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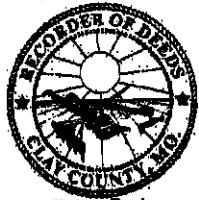
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Katee Porter
Recorder of Deeds

12th March 2020

DECLARATION OF COVENANTS,

RESTRICTIONS,

EASEMENTS, CHARGES, ASSESSMENTS AND

LIENS FOR ESTATES AT THE RANCH

CLAY COUNTY, MISSOURI

Gravatur
* Grantee

See Exhibit A

Legal Description

RE- Eric Craig
106 W Main St.
Smithville, MO 64089

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**DECLARATION OF COVENANTS, RESTRICTIONS,
EASEMENTS, CHARGES, ASSESSMENTS AND
LIENS FOR ESTATES AT THE RANCH**

THIS DECLARATION is made this 12th day of March, 2020, by HHS RANCH DEVELOPMENT, LLC, a Missouri limited liability company, (hereinafter "Developer").

WHEREAS, the Developer is the Owner of certain land described in **Exhibit A (page 52 hereof)**; and

WHEREAS, the Developer desires to create thereon a planned residential community of high quality to be known as, "ESTATES AT THE RANCH", devoted to single family residential use; and

WHEREAS, the Developer desires to provide for the preservation of the values and amenities in said community and for the maintenance of the entrance, fencing and including any improvements located thereon; and, to this end, desires to subject the real property to the covenants, restrictions, and easements hereinafter set forth, each and all of which are for the benefit of said property and each owner thereof, and shall apply to, and bind the Owners thereof and any heirs, assigns and successors in interest; and

WHEREAS, the Developer has deemed it desirable, for the efficient preservation of the values and amenities, of said community, to create an agency to which should be delegated and assigned the power of maintaining, administrating and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter created; and

WHEREAS, the Developer will incorporate under the laws of the State of Missouri, a not-for-profit Missouri corporation for the purpose of exercising the functions herein described, such corporation to be known as "Estates at The Ranch Homes Association, Inc.", or such other similar name, as shall be available for use under Missouri law.

NOW, THEREFORE, the Developer hereby declares that the land described in Exhibit A shall be held, sold, used and conveyed subject to the following covenants, restrictions, easements, charges and liens, all of which are for the purpose of promoting the common good and general welfare of all Residents, Members and Owners and thereby enhancing and protecting the value, desirability and attractiveness of such land. These covenants, restrictions, easements, charges and liens shall run with such land and with the title to such land and shall be binding on all parties having or acquiring any right, title or interest in such land or any part thereof, subject to the limitations herein provided, and shall inure to the benefit of each Owner, his or its heirs, grantees, distributes, personal representatives, successors and assigns, the Association, each Resident, and the Developer.

ARTICLE I

Definitions

The following terms, when used in this Declaration, or in any supplemental declaration made effective against the Property according to law, shall have the following meanings (except as otherwise expressly provided or unless the context otherwise requires):

1.01 **Assessable Property.** “Assessable Property” shall mean and refer to the Property, together with all permanent structural improvements thereon, except such part or parts thereof as may from time to time constitute “Nonassessable Property.” In no event shall land owned by the Developer be deemed Assessable Property.

1.02 **Assessments.** The term “Assessments” shall have the meaning specified in Article III and shall include Annual Assessments, Special Assessments, User Fees, and all other charges as such terms are defined in Article III.

1.03 **Association.** “Association” shall mean and refer to the Estates at The Ranch Homes Association, Inc., a not-for-profit Missouri corporation, (or a similarly named corporation), to be concurrently or hereafter established, and its successors and assigns.

1.04 **Association Board.** “Association Board” shall mean and refer to the Board of Directors of the Association.

1.05 **Common Property.** “Common Property” shall mean and refer to the improved or unimproved real property, together with any Structures and personal property located thereon, in which the Association owns or holds an ownership or easement interest (or in which Developer otherwise makes available for use by Owners, by easement or otherwise) or which is, or may be, available for the common use, benefit or enjoyment of the Owners (including any landscaping, “Stone, Log, Wood Fencing, Decorative Street Lighting, Pillars and Community Mailbox”, easements described below, monument sign easements otherwise reserved), as such areas may be designated from time to time, without limitation, by the Developer or the Board.

- a) Such interest or interests may include, without limitation, estates in fee, easements, leaseholds or licenses. Without limiting the foregoing, the Community Property may include all, (if any), islands, median strips, landscaping berms and monument signs/sites, irrigation systems on Common Property, green spaces, landscaped areas, decorative street lighting/sites, wood fencing/sites, pillars/sites, community mailbox/site, dams and storm water detention facilities.
- b) Developer intends to install decorative Stone and Log Pillars at entrance, Wood Fencing and Pillars along the road frontage of 144th Street, Decorative Street Lighting and a Community Mailbox.
- c) Such Stone, Log, Pillars, Wood Fencing, Decorative Street Lighting and Community Mailbox Structures shall be installed in easements (on Lots) created on the Lots so affected by the same.
- d) Such Stone, Log, Pillars, Wood Fencing, Decorative Street Lighting and Community Mailbox Structures, and the easements upon which same are to be situated, shall be deemed Common Property, notwithstanding, that fee simple title to the Lots (on which such Structures are located) will be vested in the Owners of the Lots on which the Stone and Log Entrance, Pillars, Wood Fencing, Decorative Street Lighting and Community Mailbox Structures are constructed. The Owners of such Lots understand, and agree, that their ownership of such Lots is subject to the perpetual easement for the erection, maintenance and repair of the Stone, Log, Pillars, Wood Fencing, Decorative Street Lighting and Community Mailbox by the Association.

1.06 Completed Unit. “Completed Unit” shall mean and refer to a living Unit upon which construction is completed and which has been, or is, in fact, occupied.

1.07 DRC. “DRC” shall mean and refer to the Design Review Committee which shall have the duties and functions specified in Article VII hereof.

1.08 Declaration. “Declaration” shall mean and refer to this Declaration of Covenants, Restrictions, Easements, Charges, Assessments and Liens, as the same may from time to time be supplemented or amended in the manner prescribed herein.

1.09 Deed. “Deed” shall mean and refer to a deed, assignment or other recordable instrument conveying the fee simple title to a Lot or a recorded land sale contract, contract for deed or similar instrument which requires the vendee to make periodic payments towards the purchase price for the purpose of eventually obtaining the fee simple title to a Lot.

1.10 Developer. “Developer” shall mean and refer to HHS Ranch Development, LLC, a Missouri limited liability company, and its successors and assigns.

1.11 Development Guidelines. “Development Guidelines” shall mean and refer to the rules, regulations and policy statements adopted, promulgated, revised and amended by the Developer and enforced by the DRC pursuant to Article VII of this declaration.

1.12 Development Period. “Development Period” shall mean and refer to the period of time commencing upon the execution date hereof and terminating upon the date that all lots are considered Completed Units and occupied by an Owner or terminating upon the date that Developer, in Developer’s sole discretion, ends the Development Period by written notice to the Board, whichever shall occur first.

1.13 Development Plan. “Development Plan” shall mean and refer to Developer’s plans for the development of Estates at The Ranch which plans may from time to time be amended, in Developer’s sole discretion.. As of the date hereof, Developer contemplates residential use.

1.14 Director. “Director” shall mean and refer to a director of the Association Board.

1.15 Easement Area. “Easement Area” shall mean that real property, or portion of real property, described as an easement on the Plat, plats or maps filed, or to be filed, for record by the Developer in accordance with the Development Plan, and from time to time by recorded instrument, reserved for the easement purposes set forth in such instruments and as generally described in Article VIII hereof and including access easement areas.

1.16 Living Unit. “Living Unit” shall mean and refer to any Structure or portion of a Structure situated upon any Lot designed and intended for use and occupancy as a residence by a single person or a family.

1.17 Lot. “Lot” shall mean and refer to any plot or parcel of land shown on the Plat or plats or subdivision map of any part of the Property or any other lot or parcel of land constituting part of the Property described in a Deed from the Developer or any subsequent Owner, which Deed has been recorded in the Recorder of Deeds Office of Clay County, Missouri (with the exception of Common Property) together with all permanent structural improvements thereon.

1.18 **Member.** “Member” shall mean and refer to every person or entity holding membership in the Association, as set forth in Article II.

1.19 **Nonassessable Property.** “Nonassessable Property” shall mean and refer to all land designated “Private Open Space”, or with a similar common property designation upon the Plat, or any map or plats of any part of the Property.

1.20 **Nonresidential Property.** “Nonresidential Property” shall mean and refer to any Property or building or any portion of a building which has a nonresidential use, and which is situated on Assessable Property. Structures constructed with Living Units, such as swimming pools, shall be considered “residential.”

1.21 **Note.** “Note” shall mean and refer to all notes, bonds, debentures or other evidences of indebtedness issued and sold by the Association.

1.22 **Note Holder.** “Note Holder” shall mean and refer to the holder of any Note and all trustees and other representatives of any such holder.

1.23 **Owner.** “Owner” shall mean and refer to any person or entity holding record title to the fee interest of any Lot. “Owner” shall include a contract for deed seller but shall exclude a person having an interest merely as security for the performance of an obligation.

1.24 **Plat.** “Plat” shall mean and refer to that certain Estates at The Ranch Final Plat recorded the 6th day of March, 2020 in the office of Recorder of Deeds for Clay County, Missouri, together with all other plats recorded in respect of the Property.

1.25 **Property.** “Property” shall mean and refer to that certain real property described more particularly in Exhibit “A” attached hereto and made a part hereof.

1.26 **Resident.** “Resident” shall mean and refer to any person who:

- a) Owns a Living Unit within the Property and has manifested his present intent to reside in that dwelling even though he may be temporarily absent; or
- b) Is actually living within the Property in the same household with a person described in either Section 1.26(a) or in Section 1.26(c), whether or not he is a member of the immediate family of such person; or
- c) Is a Residential Tenant.

1.27 **Residential Area.** “Residential Area” shall mean and refer to Lots 1-14 on Estates at The Ranch Final Plat.

1.28 **Residential Tenant.** “Residential Tenant” shall mean any person who occupies a Living Unit as the named “lessee” under a written lease from an Owner and which lease has been filed with the Association and which lessee has been registered with the Association as herein provided and required.

1.29 **Restriction.** “Restriction” shall mean and refer to any covenant, restriction, easement, charge, assessment, lien or other obligation created or imposed by this Declaration.

1.30 Right of Action. "Right of Action" shall have the meaning specified in Article XII hereof.

1.31 Structure. "Structure" shall mean and refer to:

- a) Any thing or object, trees and landscaping, the placement, size, shape, color, height and quality of which upon any Lot may affect, in the opinion of the DRC, the appearance of such Lot, including by way of illustration and not limitation, any building or part thereof, garage, porch, greenhouse or pool house, covered or uncovered patio, swimming pool, fence, paving, wall, fence, hedge, sign, appurtenance, or any temporary or permanent improvement to such Lot; and
- b) Any excavation, fill, ditch, diversion dam, retention basin or other thing or device which affects or alters the natural flow of waters from, through, under or across any Lot or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot; and
- c) Any change in the grade of any Lot of more than six (6) inches.

ARTICLE II

Estates at The Ranch Association

2.01 Powers and Duties of the Association. The Association is organized to operate for the promotion of the common good and general welfare of the Residents, Members and Owners and consistent therewith, to acquire, own, improve, maintain, preserve, convey and control the Common Property, to administer and to enforce all covenants, restrictions, easements and charges contained in the Declaration and all liens created herein, and otherwise to promote the health, safety and general welfare of the people of said community, and to do and perform any and all acts which may be necessary or proper for or incidental to the exercise of any of the express powers (but not intended as affirmative obligations unless so stated) of the Association, including by way of illustration and not obligation, unless so stated, or limitation:

- a) Assessments. The Association may levy Assessments on the Owners and enforce payment of such Assessments, all in accordance with the provisions of the Declaration set forth in Article III.
- b) Right of Enforcement. The Association shall also have the power and authority from time to time in its own name, on its own behalf or on behalf of any Owner, or Owners, who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of the Declaration and to enforce, by mandatory or prohibitive injunction, or otherwise, all of the provisions hereof, or to pursue its Right of Action as provided in Article XII herein.
- c) Programs. The Association may plan and implement community programs.
- d) Common Property. The Association may (but shall not be required to) plan, design, acquire, improve, construct on, lease and equip the Common Property and Easement

Areas with, by way of example and not limitation or affirmative obligation, open space, trees, flowers, landscaping, berms, other landscaped areas such as islands and medians, monument/monument signs for the Property or any part thereof, public sculpture, decorative street lighting, community mailbox and facilities deemed necessary or desirable by the Association (collectively, the “Common Property Improvements” which may also be referred to herein as the Common Property). The Association may maintain, repair and replace the Common Property Improvements, all as shall be determined to be necessary by the Association.

