (the "Community") was created by virtue of the "Declaration of Trust and Restrictions of Heritage Patio Homes," as recorded in Book 717, Page 1762, as amended by instruments recorded in Book 1054, Page 1518 and in Book 1218, Page 580, all of the records of St. Charles County, Missouri, as may be further amended ("Declaration"); and

WHEREAS, the real property comprising the Community and subject to the Declaration is more particularly described in Exhibit "A" attached to the Declaration, and depicted on the Plat recorded in Plat Book 19, Page 89 of the records of St. Charles County, Missouri, as may be amended, and

WHEREAS, the Community is also subject to the Declaration of Trust and Restrictions of Heritage as recorded in Book 707, Page 23 of the records of St. Charles County, Missouri ("Master Indenture"); and

WHEREAS, Section 18.1 of the Declaration authorizes amendment of the Declaration by an instrument executed by at least sixty percent (60%) of Unit Owners; and

WHEREAS, the Owners as members of the Association desire and intend to amend the Declaration to promote the residential character of the Community and to foster owner occupancy and reduce the number of leased Units by restricting leasing of Units conveyed after the effective Date of this Amendment, as more particularly set forth herein below.

NOW THEREFORE, the Declaration is amended as follows:

A. Section 6.12, relating to leasing of Units, is deleted in its entirety and a new Section 6.12, relating to the same subject, is adopted in lieu thereof, to read as follows:

"6.12 Restrictions on Leasing. Purpose. The Association deems it to be in the best interests to preserve the Community to consist of Units owned by Owner-occupants. Accordingly, the purpose of this provision is to foster Owner-occupancy and thereby improve stability among residents, inhibit transiency and safeguard the value of investment, by prohibiting future sales of Units to investor-Owners after the Effective Date. Any Owner who owns his Unit on the Effective Date will continue to have the right to lease his Unit, subject to certain regulations on leasing contained in subsection (b) of this Section.

“(a) Leasing of Units. The provisions of this Section shall be effective on the date sixty (60) days after the recording date of this amendment (the “Effective Date”).”

“(1) No Person who acquires title to a Unit on or after the Effective Date, regardless of the manner in which title may be acquired (excluding a mortgage holder by foreclosure or deed in lieu), shall lease his Unit. For the purposes hereof, a Unit shall not be deemed as leased if it is occupied by parents of the Owner or by the beneficiary of a family trust if the Unit is owned by such trust. The records of the St. Charles County Recorder of Deeds shall be conclusive in determining the Owner of a Unit.

“(2) Any contract for the purchase of a Unit shall be exempt from this subsection (a) if the acceptance date of said contract is prior to the Effective Date.

“(3) Nothing in this subsection (a) shall be construed to impair the right of any Owner on the Effective Date to lease his Unit after the Effective Date, and to continue to enjoy such right so long as he is the Owner of said Unit, subject to the regulations contained in subsection (b) of this Section.

“(b) Regulations on Leases. Any lease agreement permitted under this Section after the Effective Date shall be in writing and, whether or not expressly set forth in the agreement, shall be deemed to include the following provisions:

“(1) the lease and tenant shall be subject to the provisions of this Declaration, By-Laws and Association rules and regulations, and the Master Indenture (“Governing Documents”),

“(2) any violation of the Governing Documents shall be deemed a default of the lease,

“(3) the Owner shall have ultimate responsibility for the tenant’s compliance with the Governing Documents,

“(4) the lease shall have a minimum initial term of twelve (12) months,

“(5) no Unit shall be leased for transient or hotel purposes,

“(6) not less than the entire Unit shall be leased,

“(7) the Owner appoints the Association, acting through the Board, as his/her attorney-in-fact to enforce any violation by the tenant, except for nonpayment of rent,

“(8) the Owner shall furnish a copy of the lease and the names and relationship of all tenants, and such other information as may be reasonable and requested, to the Board at least fifteen (15) days prior to the commencement date of the lease, and the Board shall have the right to review the lease to determine compliance with this Section and other applicable provisions of the Governing Documents, and

“(9) the Owner shall furnish a complete copy of the Governing Documents to the tenant and afford the tenant a reasonable opportunity to cancel the lease after receipt of the Governing Documents, and the Owner shall give written notice to the Board certifying compliance with this provision.

“(c) Waiver. Upon written application by an Owner, the Board may waive any provision of this Section for a reasonable period of time in the event of unforeseen circumstances, hardship, or other good cause shown by the Owner. Any such waiver shall be set forth in writing and signed by the Owner and the Board.

“(d) Local Government Inspection, Occupancy Permit. Any change of occupancy of a Unit in connection with a sale or lease must comply with inspections and other applicable ordinances and codes of local government. A copy of any permit required by local government shall be furnished to the Board prior to such change in occupancy.

“(e) Administrative Charges. The Board is authorized to adopt reasonable rules, including reasonable charges for administration, inspections relating to change in occupancy, and other reasonable administrative charges, to implement the provisions of this Section.

“(f) No Time-Sharing. No Unit may be conveyed pursuant to a time-sharing plan.

“(g) Remedies. In the event of any violation of this Section, the Association shall be entitled to any appropriate relief and remedies under this Declaration, against the Owner and/or tenant, including but not limited to termination of the lease and eviction of the tenant, and recovery of attorney’s fees and costs incurred, at the Owner’s expense.”

B. The President and Secretary of the Association are authorized to execute and record this Amendment upon its adoption by the Owners and, by their signatures below, do certify that this Amendment has been duly approved by the Owners as provided in Section 18.1 of the Declaration.

C. This Amendment shall be recorded in the records of the Office of Recorder of Deeds, St. Charles County, Missouri, and shall be applicable to events and circumstances occurring after the Effective Date set forth herein above.

IN WITNESS WHEREOF, the Heritage Patio Homes Association, acting by and through its duly authorized officers, has executed this Amendment on the day and year first above written.

HERITAGE PATIO HOMES ASSOCIATION,  
a Missouri nonprofit corporation

Paul Hoff  
President

By:

Attest:

Barbara J. Perry  
Secretary

STATE OF MISSOURI )  
                                  ) SS  
COUNTY OF ST. CHARLES )

On this 18th day of MARCH, 2005, before me appeared PAUL HERBERT to me personally known, who, being by me duly sworn, did say that he/she is the President of Heritage Patio Homes Association, a Missouri nonprofit corporation which has no seal, that said instrument was signed on behalf of said corporation, that said person acknowledged said instrument to be the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

Nancy Hoff  
Notary Public

My Commission Expires: 3-18-06