- e) Easements and Rights-of-Way. The Association may grant and convey easements and rights-of-way in, on, over or under the Common Property and the Property for the purposes of constructing, erecting, operating or maintaining thereon, therein or thereunder:
 - (i) Overhead or underground lines, cables, wires, conduits or other devices for the transmission of electricity and for lighting, heating, power, telephone, community television, street lighting, radio and audio antenna facilities and other purposes.
 - (ii) Public sewers, storm water drains and pipes, water systems, sprinkling systems, water, heating and gas lines or pipes.
 - (iii) Any similar public or quasi-public improvements or facilities as may be considered necessary for the common good of said community.
- f) Employment of Agents. The Association may employ the services of any person or corporation as manager (herein, “Manager”), together with other employees, to, as may be directed and delegated by the Association Board, manage, conduct and perform the business, obligations and duties of the Association and may enter into contracts for such purpose.
- g) Insurance. The Association shall obtain and keep in force such policies of insurance and surety bonds, as are necessary to adequately insure and protect the Common Property and the operations thereon and of the Association and as deemed by the Association Board to be necessary and appropriate.
- h) Landscape Maintenance. The Association may care for, spray, trim, protect, provide irrigation for, and replant trees (if any) on or adjacent to the street, and on islands located therein, on the Common Property and Easement Areas (including monument sign easements located on any Owner’s Lot) and on any Lot, if necessary (as determined by the Association); and shall care for, irrigate, protect and replant any shrubbery, reseed any grass and replace any sod on the Common Property and Easement Areas, where the maintenance thereof is for the general welfare and benefit of the Owners (including enhancement or preservation of Lot values), as determined in the sole judgment of the Developer and/or Association.
- i) Maintenance of Vacant Property. The Association may mow, care for, maintain and remove rubbish from vacant or unimproved Property (except those Lots on which construction has commenced), and do any other things necessary or desirable in the judgment of the Association Board to keep any vacant and unimproved Property and the parking in front of any Property neat in appearance and in good order, provided

however, notwithstanding any provision of this instrument to the contrary, certain portions of the Common Property.

- j) Street Lighting. The Association shall provide such lights as the Association may deem advisable on streets (after first obtaining the appropriate permits and approval from the City's Public Works Department), in Private Open Space, gateways, entrances, or other features, and on other Common Property or public property subject to the prior written approval of the DRC.
- k) Snow Removal and Street Cleaning. The Association may provide for the removal of snow from street and the cleaning of street, catch basins, pedestrian ways, and for repair and maintenance of sewers, storm sewers and appurtenant drainage facilities, to the extent not prohibited by the City.
- l) Signs. The Association may erect and maintain signs (including the monument sign identifying the Community), other than street signs which are within the exclusive control of the City, after such signs are approved by appropriate public authorities and after such signs are approved in writing by the Developer (which approval may be withheld or conditioned in Developer's sole and absolute discretion).
- m) Security Protection. The Association may employ duly qualified officers for the purpose of providing such security protection as the Association Board may deem necessary, or desirable, in addition to the protection rendered by public authorities.
- n) Acquisition of Real Estate. The Association shall acquire and own title to such real estate as may be reasonably necessary to carry out the purpose of the Association and promote the health, safety, welfare of Owners; pay taxes on real estate and facilities owned by it; and pay such taxes as may be assessed against the Common Property.

2.02 Membership in the Association. Consistent with the foregoing, the Association is authorized to exercise all powers which a corporation organized under the Not-For-Profit Corporation Law of Missouri may exercise.

- a) Each Lot shall be entitled to one (1) Association Membership (notwithstanding the number of Owners) and one (1) vote in the Association, so long as the Owner of the Lot remains an Owner of such Lot(s), and such Owner shall specify in writing to the Association the name of the individual who holds the Association Membership and the right to vote on behalf of such Owner. In the absence of such written specification to the Association, Assessments shall be charged against the Lot and Owner thereof, but there shall be no right to vote the Membership. Furthermore:
 - (i) If the sole Owner of a Lot(s) is a natural person, only that person may be the Member.
 - (ii) If the Owner of a Lot(s) is, or includes, more than one natural person (such as a husband and wife), the Member may only be an individual who is one (1) of those natural persons.
 - (iii) If the Owner of a Lot is an artificial entity (such as a corporation, trust, limited liability company, limited partnership, limited liability partnership, general partnership, or the like), such artificial entity shall be the Member but

the person who may vote on behalf of such Member must be duly authorized to do so by such artificial entity (and such artificial entity must provide the Association with such proof of due authorization, as the Association may require in its sole discretion, before such Member may vote).

- (iv) Anything in this subsection to the contrary notwithstanding, where a Lot is owned of record in any manner of joint, or common ownership between one or more individuals and/or artificial entities, the joint or common Owners thereof shall share the rights (including voting rights) given to an Owner pursuant to this Declaration which they shall be entitled to exercise as a whole, but not in part, in whatever manner they shall jointly and unanimously determine (but if they cannot agree upon how their vote shall be cast, such Member shall not be entitled to vote on the issue(s) upon which the disagreement exists). It shall be rebuttably presumed that any person or entity who is a joint or common Owner and who appears at a meeting for the purpose of voting for the Owner on a proposition shall have the right to vote that Membership unless at (or within 30 days before) such meeting, the Association is advised in writing by another Co-Owner that such person attempting to vote does not have the concurrence of his or her other Co-Owners.
- b) A builder of a residence on a Lot, although an Owner, shall not be entitled to any vote in the Association unless and until such builder occupies the Living Unit as such builder's sole place of residence.
- c) Developer shall be entitled to ten (10) votes for each Lot owned by Developer. Notwithstanding anything herein to the contrary, Developer's Lot(s) shall not be subject to payment of Assessments. At the end of the Development period, Developer shall retain its right to ten (10) votes for each Lot owned by Developer until such time as Developer does not own any Lot/s or real property located within the Property.
- d) Subject to the provisions of this Section 2.02, once a Member has been specified as an Owner, a successor Member may only be specified as such Owner upon at least thirty (30) days prior to notice to the Association; provided, however, the foregoing shall not impair the provisions of Section 2.02(e).
- e) A Membership shall not be transferred, pledged or alienated in any way, except as herein expressly provided. Subject to the provisions of this Declaration, an Association Membership shall automatically be transferred to a new Owner upon the transfer of the Lot to which it appertains (and then only to such transferee), whether by sale, intestate succession, testamentary disposition, foreclosure of a mortgage or other legal process transferring fee simple title to such Lot, or otherwise.
- f) Subject to the provisions of this Declaration, and the Association's By-Laws, the Association Board may make, amend or rescind such rules and regulations as it deems advisable for any meeting of Members, Association vote, referendum or election.

2.03 Board of Directors (Association Board).

- a) The affairs of the Association shall be exercised in accordance with the Association's Articles of Incorporation and By-Laws. The Association shall be controlled by a Board of Directors consisting of three (3) persons who, after the Development Period, shall be Members (the "Association Board"). During the Development Period, the Developer shall appoint three individuals who do not need to be members to serve as Directors on the Association Board for the entirety of the Development Period. During the Development Period, the Developer shall maintain absolute and exclusive appointment power and removal power for the Association Board and its Officers. Upon the expiration of the Development Period, the Association shall appoint three (3) persons to serve as Directors on the Association Board pursuant to the terms hereof and the Association's By Laws and Articles of Incorporation. The Association Board, by a majority vote, shall exercise for and on behalf of the Association all powers, duties and authority vested in or delegated to the Association. Whenever any provision of this Declaration requires or permits the "Association" to do or perform an act, such action shall be taken and authorized by the Board, without the necessity of first securing the consent of the Members (unless this Declaration specifically requires the performance of a specific act to be first approved by Members at a special or annual meeting).
- b) Directors, except for Directors appointed by the Developer during the Development Period, shall be elected annually by the Members (cumulative voting for same shall not be permitted), shall be elected for two (2) year term of office, and shall serve thereafter until their successors are elected and qualified.

2.04 **Suspension of Membership and Rights of Enjoyment.** The Association Board may suspend the voting rights of Members (other than voting rights of Developer) and the rights of any Member (other than Developer), Resident or user of the Common Property and the services offered thereon who:

- a) is subject to a Right of Action by reason of having failed to take reasonable steps to remedy a violation or breach of the Declaration within the number of days specified in a written notice given by the Association Board after such violation or breach;
- b) has allowed any Assessment levied by the Association pursuant to this Declaration to become delinquent;
- c) has failed to pay any User fee or charge levied by the Association when due and payable; or
- d) has violated any rules and regulations adopted by the Association Board governing the use and enjoyment of the Common Property or services thereon.

Such suspension shall be for the balance of the period in which the conditions set forth in subsections (a), (b), (c) and (d) of this Section 2.04 exist.

2.05 **Termination of Membership.** No Owner (other than Developer) shall continue to be a Member after he ceases to hold a qualifying interest in any Lot. No Member may avoid his obligations under this Declaration by declining to use Common Property, abandoning his Lot, or by any other act of abandonment or renunciation.

2.06 Notice of Meetings and Referendums. Proper notice shall be given by the Association Board of all meetings of the Association Board at least fifteen (15) days prior to the meeting date; and of all meetings of the Association Members, public hearings or referendums at least thirty (30) days prior to the hearing or referendum. The methods and procedures of such notice shall be determined by the Association board in accordance with the By-Laws of the Association.

2.07 Limitation of Liability. Neither Developer, nor any Member of the Association, Officer of the Association, or Member of any committee of the Association (whether such committee is specifically described in this Declaration or hereafter created by the Association) shall be personally liable to any Owner, Member or Residential Tenant or to any other party, including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of Developer, or such Board, officer of the Association, committee member, or any other representative or employee of the Association or of Developer, provided that such person has, upon the basis of such information as may be possessed by him, acted in subjective good faith, without willful or intentional misconduct.

2.08 Developer's Control of the Association. Notwithstanding anything in this Article II, or elsewhere in this Declaration to the contrary, the Developer shall maintain absolute and exclusive control over the Association Board and the DRC, including appointment and removal of the president and all officers of the Association, all directors of the Association Board and all members of the DRC until the expiration of the Development Period. The Developer may voluntarily, (but shall not be required to), at any time relinquish all, or any part, of the Developer's control and rights under this Article II.

ARTICLE III

Imposition of Assessments and Liens Upon Property

3.01 Covenants for Assessments and Creation of Liens. The Developer and each Owner of Assessable Property, jointly and severally, for himself, his heirs, distributees, legal representatives, successors and assigns, by acceptance of a Deed, or other conveyance, for any Lot which is Assessable Property, whether or not the covenants contained herein shall be expressed in any such Deed or other conveyance, hereby covenants and agrees that:

- a) he will pay to the Association all Assessments which may or shall be levied by the Association against Assessable Property owned by him in each year or any part thereof, and that he will pay to the Association the user fees, charges and all other duly authorized charges to be established as herein provided, if applicable, levied by the Association in each year and including Special Assessments levied pursuant to Section 3.09 hereof;
- b) he shall be personally liable for all such Assessments, user fees and charges which become due while he is the Owner of each Lot being assessed;
- c) all Assessments, together with the continuing obligation to pay Assessments assessed, levied or charged in all future years and all user fees and charges, together with all costs, expenses, interest and reasonable attorneys' fees incurred in the

collection of delinquencies, shall become, upon the filing of this Declaration, and thereafter remain a charge against and be secured by a continuing lien upon the Assessable Property of such Owner (which lien shall be imposed and enforced in accordance with this instrument); and

- d) said charge and lien shall be superior to any and all other charges, liens or encumbrances which may hereafter in any manner arise or be imposed upon the Assessable Property (or the Nonassessable Property to the extent that it may later become Assessable Property) whether arising from, or imposed by, judgment or decree or by any agreement, contract, mortgage or other instruments, excepting only;
 - (i) Purchase Money Mortgages or Deeds of trust given to finance the purchase of the Lot subject to the mortgage or deed of trust or to finance construction of improvements on the Lot subject to the mortgage or deed of trust; provided, however, that this subordination to such mortgages shall apply only to Assessments which have become due and payable prior to a sale or transfer of any Lot on account of the foreclosure of any such mortgage or on account of any other proceeding in lieu of foreclosure; such a sale or transfer at foreclosure or in lieu of foreclosure shall not release such Lot from the lien of or relieve the new Owner, his successors and assigns from liability for any Assessments thereafter becoming due; and
 - (ii) such liens for taxes or other public charges as are made superior by applicable law; provided, however, that this subordination to such liens shall apply only to Assessments which have become due and payable prior to a sale or transfer of any Lot on account of the foreclosure of any such lien or on account of any other proceeding in lieu of foreclosure; such sale or transfer at foreclosure or in lieu of foreclosure shall not release such Lot from the lien of or relieve the new Owner, his successors and assigns from any liability for any Assessments thereafter becoming due.

Nothing contained in this subsection (d) of Section 3.01 shall be construed so as to constrain or impair the right of the Association to the receipt of payment of funds realized from a foreclosure sale, to the extent of any funds remaining after satisfaction of prior liens; in order of priority to holders of subordinated liens.

3.02 Uniform Rate of Assessment.

- a) For the purpose of providing funds for the uses specified in Article IV hereof, the Association Board shall assess against the Assessable Property in each year, beginning with the year in which Common Property is first transferred to the Association, a charge (referred to herein as "Assessment" or "Annual Assessment"), which shall be uniform as to each Lot which constitutes Assessable Property, and shall be in such amounts as determined by the Association Board. The fact that the Association Board shall not make Annual Assessment in any year, or years, shall not constitute a waiver of its right of making Annual Assessments in any subsequent years.
- b) Not later than ninety (90) days prior to the end of each fiscal year for the Association, the Association Board shall prepare an annual cash budget projecting anticipated revenues, cash receipts, cash expenditures, net cash, cash surplus or cash deficit for

the ensuing fiscal year (the “Association Budget”). The fiscal year for the Association shall be the calendar year. Upon approval of the Association Budget by the Association Board, the Association Board shall set and levy the rate of Annual Assessment for the ensuing fiscal year, provided however, after the expiration of the Development Period, the Board may not increase the rate of Annual Assessment by more than twenty-five percent (25%) over the previous year’s Annual Assessment unless first approved at a special meeting of the Members, (majority vote of a quorum at such Member’s meeting prevails), called for such sole and exclusive purpose, provided however, there shall be no such limitation on increases in Annual Assessments during the Development Period.

3.03 Billing of Annual Assessments. At such time or times as the Association Board may determine, the Association shall levy the Annual Assessment. The Association shall send a written bill to each Owner stating the amount of the Annual Assessment imposed against each Lot which is Assessable Property owned by the Owner, the time period for payment thereof, and the interest rate to be charged for late payments thereof. Each Annual Assessment shall be due and payable no later than thirty (30) days after a bill for same is sent to the Owner at such Owner’s last known address. Such billings, when so sent, shall be deemed, “notices”, within the meaning of this Declaration (and specifically the portions hereof which govern the method and effect of giving notices).

3.04 Commencement of Assessments. Each Lot constituting Assessable Property shall become subject to the Assessments set forth herein on the first day of the month following the month in which each part meets the definition of a Lot. Such Assessments shall be adjusted and prorated according to the number of full or partial months remaining in the fiscal year of the Association.

3.05 Late Payments.

- a) Interest shall, and will, accrue on unpaid Assessments (which are delinquent) at a rate of ten percent (10%) per annum from the delinquency date until paid.
- b) In the event that an Owner shall fail to fully pay the Annual Assessment by the delinquency date thereof, such unpaid amount shall become a binding personal obligation of such Owner, and the Association shall have the right, pursuant to the provisions of this Declaration hereof, to enforce the lien for the Annual Assessments as set forth in this Declaration. The Association Board shall have the right and duty to take all appropriate actions and steps to collect any such unpaid Annual Assessments. Each delinquency shall constitute a separate basis for a demand of claim of lien or liens, but any number of defaults may be included within a single demand or claim of lien or liens on account of prior delinquencies and shall be deemed to include subsequent delinquencies and amounts due on account thereof. The Association Board may institute a suit to recover a money judgment for the same, together with interest thereon and reasonable expenses of collection, including attorneys’ fees, without waiving its right to establish and cause foreclosure of its lien hereinbefore or hereafter provided.

3.06 Certificate of Payment. Upon written demand by an Owner, the Association shall issue and furnish to such Owner, within a reasonable period of time, a written certificate stating that all Assessments, including interest and costs, (if any), have been paid with respect to any specific Lot owned by said Owner as of the date of such certificate, or if all

Assessments have not been paid, setting forth the amount then due and payable. The Association may make a reasonable charge for the issuance of such certificate, not to exceed \$25. Any such certificate, when duly issued as herein provided, shall be conclusive and binding with regard to any matter therein stated as between the Association and any bona fide purchaser or encumbrancer of the Lot in question.

3.07 User Fees and Special Charges.

- a) In addition to the Annual Assessment, the Association may levy and collect charges and fees from all Owners for the use, improvement or maintenance of Common Property and Easement Areas for the purpose of maintaining, refurbishing, replacing and repairing the Easement Areas, Common Property and the Common Property Improvements, and for operating services on Common Property.
- b) In establishing user fees and charges, the Association Board may formulate reasonable classifications of users. Fees and charges shall be uniform within each classification but need not be uniform from classification to classification.
- c) If any Owner shall fail to pay any user fee or charge, when due and payable, the Association may immediately suspend such Owner's right of enjoyment of the Common Property, or services thereon, and may take whatever action it deems necessary to enforce such suspension.
- d) Such User Fees and Special Charges may be collected, and payment of same be enforced, in the same manner as set forth herein for the collection of Annual Assessments.
- e) Any Lot or property owned by Developer, or the Association, shall not be subject to User Fees and Special Charges.

3.08 Additional Procedures. The Association Board shall have the right to adopt procedures for the purpose of making the Assessments, user fees and charges provided for herein and for the billing and collection of the same, provided that such procedures are not inconsistent with the provisions hereof.

3.09 Special Assessments.

- a) In addition to the Annual Assessments, User Fees and Special Charges authorized by this Article, the Association Board may levy in any year a Special Assessment, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common Property and Easement Areas, including any capital improvement upon the Common Property and Easement Areas, or the cost of any utility deemed necessary by the Board to serve the Property including the necessary fixtures and personal property related thereto, or any unexpected cost or expense of the Association, as the Association Board may determine.
- b) A Special Assessment shall become effective upon written notice by the Association Board to such Owners' last known addresses. Such Special Assessments may be collected (and payment of same be enforced) in the same manner as set forth herein for the collection of Annual Assessments.

- c) Special Assessments exceeding Five Hundred Dollars (\$500.00) for any Lot in any fiscal year shall not be imposed by the Association Board unless first approved at a special meeting of the Members, (majority vote of a quorum at such Member's meeting prevails), called for such sole and exclusive purpose, provided however, there shall be no such limitation on the Association Board's power to require payment of Special Assessments during the Development Period.
- d) Any Lots or Property owned by the Developer, or Association, shall not be subject to Special Assessments.

ARTICLE IV

Use of Funds

4.01 **Purposes for Which Funds May Be Used.** The Association shall apply all funds received by it, pursuant to this Declaration, and all other funds and property received by the Association, including the proceeds of loans and accumulated funds referred to in this Declaration to the following:

- a) the operating costs and expenses of the Association, including planning and implementation of the community programs, if any;
- b) the planning, design, acquisition, improvement, construction, maintenance and equipping of Common Property Improvements, Common Property and Easement Areas;
- c) Association programs and services conducted on or in Common Property;
- d) the payment of all principal and interest when due on all loans made to the Association;
- e) payment of all real and personal property taxes and Assessments, if any, separately levied upon or assessed against the Association or any property owned by the Association;
- f) payment of all premiums and charges for all policies of insurance or surety bonds, as deemed by the Association Board to be necessary and appropriate, including but not limited to workmen's compensation insurance, to the extent necessary to comply with any applicable law and then-current insurance practices, and indemnity, faithful performance, fidelity and other bonds as the Association Board shall deem necessary, appropriate or required to carry out the Association functions or to insure the Association against any loss from malfeasance or dishonesty of any employee or other person charged with the management or possession of any Association funds or property;
- g) the repair, improvements, construction, operation or extension of any utility servicing the Property, or any utility deemed reasonably necessary by the Association Board to service the Property; and

- h) such other expenses and charges, as are determined by the Association Board, in its subjective good faith and discretion, to be reasonably incidental to maintenance of the Association and the Common Property as herein provided.

4.02 Handling of Funds. In order to secure the repayment of any and all sums borrowed by it from time to time, the Association Board is hereby granted the right and power:

- a) to assign and pledge revenues received and to be received by it under any provision of this Declaration, including, but not limited to, the proceeds of the Assessments payable hereunder; and
- b) to enter into agreements with lenders with respect to the collection and disbursements of funds, including, but not limited to, agreements wherein the Association covenants:
 - (i) to assess the Assessments on a given day in each year as herein provided;
 - (ii) to establish sinking funds or other security deposits, or both;
 - (iii) to apply funds received by the Association to the payment of all principal and interest when due on such loans or to apply the same to such purpose after providing for costs of collection;
 - (iv) to establish such procedures as may be required by such lenders, but not inconsistent with the Declaration;
 - (v) to provide for the custody and safeguarding of all funds by the Association; and
 - (vi) to negotiate and arrange the amount, terms and rate or rates of all borrowing and the provisions of all agreements with lenders.

4.03 Accumulation of Funds Permitted. The Association shall not be obligated to spend in any calendar year all the sums collected in such year by way of Annual Assessments, User Fees, Special Charges, Special Assessments, or otherwise, and may carry forward, as surplus, any balances remaining; nor shall the Association Board be obligated to apply such surplus to the reduction of the amount of the Annual Assessment in the succeeding year, but may carry forward from year to year such surplus as the Association Board may determine to be necessary or desirable, for the greater financial security of the Association and the effectuation of its purposes, including accruing sinking or other similar funds for the replacement of Common Property.

4.04 Posting of Bond. The Association, acting through the Association Board, shall require that all persons or entities who handle the Association funds or monies which funds and monies shall be deposited in federally insured banks or savings and loans, post bonds sufficient in amount to indemnify the Association from any loss.

ARTICLE V

Common Property

5.01 Use of Common Property.

- a) Every Owner of Assessable and Nonassessable Property, by reason of such ownership, shall have a non-exclusive right and easement of enjoyment in, and to all Common Property, and such easement shall be appurtenant to and shall pass with every Lot upon transfer (subject to limitation, divestment and suspension as herein provided). All Residential Tenants, who are not also Owners, shall have a nontransferable privilege to use and enjoy all Common property for so long as they are a Resident. Notwithstanding the foregoing, only the Association and the Developer, (and their designates) shall have the right to enter onto landscaping and monument sign easement areas, (and other Easement Areas), which are located upon Lots, for the purposes of working on, maintaining and repairing same.
- b) All such rights, easements and privileges conferred under this Declaration (including such non-exclusive right and easement of enjoyment in and to all Common Property) shall, however, be subject to the right of the Association Board to:
 - (i) establish, adopt, promulgate, amend and rescind reasonable rules and regulations pertaining to the use, operation and maintenance of Common Property which shall enhance the preservation of such facilities, promote the safety and convenience of the users thereof, and which shall serve to promote the best interests of the Members and the Estates at The Ranch community;
 - (ii) determine the use, or uses, to which Common Property may be put;
 - (iii) levy Assessments, user fees and other charges pursuant to this Declaration;
 - (iv) borrow money for the purpose of acquiring, developing or improving any Common Property including improvements thereon, and in aid thereof to mortgage the same, provided that the rights of any such mortgagee shall be subordinate to the rights, easements and privileges herein granted and assured.

5.02 Damage or Destruction of Common Property by Owner. In the event any Common Property, including Monument, Monument Signage, Roadway, Lighting, Community Mailbox and Landscaping installed in Landscape Easements or other Easement Areas on Lots, is damaged or destroyed by an Owner, Resident, any Owner/Resident's guests, tenants, contractors, subcontractors, builders, material suppliers, licensees, agents or invitees, such Owner and Resident do hereby authorize the Association to repair such damaged areas. The Association shall repair such damaged area in a good and workmanlike manner in conformance with the original plans and specifications of the area involved, or as the area may have been modified or altered subsequently by the Association, at the discretion of the Association. The amount necessary, and actually expended, for such repairs shall be a Special Assessment upon the Lot of said Owner and shall be enforceable as other Assessments under Article III. The cost of repair shall also constitute a lien on that Owner's Lot upon compliance with the provisions of this Declaration relating to imposition of liens.

5.03 Maintenance of Common Property. The Association shall maintain the Common Property according to at least the same standard of maintenance required of Owners.

5.04 **Suspension of Rights.** The Association Board shall have the right to suspend the right or privilege under this Article V of any Member, (other than the Developer), for any period during which any Assessments, fees or charges assessed under Article III hereof remain delinquent, and may suspend said right or privilege in connection with the enforcement of any rules and regulations relating to Common Property, in accordance with the provisions of this Article V. Notwithstanding any provision of this Declaration to the contrary, the suspension of such right and privileges, as aforesaid, shall not affect, diminish or reduce such Member's liability for Assessments and other charges then and thereafter levied with respect to such Member's Lot.

ARTICLE VI

Designation of Use of Property

6.01 **Designation.** Initially, and from time to time, the Developer shall file with the Association and the DRC, for information purposes, a duplicate of each plat, as such is recorded in the appropriate Recorder of Deeds Office. The Developer may at the time of filing, or at any time thereafter, without the approval of the DRC, designate any Lots owned by the Developer, according to such uses or designations as the Developer may determine to be in accordance with the Development Plan.

6.02 **Change of Designation.** After a Lot is no longer owned by the Developer there shall be **No Change in Designation**, if any, of such Lot except with the mutual consent of the Owner thereof and the DRC, together with such additional government approval, as may be required.

ARTICLE VII

Design Review Committee

7.01 **Purpose, Powers and Duties of the DRC.** The purpose of the DRC is to assure that all proposed uses and any construction or alteration of any Structure which takes place on any Lot or any other Property, shall be performed in conformity with the objective of high-quality environmental design and development, as set forth in the Development Plan. To carry out that purpose, the DRC shall have all of the rights, powers and duties conferred upon it pursuant to the provision of this Article VII, including the right to approve any and all proposed uses, site plans and Structures to be constructed on the Property, including the Common Property Improvements, except that the DRC shall not have the right, without the approval of the Developer during the Development Period, to disapprove a use for a Lot which is within the use category designated for such Lot by the Developer pursuant to Section 6.01. The DRC shall also have the right to approve or disapprove any and all proposed external alterations or use changes for Lots or Common Property. The DRC will not do anything, however, which would prevent the Developer from fulfilling its obligations under the Development Plan.

7.02 **Composition and Appointment.**

a) The DRC shall be comprised of the following members (the “Initial Members”): Horst Schwab and Brenda Schwab. The aforementioned individuals shall remain on the DRC until such time as all lots are considered Completed Units. Developer shall have the sole and exclusive right to appoint all members of the DRC, and shall retain this right until the expiration of the Development Period. The term of the DRC Initial Members shall be until the expiration of the Development Period. Developer may, at Developer’s sole discretion, and at any time, transfer this right to a successor or an assign. In the event of the death, or resignation, of any Initial Member of the DRC, the remaining member shall serve as the sole Initial Member of the DRC and at its sole discretion may designate a successor to fill the vacancy of the Initial Member, if so desired by remaining sole Initial Member. At the expiration of the Development Period, the Association Board shall appoint three (3) DRC members, each serving a one (1) year term. The DRC Members shall have the following qualifications and shall be selected by the following entities:

(i) DRC Member #1:

(A) must be an Owner;

(B) shall be appointed by a majority vote of the Association Board;

(ii) DRC Member #2:

(A) must be a member of the Association Board;

(B) shall be appointed by a majority vote of the Association Board;

(iii) DRC Member #3:

(A) May be a member of a profession or occupation related to land planning, residential development, including but not limited to architecture, landscape architecture, engineering, building, environmental design and interior design;

(B) shall be appointed by a majority vote of the Association Board.

b) During the Development Period, Developer may, but shall not be obligated to, assign its rights to appoint the DRC Members to the Association.

c) After the Development Period, if any vacancy shall occur in the Membership of the DRC by reason of death, resignation, removal or otherwise, including the failure to find a candidate with the necessary qualifications for a specific DRC Member’s position, the remaining vacancies of the DRC shall be filled by the majority vote of the Association Board. Any DRC Member may resign at any time by giving written notice of such resignation to the Chairman of the DRC and such resignation shall take effect on receipt thereof by the Chairman. Any Member of the DRC may be removed without cause by a majority vote of the Association Board. If the Association Board fails to act to fill a vacancy within thirty (30) days of the receipt of a written notice of resignation, a majority of the remaining Members of the DRC shall appoint the new Member to fill the vacancy.

7.03 **Officers, Subcommittees and Compensation.** The Members of the DRC shall appoint a Chairman from among their number and may appoint from among their number such other officers and subcommittees as they shall from time to time determine. In addition, the DRC may establish advisory committees, which may include such members of the DRC or Members of the Association, or other persons as the DRC may in its discretion determine; provided that any such subcommittees or advisory committees may make recommendations to the DRC but shall have no power to finally exercise any of the power and authority of the DRC under this Declaration. Members of the DRC shall serve without compensation (pay) and shall have no legal or financial liability for any of their acts, omissions, or errors in judgement. Members of the DRC may receive reimbursement for expenses or out-of-pocket costs incurred in the performance of their duties as the Association Board may determine.

7.04 **Operations of the DRC.**

- a) **Meetings.** All meetings shall take place as often as is reasonably necessary to conduct the business of the DRC. At each meeting of the DRC, the presence of a majority of the members then in office, which majority during the Development Period shall include both "Initial Members", shall constitute a "quorum" for the transaction of business. The DRC shall maintain a written record of votes and minutes of each of its meetings. Upon written request, the DRC shall make such records and minutes and current copies of its Development Guidelines available at reasonable places and times for inspection by Members and prospective Members of the Association.
- b) **Activities.**
 - (i) The DRC may (but shall not be obligated to) adopt and promulgate and, as it deems appropriate, amend the Development Guidelines as provided in Section 7.05 hereof and will, as required, make findings, determinations, ruling and orders with respect to the conformity with said Development Guidelines of plans and specifications to be submitted for approval to the DRC as provided in Section 7.06 hereof. As required, the DRC shall issue permits, authorizations or approvals pursuant to the directions and authorizations contained herein.
 - (ii) Members of the DRC are authorized by the Design Review Guidelines to exercise the full authority of the DRC with respect to the review of plans and specifications pursuant to the provisions of this Article and with respect to all other matters as may be specified by resolution of the DRC, except with respect to the adoption or promulgation of the Development Guidelines. The unanimous action of the members of the DRC is required in issuing an approval based upon specified conditions or a modification of any plans and specifications submitted under the provisions of this Article, or in issuing an approval or disapproval of any permit or authorization, and shall be final and binding upon the DRC. The DRC shall have broad discretion in approval and disapproval of plans and specifications. In any case in which the DRC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such approval or qualified approval, shall be accompanied by a statement of the grounds upon which such action was based. Accordingly, so as to minimize

misunderstandings which might otherwise develop between Owners and the DRC, Owners are encouraged, (although not required), to first seek approval by the DRC of their plans and specifications before acquisition of a Lot.

7.05 Development Guidelines.

- a) As contemplated by and pursuant to the provisions of this Article VII, the DRC may adopt, promulgate, amend, revoke and enforce design and development guidelines, hereafter referred to as the Development Guidelines, for the purposes of:
 - (i) governing the form and content of plans and specifications to be submitted for approval pursuant to the provisions of Section 7.06;
 - (ii) governing the procedure for such submission of plans and specifications; and
 - (iii) establishing policies, requirements, standards, restrictions and specifications with respect to the approval and disapproval of all proposed uses and with respect to all construction or alteration of any Structure on any Lot, Easement Area or Common Property.
- b) The DRC shall make a published copy of its current Development Guidelines, readily available to Members, prospective Members of the Association and builders which Guidelines shall include the Residential Plan Submission Procedure, Site Planning, Landscape Standards and Residential Design Standards.

7.06 Submission of Plans and Specifications. No Structure shall be commenced, erected, placed, moved onto or permitted to remain on any Lot, nor shall any existing Structure upon any Lot be altered in any way which materially changes the exterior appearance thereof, unless plans and specifications for the same have been submitted to and approved in writing by the DRC. Such plans and specifications submitted to the DRC shall be in such form and shall contain such information as may be required by the DRC in the Development Guidelines promulgated by the DRC pursuant to Section 7.05 of this Declaration. At a minimum, submissions to the DRC shall include (in such detail and according to the scale as required by the Development Guidelines) two (2) copies of:

- (i) the site plan;
- (ii) the floor plans;
- (iii) the list of building materials;
- (iv) the landscape plan;
- (v) the exterior color scheme.

Such submissions shall include, among the other requirements of the Development Guidelines, a two (2) step design process whereby the DRC shall first have submitted to it for its approval a "preliminary" site plan showing building location and relation to the lot lines with "preliminary" indication of finish grades, and "preliminary" floor plans showing four (4) exterior elevations noting the location of all windows, doors, openings and finish materials, all in as much detail as required by the DRC and the

Development Guidelines. Thereafter, and prior to final approval, the DRC shall have submitted to it for approval “final” site and floor plans indicating final grading and landscaping and showing the four (4) exterior elevations including doors, windows and openings together with actual samples of materials and colors.

7.07 Approval of Plans and Specifications. Upon approval by the DRC of any plans and specifications submitted, a copy of such plans and specifications, as approved, shall be deposited as a permanent record with the DRC and a copy of such plans and specifications bearing such approval in writing shall be returned to the applicant submitting the same. Approval for use in connection with any Lot or Structure of any plans and specifications shall not be deemed a waiver of the DRC’s right, in its discretion, to disapprove similar plans and specifications or any of the features or elements included therein if such plans, specifications, features or elements are subsequently submitted for use in connection with any other Lot or Structure. Approval of any such plans and specifications relating to any Lot or Structure, however, shall be final as to that Lot and such approval may not be revoked or rescinded thereafter, provided that there has been adherence to, and compliance with, such plans and specifications, as approved, and any conditions attached to any such approval. The DRC, in its discretion, is permitted to approve deviations from the Development Guidelines and from this Declaration when, in its judgement, such deviations will result in a more commonly beneficial use. Such approval, however, must be granted in writing and must clearly state what deviation or variance is requested. Whensoever the DRC approves and grants a deviation or variance from this Declaration, such approved deviation or variance shall for all purposes amend this Declaration but only to the limited extent of such specifically approved deviation or variance as to a particular Lot. No approved deviation shall be deemed to act as a precedent in respect of any other request for approvals of deviations.

7.08 Disapproval of Plans and Specifications.

- a) The DRC shall have the right to disapprove any plans and specification submitted hereunder as determined by the DRC in its sole judgement and discretion for any reason, including among others:
 - (i) failure to include information in such plans and specification as may have been requested by the DRC, or as required herein or in the Development Guidelines;
 - (ii) failure of such plans or specifications to comply with this Declaration or any of the Development Guidelines for submission of plans and specifications;
 - (iii) objection to the exterior design, appearance or materials of any proposed Structure or improvements;
 - (iv) incompatibility of any proposed Structure, uses or Lot improvements to other existing Structures or uses upon other Lots in the Property;
 - (v) objection to the site plan due to incompatibility with other Lots in the Property;

- (vi) objection to the grading plans, drainage patterns and/or landscaping for any Lot in the Property;
- (vii) objection to the color scheme, finish, proportions, style or architecture, height, bulk, safety or appropriateness of any proposed Structure or improvement on any Lot on the Property;
- (viii) failure to satisfy minimum or maximum floor area requirements or standards;
- (ix) objection to the parking areas proposed for any Lot on the Property based on, among other things:
 - (A) incompatibility with proposed uses and Structures of the Lot;
 - (B) insufficiency of size of the parking area in relation to the proposed use; or
 - (C) undesirable alteration of the flow of water over or through any Lot;
- (x) any other matter with respect to such submitted plans and specifications, whether or not such matters are included in the Development Guidelines, if such matters, in the sole judgment and discretion of the DRC, would conflict with the value of Estates at The Ranch community established in the Development Plan and as may be set forth in this Declaration or the Development Guideline; and
- (xi) any other matter which, in the judgment of the DRC, would render a proposed Structure or use inharmonious with the standards for Estates at The Ranch as set forth in the Development Plan.

b) In any case in which the DRC shall disapprove any plans and specifications submitted hereunder, or shall approve the same only as modified or upon specified conditions, such disapproval or qualified approval shall be accompanied by a statement of the grounds upon which such action was based.

c) The DRC shall have broad discretion in approval and disapproval of plans and specifications. The approval or disapproval of plans and specifications by the DRC shall not be construed as approval or disapproval of engineering decisions or of compliance of such plans and specifications with zoning and building ordinances no with any such industry or governmental standards, rules, regulations and codes. It is the responsibility of each Owner to employ properly qualified and, as applicable, licensed professionals to design and construct his residence. By approving or disapproving the plans and specifications, neither the DRC nor any Member thereof assumes any liability or responsibility therefor or for any defect in any Structure or part thereof constructed from such plans and specifications.

7.09 Inspection Rights. At any reasonable time or times, (without notice), any agent of the Association or the DRC may enter upon any Lot for the purpose of ascertaining whether the use or maintenance of such Lot or the construction of any Structure thereon is in compliance with the provisions hereof. Neither the Association, nor the DRC, nor any agent thereof shall be liable or responsible or deemed to have committed a trespass or

other wrongful act to any party arising out of the allegation that such entry or inspection was a trespass or wrongful.

7.10 Violations. If any Structure shall be erected placed, maintained or altered upon any Lot, or any new use commenced on any Lot, otherwise than in accordance with the plans and specifications approved by the DRC pursuant to this Declaration, such erection, placement, maintenance or alteration shall be deemed to have been undertaken in violation of this Article and without the approval required herein. If in the opinion of the DRC, such violation shall have occurred, the DRC shall notify the Association Board and the Developer, if applicable. If the Association Board or Developer shall agree with the determination of the DRC, with respect to the violation, then upon written notice of the violation to the Owner from the Association Board or Developer (which shall be deemed to have been delivered if sent by certified or registered mail, return receipt requested, postage paid), any such Structure so erected, placed, maintained or altered upon any Lot in violation hereof shall be removed or altered, and any such use shall be terminated, so as to extinguish and eliminate such violation. If the Owner of the Lot upon which such violation exists shall not have taken reasonable steps toward the removal or termination of such violation within the time specified in the Association Board's or Developer's notice to the said Owner, the Association Board or Developer shall have the right to pursue its Right of Action and remedies as provided in Article XIII hereof together with all remedies whether at law or in equity and whether specified herein or in Article XIII hereof, and including but not limited to the remedy of injunctive relief and obtaining a monetary judgment for all costs, expenses, including reasonable attorney's fees, damages, court costs and reasonable investigative expenses.

7.11 Certificate of Compliance.

- a) Issuance. Upon the completion of construction or alteration of any Structure in accordance with plans and specifications approved by the DRC, the DRC shall (upon written request of the Owner) issue a Certificate of Compliance identifying such Structure (and the Lot upon which the Structure is located) and accompanied by a statement that the Structure was completed in accordance with all applicable rules and regulations of the DRC. A copy of such Certificate of Compliance shall be filed for permanent record with the plans and specifications on file with the DRC. Any such Certificate of Compliance, however, shall not be deemed a certification that the Structure complies with any governmental rules or regulations.
- b) Evidence of Compliance. Any Certificate of Compliance issued in accordance with the provisions of this Article shall be *prima facie* evidence of the facts therein stated and, as to any purchaser or encumbrancer in good faith and for value as to the Lot, such Certificate of Compliance shall be conclusive evidence that the Structure complies with all requirements of this Article as of the date of such Certificate of Compliance.

7.12 Fees. As a means of defraying its expenses, the DRC may charge and collect a reasonable and appropriate fee as established from time to time and published in the Development Guidelines. The fees shall be made payable to the Association and shall be payable at the time plans and specifications are submitted as a condition precedent for the review and approval of such plans and specifications.

7.13 **Nondiscrimination by DRC.** The DRC shall not discriminate against any applicant requesting its approval of plans and specifications because of such applicant's race, color, sex, religion, national origin, family composition or marital status. Further, the DRC in the exercise of its power granted pursuant to this Declaration shall not take any action which is intended to or does, in effect, discriminate against persons or a particular race, color, sex, religion, national origin, family composition or marital status.

7.14 **Limitation of Liability.** Neither Developer nor the DRC shall be personally liable to any Owner, Member or to any other party including the Association, for any damage, loss or prejudice suffered or claimed on account of any act, omission, error or negligence of Developer or DRC (or any member thereof), provided that such person has, upon the basis of such information as may be possessed by him, acted in subjective good faith, without willful or intentional misconduct.

ARTICLE VIII

Easements

8.01 **Easements.**

a) The Developer reserves to itself, its assignees and designees the right, power and authority to (but not the obligation) do the following with respect to the Easement Area of each Lot and the Common Property:

- (i) erect, install, construct and maintain wires, lines, conduits and poles and the necessary or proper attachments and appurtenant structures in connection with the transmission of electricity, street lighting, telephone, fire alarm systems, communication systems, television cables and other utilities and similar facilities;
- (ii) erect, install, construct and maintain storm water drains, land drains, pipe lines for supplying gas, water and heat, and for any other public or quasi-public facility, service or function, and appurtenant structures whether above ground or underground;
- (iii) control slope, including the right to grade and plant slopes and prevent the doing of any activity which might interfere with slope ratios approved by the Developer or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow;
- (iv) erect and maintain monument and monument sign (and no Owner of a Lot on which a monument or monument sign is located shall interfere with or modify such monument or monument sign so installed); and
- (v) erect and maintain wooden fence and stone pillars on 144th Street frontage (and no Owner of a Lot on which the wood fence and stone pillars are located shall interfere with or modify such wood fencing or stone pillars so installed); and

- (vi) create, grade, repair, maintain and otherwise beautify landscape berms and areas (and no Owner of a lot on which a landscape berm or area is located shall interfere with or modify such berm or landscaping so installed);
- (vii) erect and maintain a community mailbox (and no Owner of a Lot on which the community mailbox is located shall interfere with or modify such community mailbox so installed); and
- (viii) erect and maintain decorative street lights (and no Owner of a lot on which a street lamp is located shall interfere with or modify such street lamp so installed).

This Section 8.01 (a) shall not be construed to exempt Structures erected or placed in the Easement Area from the Provision of Article VII.

- b) Developer reserves unto itself, its assignees, successors and designees, the right, power and authority to direct and control the installation of facilities, in cooperation with a public authority or any utility company which will install, own, operate and maintain the respective facilities, which utilities and drainage services (as provided for in paragraphs (a) (i), (ii), (iii), (iv), (v), (vi) and (vii) of this Section 8.01) shall be installed in and occupy any specific easement. Within any easements, no Structure, planting or other material or improvement shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which will detract from the image set forth for the Estates at The Ranch, or which may change the directional flow of drainage channels in the easement, or which may alter, obstruct or retard the flow of water through drainage channels within the Easement Areas, or which may change or prevent the intended use of any easement.
- c) Subject to all of the other Restrictions contained in this Declaration, and subject to the easements and rights thereto pursuant to the Plat, each Owner shall have the right to use the Easement Area of his Lot in any manner not inconsistent with the purposes for which such Easement Area is reserved, and the area within any Easement Area and all improvements within the bounds of such Easement Area shall be maintained continuously by the Owner except for such improvements for which a public authority or utility company is or may become responsible for maintenance.
- d) Notwithstanding anything herein to the contrary, each Owner covenants and agrees that, in cooperation with the Developer and the Association Board, each Owner shall execute all grants of easements, grants of right-of-way or any other similar grant or conveyance documentation required to be executed by an Owner in order to grant and convey to any public authority or utility company, their assigns or lessees, the right, privilege and easement to lay, construct, maintain, alter, inspect, repair, replace, protect, relocate, change the size of, operate and remove all utility lines, service taps, distribution facilities, valves, regulators and other equipment appurtenant to and necessary for providing any and all of the utility and drainage services as provided for in paragraphs (a) (i), (ii), (iii), (iv), (v), (vi) and (vii) of this Section 8.01.

8.02 Entry. The Developer reserves for itself and the Association Board, their agents, designees, successors and assigns the right at all reasonable times and upon reasonable oral or written notice, to enter upon all parts of the Easement Areas of each Lot for any of the purposes for which said Easements or rights-of-way are reserved, without being

deemed to have committed a trespass or wrongful act solely by reason of such entry. The Developer and the Association, their agents, designees, successors and assigns shall be responsible for leaving each Easement Area in good repair and condition following any work or activity within such Easement Area but the Owner of the Lot shall be responsible for repairing and/or replacing any improvement (installed by Owner) in the Easement Area which is disturbed by such entry by Developer or the Association Board pursuant to the provisions of Section 8.01.

- 8.03 **Disposition During Development Period.** During the Development Period, the Developer may convey an Easement area to a public authority or utility company where such conveyance is required by the public authority or utility company as a prerequisite to installing the utility facility on the Easement Area or where such conveyance is required by the public authority or utility company as a prerequisite to accepting ownership of the utility facility for operation and maintenance.
- 8.04 **Monument and Monument Signage.** Developer intends to erect monument and monument signage on Lots One (1) and Fourteen (14) of the Property. Once such Monument and Monument Signage are installed by Developer, such Monument and Monument Signage as so installed shall not be altered by the Owners of said Lots, DRC or Association. Both the Developer and Association shall have the perpetual easement over such Lots to maintain Monument and Monument Signage as so installed. Furthermore, once such Monument and Monument Signage are so installed, Developer and Association shall have a blanket easement to enter such Lots for the sole purpose of maintaining, repairing and (if necessary) replacing Monument Signage.
- 8.05 **Wood Fencing and Stone Pillars.** Developer intends to erect Wood Fencing and Stone Pillars on Lots One (1) and Fourteen (14) of the Property parallel to 144th Street. Once such Wood Fencing and Stone Pillars are installed by Developer, such Wood Fencing and Stone Pillars as so installed shall not be altered by the Owners of said Lots, DRC or Association. Both the Developer and Association shall have the perpetual easement over such Lots to maintain wood Fencing and Stone Pillars as so installed. Furthermore, once such Wood Fencing and Stone Pillars are so installed, Developer and Association shall have a blanket easement to enter such Lots for the sole purpose of maintaining, repairing and (if necessary) replacing Wood Fencing and/or Stone Pillars.
- 8.06 **Community Mailbox.** Developer intends to erect a Community Mailbox on Lot One (1) of the Property just after the Monument. Once such Community Mailbox are installed by Developer, such Community Mailbox as so installed shall not be altered by the Owner of Said Lot, DRC or Association. Both the Developer and Association shall have the perpetual easement over such Lot to maintain Community Mailbox as so installed. Furthermore, once such Community Mailbox are so installed, Developer and Association shall have a blanket easement to enter such Lot for the sole purpose of maintaining, repairing and (if necessary) replacing Community Mailbox.
- 8.07 **Decorative Street Lights.** Developer intends to erect Decorative Street Lights on Lots eight (8), twelve (12) and fourteen (14) of the property. Once such Decorative Street Lights are installed by Developer, such Decorative Street Lights as so installed shall not be altered by the Owners of said Lots, DRC or Association. Both the Developer and Association shall have the perpetual easement over such Lots to maintain Decorative Street Lights as so installed. Furthermore, once such Decorative Street Lights are so installed, Developer and Association shall have a blanket easement to enter such Lots for

the sole purpose of maintaining, repairing and (if necessary) replacing Decorative Street Lights.

ARTICLE IX

General Restrictions

9.01 Maintenance Required by Owner.

- a) Each Owner shall keep all of his Lots (including Easement Areas, if any), and all improvements therein or thereon, in good order and repair, including, but not by way of limitation, the seeding, watering and mowing of all lawns, the pruning and cutting of all trees and shrubbery and the painting (or other appropriate external care) of all buildings and other improvements, all in a manner and with such frequency as is consistent with safety and good property management. There is reserved to the Association, its agents, successors, designees or assigns a "maintenance easement" on Property lying between the foundation of any Structure on any Lot and the property line of said Lot to permit the Association, its agents, successors or assigns, at its election, to maintain said Property at any reasonable hour. The Association shall have the right, after written notice to the Owner of the affected Lot as hereinafter provided, to remove trash or rubbish and to cut grass, weeds and vegetation and to trim or prune any hedge or other planting that, in the opinion of the DRC, by reason of its location or height or the manner in which it is permitted to grow, is detrimental to adjoining Lots or Property or is unattractive in appearance. The Association shall further have the right to care for vacant and unimproved Property and to remove grass, weeds and rubbish therefrom and do any and all things necessary or desirable in the opinion of the DRC to keep such Property in neat and good order. All cost and expenses incurred by the Association Board or Developer shall be paid by the Owner to the Association or Developer upon demand and, if not paid within ten (10) days thereof, shall become a lien upon the Property affected, equal in priority to the liens provided for in Article III or as provided by law.
- b) The DRC or Developer (as the case may be) shall give five (5) days' written notice to the Owner in violation of this Restriction, setting forth the specific violation or breach of this Restriction and the action required to be taken by the Owner to remedy such violation or breach; if, at the end of such time, reasonable steps to accomplish such action have not been taken by the Owner, the DRC or Developer may pursue its Right of Action and shall have such other remedies at law or in equity as may then exist and/or as provided in Article XII hereof.

9.02 Land Use and Building Type.

- a) All Property (Lots 1 through 14) shall be used solely for residential purposes. The term "residential purposes" as used herein, means single family residential purposes and for no other purposes whatsoever, unless specifically provided to the contrary herein.
- b) No building shall be erected, altered, placed or permitted to remain on any Lot unless it is an approved Structure (i.e., approved by the DRC) and no previously approved

Structure shall be used for any purpose other than that for which it was originally approved.

- c) No Lot shall be split, divided or subdivided for sale, resale, gift, transfer or otherwise is strictly forbidden.
- d) The Developer hereby reserves the exclusive right to use any of its Property for temporary use as an office or for model home purposes during the Development Period. Such right shall be limited to the Developer and shall extend to no other person, builder, Owner or other developer.

9.03 **Landscape Restrictions.** No tree or shrubbery shall be maintained in such a manner as to obstruct the view of vehicular traffic. No tree having a diameter of four (4) inches or more (measured from a point two (2) feet above ground level) shall be removed from any Lot without the express written authorization of the DRC. The requirement of planting trees, preservation of trees and other natural resources and wildlife are to protect and encourage the preservation of the ecological balance of the Property. The DRC may mark certain trees, regardless of size, as not removable without written authorization. Landscaping must conform to the area in the opinion of the DRC. Each Lot must be sodded or seeded with fine leaved turf-type tall fescues, ryes and blue grasses, except in areas to be left in a natural state upon approval of the DRC. In carrying out the provisions of this Section 9.03, the DRC, the Association, the Developer and its agents or designees may come upon any Lot during reasonable hours for the purpose of inspecting and marking trees. Notwithstanding the foregoing, the DRC, in its sole discretion, may grant written permission to an Owner to partially or completely grass seed a lot in lieu of sodding. The grass seed and seeding procedure shall be approved by the DRC prior to commencement of any seeding activities and such seeding shall be performed in strict compliance with the seeding procedure as specified by the DRC.

9.04 **Building Locations.** No building or other Structure shall be located on or built on any Lot nearer to the front Lot line or nearer to the side street right-of-way line than the minimum set back line shown on a Plat. No building or Structure shall be placed nor shall any refuse or material, including but not limited to firewood, be placed or stored on any Lot within thirty (30) feet of the rear property line of any Lot. Furthermore, the DRC must provide approval (determined in the sole and absolute discretion of the DRC) to erect and install only one (1) barn or outbuilding, as per the Development Guidelines. The exact placement and orientation of any single-family residential Structure or Barn/Outbuilding on a Lot shall be subject to approval of the DRC.

9.05 **New Construction.** All Living Units and other Structures permitted hereby shall be new construction and no buildings or structures (including Pre-Fabricated Structures) shall be moved onto any Lot.

9.06 **Uncompleted Structures.** Commencement of construction of a Living Unit or any other Structure shall not commence until the DRC has approved the final plans and specifications for such Living Unit or any other Structure. No Living Unit or other Structure shall be permitted to stand with its exterior in an unfinished condition for a period longer than six (6) months after commencement of construction. Extensions for periods beyond six (6) months may be granted by the DRC in its sole discretion. In the event of fire, windstorm or other damage, no Living Unit or other Structure shall be permitted to remain in a damaged condition for more than three (3) months. No Living

Unit or other Structure shall be occupied until completed according to the plans and specifications approved by the DRC.

9.07 Structures. No temporary building, trailer, tent, garage, barn or other building, whether in the course of construction or otherwise, shall be placed upon any Lot (other than a residence). No detached Structure or improvements for purely ornamental purposes nor any above ground swimming pools nor any permanently constructed stoves, grills or ovens may be erected on any part of any Lot without the consent of the DRC, which consent may be withheld or conditioned in the sole and subjective discretion of the DRC.

9.08 Square Footage Requirements. No single- family residence shall be erected on any Lot which contains less than the following minimum square footage areas:

(a) Single Level Above Ground (Ranch):	2,000 sq. ft.
(b) One and a Half Story: <u>1,600 sq. ft.</u> on first level;	2,800 sq. ft.
(c) Reverse One and a Half Story: <u>1,800 sq. ft.</u> on the first level;	2,800 sq. ft.
(d) Two Level above Ground; <u>1,600 sq. ft.</u> on the first level.	2,800 sq. ft.

9.09 Height Limitation. Any residence erected on any Lot shall not be more than two levels in height above ground.

9.10 Roof Materials. Roof pitches must be consistent with the architectural style of the Living Unit or Structure being constructed. All roofs shall be made of cedar shake, dimensional cedar with shingles, slate, clay or concrete tiles or other DRC approved architectural laminated composition roofing that must meet or exceed specification of Certainteed Presidential TL or Certainteed Grand Manor Shingle composition.

9.11 Exterior Building Materials. Exterior building materials may be combinations of brick, stone, wood shingles, wood paneling, plate glass, stucco, or a combination thereof. No Masonite board or batt, composition board, lava rock, exposed concrete block, simulated brick, simulated stone or simulated wood for exterior walls are allowed. Building materials must remain consistent on all exterior elevations. Roof cornice treatments and window and door trim shall be consistent on all four sides of the Living Unit or Structure. All wood exteriors, except roofs, shall be covered with high-quality paint or high-quality stain. Exposed concrete block, simulated brick, stone or wood is not permitted. At a minimum, the DRC may require that at least 40% of the front elevation of a Residence, (exclusive of doors and windows), be faced with brick, stone, stucco, or a combination of the same. Stone, stucco or brick veneering, must end only at an inside corner, unless otherwise approved by the DRC, in its sole discretion.

No exposed concrete foundation in excess of 6" vertically, is permitted on the street elevation of any residence. No exposed concrete foundations are permitted to exceed a vertical measurement of 12" and must be covered with the exterior wall material.

9.12 Windows. All windows installed in any Living Unit or Structure on a Lot must either be solid wood or solid wood encased or “clad” in either vinyl or metal.

9.13 Garages. Each residence shall have an attached, private, fully enclosed garage for not less than three (3) average size passenger automobiles. All garages must be equipped with doors which shall be kept closed as much as practicable so as to preserve the appearance of the residence and the Development as a whole. The driveway constructed on each Lot shall contain sufficient paved area for the off-street parking of at least two (2) cars. Garages may be used only for the storage of automobiles and related use as a storage facility and for no other purposes, i.e., no garage space shall be enclosed for use as living space.

9.14 Frontage. Each residence shall front and present a good frontage on the street on which it is located as shown on the Plat. Each residence shall present good frontage on all four (4) sides.

9.15 Use of Clothes Hanging Devices and Machinery. No clothing or any household fabrics shall be hung in the open on any Lot. No poles for attaching wires or lines for the express purpose of hanging laundry thereupon shall be erected, installed or constructed on any Lot.

No machinery shall be operated upon any Lot (except such machinery used in the maintenance of a private residence). No machinery shall be placed, parked or stored upon any Lot unless such machinery is placed, parked and stored within an approved Structure. No hoisting devices shall be permitted upon any Lot.

9.16 Fences and Retaining Walls. Fences are not encouraged in Estates at The Ranch as they fragment the scale of the landscape. No Fences or Retaining Walls shall be placed on any Lot without the written permission of the DRC, which requires all Fence and Retaining Walls designs and plans for DRC consideration and/or approval. No approved Fence or Retaining Walls shall be erected or maintained in such a manner as to obstruct the view of vehicular traffic. Fences and Retaining Walls may be allowed only in specific areas where a need is demonstrated and may not exceed four (4) feet in height, except as required by Smithville City Ordinance. All Fencing and Retaining Walls shall be in the architectural vocabulary of the house. Any Fences or Retaining Walls so approved by the DRC shall be as follows:

(i) wrought iron; or

(ii) steel; or

(iii) aluminum; however

(iv) chain link, wire and vinyl fences and/or other chain link enclosures are absolutely prohibited.

9.17 Barn/Outbuilding. While the DRC may, in its discretion, permit erection and installation of only one (1) barn or outbuilding which is ancillary to the primary residence, erected and installed on a Lot. The DRC requires, at a minimum, any such barn or outbuilding is architecturally harmonious (determined in the sole and absolute discretion by the DRC) with such primary residence, and that any such building be at such a location on the Lot

as the DRC shall approve. No structure shall be erected or maintained in such a manner so as to obstruct site lines for vehicular traffic.

9.18 Swimming Pools and Tennis Courts. No above ground swimming pools shall be permitted on any Lot; rather, any swimming pools must be below the surface of the ground and such swimming pools as well as all appurtenant equipment (e.g. motors, pumps, housings, etc.) must be screened from view in accordance with plans for same submitted to (and approved by) the DRC. Swimming pools, including the apron and patios, must be located in the rear yard and cannot be on or within easements. Owners shall be solely responsible for ensuring that the Structures described herein comply with any and all applicable city, county, state or federal codes, rules or restrictions and all of the appropriate permits have been obtained and filed with the appropriate official offices.

9.19 Decks. All decks, their location, size, material and method of construction must be indicated on submitted plans and approved by the DRC, which approval may be granted in the sole and absolute discretion of the DRC. All decks should be of substantial design and compatible with the architecture of the Living Unit or Structure.

9.20 Placement of Signs on Property. No sign, billboard or other advertising device of any nature shall be placed upon any Lot, including property identification signs, except by the Developer and except as provided herein. "For Rent" and "For Sale" signs (not exceeding five (5) square feet in size) shall be permitted to be placed upon any Lot provided that such signs have first been approved by the DRC and shall be professionally prepared and displayed. Notwithstanding the foregoing the provisions of this section shall not apply to any Lot, or real Property, located within the Property owned by the Developer.

9.21 Keeping of Animals on Lots. No animals or birds, other than customary household pets, shall be kept or maintained on any Lot. No animals, birds, dogs, cats, cows, horses, swine, goats, sheep, poultry shall be kept, bred or maintained for any commercial purpose or in such a manner as to constitute a nuisance or cause unsanitary conditions on any Lot. Cows, horses, swine, goats, sheep, and poultry are strictly prohibited on any Lot. No animal of any kind shall be kept, walked or exercised on landscaped Common Property. Pit Bulls or other household pets with vicious propensities or restricted by local ordinances or of an exotic type or breed are specifically prohibited. Dogs shall not be permitted outside of any Lot except on a leash and accompanied by a responsible person. No dog run shall be permitted on any Lot. No dog over six (6) months of age shall be kept by any Resident unless such animal shall have a rabies inoculation, proper license and license tag from the City of Smithville, Missouri. No more than three (3) dogs may be kept on any Lot.

Chickens may be kept on any Lot with the prior written approval by the DRC, which consent may be withheld or conditioned in the sole and subjective discretion of the DRC, but roosters are strictly forbidden from being kept on any Lot, at any time. Photographs or plans for chicken coops and a site plan must be presented to the DRC for approval. No more than five (5) chickens may be kept on any Lot and Owners must have a permit completed and approved by the City of Smithville, Missouri. All coops must be kept in good repair and shall be painted an appropriate color. Coops and chickens shall be kept in a manner as to not disturb the neighbors and provide adequate lighting and ventilation. Absorbent ground cover should be provided and replaced often to suppress odor. At no time, shall any chickens be free range and outside the confines of their enclosure.

Feed and other items associated with the keeping of animals must be kept clean and dry at all times, inside and out of sight, to prevent the infestation of rats, mice, squirrels, skunks, opossum, raccoons and other rodents and small animals. The DRC shall have the right to prohibit the keeping of any animal on any Lot, which animal continually barks, howls or makes any other noises so as to, in the opinion of the DRC, unreasonably disturb the peace of any Resident. Outside animal shelters of any type whatsoever shall be located within the back yard of any Lot within two (2) feet of the Structure thereon and, in the opinion of the DRC shall be compatible in all respects with such Structure.

9.22 Disposition of Trash and Other Debris. No Lot shall be used or maintained as a dumping ground for rubbish. No lumber, metals, bulk materials, refuse or trash shall be kept, stored or allowed to accumulate on any Lot, except building materials during the course of construction for a period not to exceed one hundred eighty (180) days (commencing from day one of the first delivery of any of such materials) unless extended by the Developer or the DRC, in its sole discretion, for any approved Structure, unless such materials are screened from view in a manner approved by the Developer or the DRC. During the course of construction, it shall be the responsibility of each Owner to insure that construction sites are kept free of unsightly accumulations of rubbish and scrap materials and that construction materials and the like are kept in a neat and orderly manner. No burning of any trash, leaves, grass or weeds and no accumulation or storage of litter of any kind shall be permitted on any Lot. If trash or other refuse is to be disposed of by being picked-up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pick-up is to be made, at such place on the Lot so as to provide access to persons making such pick-up. At all other times such containers shall be stored in such a manner that they cannot be seen from adjacent and surrounding property. All such containers shall be kept in a clean and sanitary condition. The DRC may adopt and promulgate reasonable rules and regulations relating to the size, shape, color, type of containers and the manner of storage of the same permitted on the Property.

9.23 Parking of Motor Vehicles, Boats and Trailers. No truck, commercial vehicle, trailer, commercial trailer house, recreational vehicle, all-terrain vehicle, van, minivan, camper, motorcycle, automobile, mobile home, boat or boat trailer shall be brought upon, stored or habitually parked on any Lot in front of any Living Unit or garage, or between any residence or garage nor upon any street abutting any Lot. This shall not be construed to prohibit the mere temporary (a maximum of twenty-four (24) hours):

- a) standing or parking of a trailer, boat, trailer house, recreational vehicle or mobile home for short periods preparatory to take same to some other location for use; or
- b) the temporary standing or parking of a truck or commercial vehicle for loading or unloading (not to exceed eight (8) hours; or
- c) the parking of any operational automobile that is roadworthy and licensed on any driveway on any Lot. The Association, with the written approval of the DRC, whose permission may be withheld or conditioned in the sole and subjective discretion of the DRC, may permit such parking for longer than twenty-four (24) hours. No such vehicle shall be openly stored in any area other than as may be designated by the DRC.

No mechanical maintenance on any vehicle shall be permitted in front of any Living Unit or garage, or between any Living Unit or garage, or upon any street abutting any Lot.

While nothing contained herein shall be considered to prohibit the use of portable or temporary buildings or trailers as field offices by contractors during actual construction, the use and appearance of such a building or trailer must be specifically approved by the DRC prior to its being moved on site.

9.24 **Nuisances.** No noxious or offensive activity shall be carried on upon any portion of the Lots, nor shall anything be done thereon that may be or become a nuisance or annoyance to any other Owners. No exterior lighting shall be directed outside the boundaries of any Lot but shall be directed so as to avoid glare and excessive light spillage onto abutting or adjacent Property or Lots. Exterior lighting shall consist of concealed sources of illumination and shall maintain lighting levels consistent with the recognized standards of the lighting industry. Exterior lighting shall be from white sources only. Upon notice from the DRC that an exterior light is objectionable, such Owner shall immediately shield such light in such a manner so that in the opinion of the DRC such light is no longer objectionable. If shielding cannot be accomplished to the satisfaction of the DRC, or the light continues to be objectionable, the DRC may require that such light be removed or replaced with a light that is not objectionable. Notwithstanding the foregoing, temporary, decorative lighting shall be permitted provided that such lighting conforms to the requirements and limitations as may be imposed by the Association.

9.25 **Antennas, Poles and Projections.** No facilities, including poles and wires for the transmission of electricity, telephone messages, CATV signals and the like shall be placed or maintained above the surface of the ground on any Lot, and no external or outside antennas or satellite dishes shall be permitted on any Lot or Living Unit. No solar collectors of any kind or type shall be maintained except with the express written permission of the DRC (which may be withheld or conditioned in the sole and subjective discretion of the DRC). No flag poles, poles, nor standards shall be erected or maintained except with the prior written permission of the DRC, which approval may be withheld in the sole discretion of the DRC. Basketball goals may not be attached to any exterior of any portion of a residence. All basketball goals must be permanently installed and properly maintained with a clear glass backboard. Only one basketball goal per Lot, unless approved in writing from the DRC (which approval may be withheld in the sole discretion of the DRC). Basketball goal type, color and location must be approved by the DRC prior to installation.

9.26 **Subsurface Water.** No well, pump, shaft, casing or other facilities for the removal of subsurface water shall be placed or maintained on any Lot, nor shall any boring, drilling, removal of or exploration for subsurface water be conducted on any Lot, except by or with the permission of the DRC. No individual water supply system shall be permitted on any Lot.

9.27 **Drainage.** Drainage from a Living Unit, Structure or Lot directly on to an adjoining Lot as a result of any construction activity or any change to the grade of any Lot shall be prohibited and each Owner shall be required to maintain the Lot and to construct and maintain the gutters and downspouts to control such drainage. The final grading on each Lot shall not cause any adverse change (as determined solely by the DRC) to the natural grade of such Lot.

9.28 Septic/Waste Treatment Systems. Without consent of the Developer, only individual sewage treatment systems (e.g. septic systems) shall be permitted on any Lot and any such individual sewage treatment systems shall be compliant with all regulations and rules pertaining thereto (including those of the Clay County, Missouri Health Department).

9.29 Air and Water Pollution. No use of any Lot (other than the normal use of living Unit fireplaces and chimneys) will be permitted which emits pollutants into the atmosphere, or discharges liquid or solid wastes or other harmful matter into any waterway in excess of environmental standards applicable thereto, to be established by the DRC, which standards shall at a minimum meet the requirements of federal and state law and any regulations thereunder applicable to the Property. No waste or any substance or materials of any kind shall be discharged into any private or public sewer serving the Property, or any part thereof, in violation of any regulations of the State of Missouri or any private or public body having jurisdiction. The burning of leaves, trash or any debris is specifically prohibited.

9.30 Mining and Drilling. No Lot or portion thereof shall be used for any mining, boring, quarrying, drilling, removal of, or any other exploitation of subsurface natural resources, with the sole exception of subsurface water, except for areas specifically designated for such purposes by the DRC. No oil drilling, oil development operation, oil refining, quarrying or mining operations of any kind shall be permitted upon any Lot, nor shall oil wells, tanks, tunnels, mineral excavations or shafts be permitted upon any Lot. No derrick or other Structure designed for use in boring oil or natural gas shall be erected, maintained or permitted upon any Lot.

9.31 Placement of Pipelines. No water pipe, gas pipe, sewer pipe or drainage pipe shall be installed or maintained on any Lot above the surface of the ground, other than as may be approved by the DRC, except at the point of connection of such pipe to Living Unit service and except for hoses used for the watering landscaping items such as trees, shrubs, flowers and grass.

9.32 Commercial Activity. No commercial activity of any kind shall be conducted in any Residential Area or in any Living Unit, but nothing herein shall prohibit the carrying on of promotional activities by the Developer. No profession or home industry shall be conducted in or on any part of a Lot or in any improvement thereon in the Residential Areas. Any Living Unit or Structure located on a Lot designated for residential use within the Property shall be occupied by the Owner of the Living Unit. Notwithstanding the above, however, leasing of single-family unit will be allowed provided that the Owner first register the lessee with the Association, providing such information as the Association may require, and file with the Association a complete copy of the executed lease agreement.

9.33 Fireworks and Use of Firearms. The sale and use of fireworks of any kind whatsoever on the Property is prohibited. Except as permitted by law for security personnel, the use of or discharge of firearms of any kind whatsoever is prohibited. Hunting of any kind, and by any method, including but not limited to firearms, traps, snares, bow and arrows, or manually propelled missiles is strictly prohibited.

9.34 Laws and Ordinances. Each Owner shall promptly comply with all laws and statutes, ordinances, rules and regulations of federal, state or municipal governments or authorities

applicable to use, occupancy, construction and maintenance of improvements upon any Lot or Living Unit.

9.35 **Driveways and Private Sidewalks.** No exposed aggregate drives, of any kind, are permitted. All driveways, even those going to a Barn/Outbuilding must be designed as follows:

- a) Full depth asphalt; or
- b) concrete pavers; or
- c) concrete.

9.36 **“Off Road” Vehicular Traffic.** None of the Property, including but not limited to the Common Property, shall be used for motorized vehicular traffic of any nature, except as to maintenance vehicles used in the ordinary course of maintaining the Common Property. Such prohibition extends to vehicles generally referred to and categorized as all-terrain vehicles, motorized bikes and all other such motorized vehicles.

9.37 **Penalties for Violation of Article IX.** If the DRC determines that provisions of this Article have been violated, the DRC may in its discretion seek appropriate relief at law or in equity to assure that the purposes of this Article are fulfilled, including those specified in Section 7.10 hereof.

ARTICLE X

Construction on Lots

10.01 **Construction Standards.**

- a) Commencement of construction on a Lot shall start within sixty (60) days following the recording of the Deed from the Developer to the purchaser. Construction shall proceed in a timely and orderly manner to a prompt completion after commencement.
- b) A porta potty must be on site at a Lot before commencement of construction and shall be maintained and serviced every five(5) days.
- c) No Lot is to be cleared, nor shall construction commence on any Lot until a building permit therefor is granted, the Lot closing has taken place and the DRC has formally approved the plans and specifications for such construction.
- d) No dumping or open burning of construction materials, waste or trash shall occur on any Lot.
- e) Loud music will not be permitted on any construction site.
- f) No signs identifying any mortgage lender, subcontractor or supplier are permitted on any Lot. Signs identifying a “home” builder only may be permitted during the building phase of the main structure.

- g) Certain tree protection procedures have been formulated for Estates at The Ranch. It should be understood that compacting of soil, trenching and grade changes involving cutting or filling often causes death to a healthy tree within three to four years. The following procedures are, therefore, recommended:
 - (i) Tree clearing of building sites should be done by hand to minimize disturbance of remaining trees.
 - (ii) Grading or trenching within the dripline of trees should be minimized and preferably limited to areas away from the center of the tree crown. A qualified arborist or landscape architect should be consulted when working within the dripline of major (as determined by the DRC) trees.
 - (iii) A qualified arborist should also be consulted if overhead branches of major trees interfere with the construction of the dwelling.
 - (iv) A four (4) foot construction fence should be erected at the dripline of major trees and tree groupings. No construction activities including storage of materials or parking of vehicles or equipment should be allowed within the dripline of trees. Signs, bracing and temporary wiring should not be nailed to any tree.
- h) Erosion control shall be provided on Lots by the Owners. The DRC requires the Owner to place erosion control materials such as straw bales or fencing on any portion of a Lot that appears to be in an erodible condition due to construction activities. Should the erosion control fail, the Owner shall be responsible for clearing/cleaning all dirt/mud that shall accumulate on the roadway.
 - i) Each Owner, at the end of each day during which construction activities are being conducted at such Owner's Lot, shall cause the street adjoining the Property to be cleaned so that they shall be free from dirt, mud and debris deposited thereon during performance of such construction activities by Owner or said Owner's contractors, builders, subcontractors and materialmen.
 - j) Builders and contractors are responsible for the actions of their workers, as well as those of their subcontractors.
 - k) No changes in plans during the construction period will be permitted without prior express written approval of the DRC.
 - l) Once a certificate of occupancy has been issued on any Lot within the Estates at The Ranch community, no construction work shall begin before 7:00 a.m. or continue after 7:00 p.m.
 - m) Excess excavation materials must be hauled away from the Lot and from the Property.
 - n) Concrete suppliers and contractors shall clean their equipment only at the locations designated by the Developer for that purpose.

- o) Owners (for themselves and their contractors, builders, subcontractors and materialmen) shall cause the clean-up of all trash and debris generated by construction on a Lot at the end of each day. Trash and debris shall be removed from each construction site at least once a week to a dumping site located off the Property. Owners (for themselves and their contractors, builders, subcontractors and materialmen) will be responsible for removing all construction debris and keeping construction sites in a well-maintained appearance at all times.

ARTICLE XI

Duration and Amendment

11.01 **Duration.** This Declaration and the Restrictions contained herein shall run with, burden and bind the Property, shall inure to the benefit of and shall be enforceable by the Developer (during the Development Period), the Association and any Owner, their respective legal representatives, heirs, successors and assigns, and by any Resident until August 1, 2030; after which time the Declaration shall be automatically renewed for successive periods of ten (10) years unless, prior to the commencement of any such renewal period, an instrument terminating this Declaration and the Restrictions contained herein shall be executed by the proper Association officers and recorded in the appropriate Office of the Recorder of Deeds or in such other place of recording as may be appropriate at the time of the execution of such instrument, pursuant to a resolution to such effect approved in writing by not less than two-thirds (2/3) of the total number of Members, which resolution shall have been approved within six (6) months prior to August 1, 2030, or the end of any such ten (10) year extension period.

11.02 **Amendment.**

- a) After the expiration of the Development Period, this Declaration may not be amended, terminated or modified in any respect except by recording an instrument executed by the proper Association officers and authorized by the Members, subject of course to the rights, if any, of any lienholders of liens on the Property to consent to or approve of such amendment, termination or modification, pursuant to a resolution to such effect approved in writing by not less than two-thirds (2/3) of the total number of the Members.
- b) Notwithstanding the foregoing, during the Development Period this Declaration can be abolished, amended, modified or changed in whole or in part ONLY by the Developer (acting alone, without concurrence of the Owners, Members, Association, Board or DRC) in order to, among other things, correct deficiencies of this Declaration as determined to exist by the Developer (as determined to exist by the Developer in Developer's sole discretion); to comply with the requirements of the City in respect to any provision of this Declaration; and to provide for the unified and efficient development of the Project on the Property (determined to be necessary in Developer's sole and absolute discretion). Such unilateral Developer amendment hereof shall be evidenced by an instrument recorded with the Recorder of Deeds for the County in which the Property is located (Clay).

ARTICLE XII

Enforcement

12.01 Right of Action.

- a) In the event of a violation or breach of any Restriction or covenant contained in this Declaration, the Association Board shall give written notice, not less than 5 days', to the Owner setting forth in reasonable detail the nature of such violation or breach and the specific action or actions which shall be taken by the Owner to remedy such violation or breach. If the Owner shall fail to take reasonable steps to remedy or cure such violation or breach within the time limit specified in the written notice, then the Association may pursue its Right of Action. The term "Right of Action" as used herein, shall mean the right of the Association Board through its agents and employees, to enter all reasonable times upon any Lot as to which a violation, breach or other condition to be remedied exists, and take the actions specified in the notice to the Owner to abate, extinguish, remove or repair such violation, breach or other condition which may exist thereon contrary to the provisions hereof. Such entry or action, or both, shall not be deemed to be a trespass or wrongful act solely by reason of such entry and such actions, provided such entry and such actions are carried out in accordance with the provisions of this Declaration. All costs and expenses, including reasonable attorneys fees incurred by the Association Board, or on its behalf, in enforcing such Right of Action and remedies provided in the Declaration (including self-help remedies and the cost thereof) shall be a binding personal obligation of such Owner enforceable at law, as well as a lien on such Owner's Lot enforceable pursuant to the provisions of this Declaration. The lien provided under this Section shall not be valid against a bona fide purchaser (or bona fide lienholder) of the Lot in question unless a notice of such lien shall have been filed in the appropriate office of the Recorder of Deeds prior to the recordation of the Deed in the said office (or lien instrument) conveying the lot in question to such purchaser (or subjecting the same to such lien). "Right of Action" shall also mean and encompass the right to pursue all remedies herein specified and specified in Sections 12.02 and 12.03, together with all remedies at law or in equity.
- b) During the Development Period, the Developer may pursue its, Right of Action, in such cases, where in the judgment of the Developer, the Association Board has abused its discretion in electing not to exercise its Right of Action to enforce the provisions of the Declaration and has thereby jeopardized the performance of the obligations of the Developer pursuant to the Development Plan. The Developer's Right of Action shall be subject to the following limitations:
 - (i) the Developer shall give written notice to the Association Board identifying the violation which the Developer seeks to correct and the steps the Developer will take to remedy the condition; and
 - (ii) the Developer may not commence to exercise its Right of Action less than ten (10) days after giving written notice to the Association Board.

12.02 Specific Performance. Nothing contained herein shall be deemed to affect or limit the rights of the Developer, the Association (including the Board), the Members, the Residents or the Owners, or any one of them, to enforce any of the terms, covenants or

conditions of this Declaration by appropriate judicial proceedings. In any and all such actions, whether at law or in equity, any such beneficiary hereof who is entitled to relief shall also be entitled to recover all costs and expenses, including reasonable attorney's fees, incurred in enforcing such rights.

12.03 Enforcement of Liens.

- a) The Association shall also have a lien for Assessments, user fees and charges, as well for the repayment of any other monies for which an Owner may be liable pursuant hereto, (herein collectively, "Assessment" or "Assessments") as set forth in Section 3.01 hereof and shall have a lien for the cost of exercising the Right of Action as set forth in this Declaration. The amount which may be recovered by the Association shall include the Assessment or costs, together with the cost of such enforcement proceedings, including reasonable attorney's fees and interest. Suits to recover a money judgment for unpaid Assessments or other charges shall be maintainable without foreclosing or waiving the lien provided for in this Declaration. The lien shall extend to all Lots owned by the Owner against whom the right or remedy is sought.
- b) If any demand for payment or claim of liens or liens is not paid when due as provided in this Declaration, the Association Board, or its duly authorized representative, may thereafter elect to file and record a claim of lien on behalf of the Association against the Lot of the defaulting Owner in the appropriate Office of the Recorder of Deeds. Such claim of lien shall be executed and acknowledged by any officer of the Association and shall contain substantially the following information:
 - (i) the name of the delinquent Owner;
 - (ii) the legal description and street address of the Lot against which the claim of lien is made;
 - (iii) the total amount claimed to be due and owing for the amount of the delinquency, interest thereon, collection costs and reasonable attorney's fees
 - (iv) a statement that the claim of lien is made by the Association pursuant to this Declaration; and
 - (v) a statement that a lien is claimed against said Lot in an amount equal to the amount stated; together with all other amounts becoming due from time to time in accordance with this Declaration.
- c) Upon such recordation of the duly executed original, or copy, of such a claim of lien, the lien claimed therein shall immediately attach and become effective in favor of the Association as a lien upon the Lot against which such Assessment or cost was levied. Such a lien shall have priority over all liens or claims created subsequent to the recordation of the claim of lien thereof, except as otherwise provided herein to the contrary.
- d) Any such lien may be foreclosed by appropriate action at law or in the manner provided by law for foreclosure of mortgages or sale by a judgment creditor or in any

other manner permitted by the laws of Missouri (including, without limitation, common law procedures for establishing and foreclosing equitable liens).

- e) The lien provided for herein shall be in favor of the Association, for the benefit of all other Owners, and shall secure payment of all sums set forth in the claim of lien, together with all sums becoming due and payable in accordance with this Declaration after the date of recordation of said claim of lien.
- f) Upon the timely curing of any default, for which a notice of claim of lien was filed by the Association Board and the payment of all sums secured by the lien created by the recordation of such claim of lien, the Association Board shall (upon payment by such Owner of reasonable costs by the Owner of the Lot subject to the lien) cause an officer of the Association to file and record an appropriate release of such claim of lien in the Office of the Recorder of Deeds.
- g) No Owner may waive or otherwise escape liability for the Assessments provided for in this Declaration by non-use of the Common Area, or any part of the Property, or abandonment of his Lot.
- h) Each Owner does hereby waive, to the extent legally possible, all rights to notices and defenses to any liens created pursuant to this Declaration, whether such liens are now in existence or are created at any time in the future, and the benefit of any exemption laws of the State of Missouri now in effect, or in effect from time to time hereafter.

12.04 Liquidated Damages for Developer. In addition to (but not in lieu of) the remedies of Association and Developer as herein provided (including but not limited to the right to receive equitable and injunctive relief), all Owners are deemed to recognize that violations of any portion of the Declaration will, so long as Developer is Owner of any portion of the Property (or any constituent Lot thereof), result in damages to Developer which are difficult, if not impossible, to ascertain at this moment (the parties and their successors in interest to the Property acknowledge that any such violations and breaches of the Declaration will have a negative impact on values of the portions of the Property still owned by Developer at the time of such violations/breaches).

- (a) Accordingly, if any Owner of any Lot shall violate or breach the Declaration (or any provision thereof) while Developer is Owner of any portion of the Property (or any constituent Lot thereof), and if the violating or breaching Owner shall not rectify or cure such violation or breach within two (2) days (the "Cure Period") after Developer shall give such Owner written notice generally describing the violation or breach, then in that event, the violating or breaching Owner shall pay to Developer special liquidated damages in the amount of \$57.00 for each day (or any part thereof) after the expiration of such Cure Period that the violation or breach shall continue, provided however, the maximum liquidated damages assessable for any single uninterrupted violation or breach shall not in any event exceed \$3,200.00 for any calendar year. The parties expressly agree that the liquidated damages stated are a reasonable advance estimate of special damages to Developer in the event of a breach or violation of the Declaration and that such liquidated damages are not intended as a penalty.

- (b) In any action or proceeding instituted by Developer for the recovery of such liquidated damages, the violating or breaching Owner shall also reimburse Developer for Developer's reasonable attorney's fees, expenses, investigative costs and costs of the action therein incurred.
- (c) Notwithstanding any provisions of this section on Liquidated Damages for Developer, which gives an Owner an opportunity to cure such Owner's default or breach after notice from Developer, if such Owner (including such Owners agents, servants, employees, tenants, invitees, contractors, subcontractors, materialmen and suppliers) shall breach or make default under this Declaration two (2) or more times during the same calendar year and Developer, because of such breaches or defaults of like character, shall give Owner two (2) written notices of breaches or defaults of like character, a subsequent breach or default of like character during the same calendar year shall constitute an immediate default and breach of this Declaration with respect to which Owner shall have no opportunity to cure same prior to Developer's commencement of its action at law to recover Liquidated Damages and attorney's fees.

12.05 **No Waiver.** The failure of the Developer, the Association, any Owner, his or its respective legal representatives, heirs, successors and assigns, or any Resident, to enforce this Declaration shall in no event be considered a waiver of the right to do so thereafter as to a similar violation or breach occurring prior or subsequent thereto.

12.06 **Additional Rules.** The Association Board (but, during the Development Period, only with the express written consent of Developer, which consent may be withheld in Developer's sole discretion) may adopt, amend, modify, and promulgate (and thereafter rescind, modify or revoke) reasonable rules, regulations and procedures regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting, amending, modifying, promulgating, rescinding or revoking such rules, regulations and procedures, or in making any finding, determination, ruling or order or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rulers or regulations, the Association Board, Developer and DRC shall take into consideration the best interests of the Owners of the Property to the end that the Property shall be preserved and maintained as a community of high quality, and shall seek to achieve the development of the Property in accordance with the standards and objectives set forth herein.

12.07 **Incorporation of Provisions in Deeds.**

- a) Each grantee (including successors and assigns of each grantee), by accepting a Deed, lease or other instrument conveying any interest in any Lot, whether or not such instrument incorporates or refers to this Declaration, covenants for himself/herself or itself, its heirs, successors and assigns to observe, perform and be bound by the Declaration and to incorporate this Declaration by reference in any Deed or other conveyance of all or any portion of his interest in any real Property subject hereto.
- b) The Developer and each grantee (including successors and assigns of each grantee), by accepting a Deed, lease or other instrument conveying any interest in any Lot, further agrees to cause all subsequent grantees to execute any Deed, lease or other instrument conveying any interest in any Lot(s) for the purpose of affirmatively

assuming the obligations of an Owner hereunder and agrees to include the following covenant in any such Deed, lease or other instrument conveying any interest in any Lot:

“For the benefit of the grantor, HHS Ranch Development, LLC (including any successor), The Estates at The Ranch Homes Association, Inc., and their respective heirs, successors and assigns, the grantee hereunder assumes the obligations of an Owner under the Declaration of Covenants, Restrictions, Easements, Charges and Liens to which the property is subject and expressly agrees to comply with each provision thereof to the extent such provision applies to him or it.”

This covenant, and any such covenant in any Deed to any Lot, may be specifically enforced against the grantor or the grantee, or both. The failure to expressly include such language in a Deed shall not diminish or impair the liens, reservations, rights, obligations and restrictions contained in this Declaration, it being understood and agreed that this Declaration runs with the land (the Property) and shall be binding upon the Property from and after recordation of this Declaration.

12.08 **New Developer or Successor.** Anything herein mentioned to the contrary notwithstanding, the Developer may, by written instrument recorded by reference to this instrument, assign its rights as Developer to a person or entity and, upon such recordation:

- a) All of the Developer’s rights, powers, duties and obligations under this Declaration shall pass to the new developer or successor so designated in such recorded instrument.
- b) Neither the new developer, successor, the Association, the Members, the Owners nor the Residents shall assume any liability arising from the Developer’s exercise of its rights and powers under this Declaration or its performance of, or failure to perform, its duties and obligations hereunder.

ARTICLE XIII

Miscellaneous

13.01 **No Reverter.** No Restriction herein is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

13.02 **Invalidity.** The determination by a court that any provision hereof is invalid for any reason shall not affect the validity of any other provision hereof, and to the extent that any term, covenant or condition contained in this Declaration is in conflict with any applicable laws, this Declaration shall be deemed to be amended so as to comply with applicable laws.

13.03 **Violation and Nuisance.** Any act or omission whereby any provision of this Declaration is violated in whole or in part is hereby declared to be a nuisance and may be enjoined or abated, whether or not the relief sought is for negative or affirmative action, by the Developer, the Association Board or any Owner of a Lot.

13.04 **Violation of Law.** Any violation of any federal, state, municipal or local law, ordinance or regulation pertaining to the ownership occupation or use of any of the Property is hereby declared to be a violation of this Declaration and subject to any and all of the enforcement procedures set forth herein.

13.05 **Remedies Cumulative.** Each remedy set forth in this Declaration shall be in addition to all remedies whether available at law or in equity and all such remedies, whether or not set forth in this Declaration, shall be cumulative and not exclusive.

13.06. **No Personal Liability.** No member of the Association Board or DRC, officer of the Association, Developer, representative of Developer, member of any committee of the Association, whether such committee is specifically described in this Declaration or hereafter created by the Association, Manager or Member of the Developer shall be personally liable to any Owner, Member, Resident or to any other party for any damage, loss or prejudice suffered or claimed on account of any act, (including any oral representation regarding any aspect of a Lot whatsoever), omission, error, failure to act, or negligence of any such Association Board Member, officer or committee member of the Association, Manager or Member the Developer, or any Member of the DRC or any realtor representing the Developer in the sale of a Lot and, further, neither the DRC nor any member thereof shall be liable to the Association, any Owner or to any other party for any damage, loss or prejudice suffered by or claimed on account of:

- a) the approval or disapproval of any plans, drawings or specifications, whether or not defective;
- b) the construction or performance of any work upon the Property;
- c) the execution and filing of any estoppel certificate, whether or not the facts therein are correct; or
- d) any other act, action or conduct of such committee.

Such limitation of liability shall apply in all cases, provided that such person has, on the basis of such information as may be possessed by him, acted in good faith, without willful or intentional misconduct.

13.07 **Assignability.**

- a) The Association shall be empowered to assign its rights, or any part thereof, to any successor public body, authority, agency, district or not-for-profit corporation (hereinafter referred to as the "Successor Entity"), and upon such assignment the Successor Entity shall have those rights and be subject to those duties assigned thereby and shall be deemed to have agreed to be bound by the appropriate provisions hereof to the same extent as if the Successor Entity had been an original party to the Declaration. Any such assignment shall be accepted by the Successor Entity under a written agreement pursuant to which the Successor Entity expressly assumes the duties and obligations thereby assigned.
- b) If for any reason the Association shall cease to exist without having first assigned its rights hereunder to a Successor Entity, the covenants restrictions, easements, charges and liens imposed hereunder shall nevertheless continue and any Owner may petition

a court of competent jurisdiction to have a trustee appointed for the purpose of organizing a not-for-profit corporation and assigning the rights hereunder with the same force and effect, and subject to the same conditions, as provided in this Declaration with respect to an assignment and delegation to a Successor Entity.

- c) Any assignment or delegation of rights shall be approved by two-thirds (2/3) of the Members voting in person or by proxy at an Association meeting at which a quorum is present or voting in a referendum called for such purpose after proper notice is given.
- d) The Developer may, at its option, assign any or all of its rights under this Declaration.

13.08 Headings. The headings of the Articles and Sections hereof are for convenience only and shall not affect the meaning or interpretation of the contents of this Declaration.

13.09 Gender. Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter and the singular, the plural and vice versa.

13.10 Effect of Violation of Declaration on Mortgage. No violation of this Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in possession or any purchaser at any foreclosure sale or any person in a similar position shall be bound and subject to this Declaration as fully as any other Owner of any portion of the Property.

13.11 Delivery of Notices and Documents.

- (a) Any written notice or other documents addressed to the Association, the Association Board, the DRC, or the Developer relating to or required or permitted by the Declaration may be delivered either personally or by certified or registered mail, return receipt requested. If by certified or registered mail, it shall be deemed to have been given, delivered and received upon receipt thereof by the addressee.
- (b) Any written notice or other documents relating to or required or permitted by the Declaration may be delivered to an Owner or Member either personally or by mail unless other requirements are specifically made in any provision hereof. If by mail, it shall be deemed to have been given, delivered and received seventy-two (72) hours after a copy of same has been deposited in the United States mail, postage prepaid, addressed to such Owner or Member, to the address of any Lot owned, whether in whole or in part, by such Owner or Member, or to any other address last furnished by such Owner or Member to the Association. Each Owner or Member shall file his correct mailing address with the Association, and shall promptly notify the Association in writing of any subsequent change of address. Any notice given or required to be sent pursuant to this Declaration shall be deemed to have been properly given, unless other requirements are specifically made in any provision hereof, when mailed, postage prepaid, to the last known address of the person to whom notice is to be given.

13.12 Local Laws Not Superseded. This Declaration shall not be construed as permitting any action prohibited by applicable zoning laws, or by the laws, rules or regulations of any governmental body, or by any Deed or lease. In the event of any conflict, the most

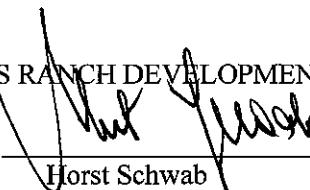
restrictive provision of such laws, rules, regulations, deeds, leases or this Declaration shall govern and control.

13.13 **No Partition.** None of the Common Property shall be subject to Partition, either at law or in equity, such right of Partition (if available) being expressly denied to all parties.

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IN WITNESS WHEREOF, the undersigned, being the Developer herein, has hereunto set its hand and seal on the day and year last above written.

HHS RANCH DEVELOPMENT, LLC

By: 

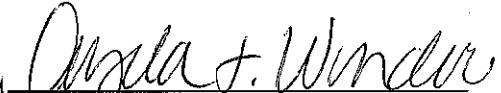
Horst Schwab

Title: Sole Member

STATE OF MISSOURI)
Clay) ss.
COUNTY OF PLATTE)

On this 12th day of March, 2020, before me, the undersigned, a Notary Public, personally appeared Horst Schwab to me personally known, who by me duly sworn, did say that he is a member of HHS Ranch Development, LLC, a Missouri limited liability company, and that said instrument was signed in behalf of said limited liability company by authority of its members, and acknowledged said instrument to be the free act and deed of said limited liability company.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the State of Missouri, in the day and year last above written.


Notary Public

My term expires _____

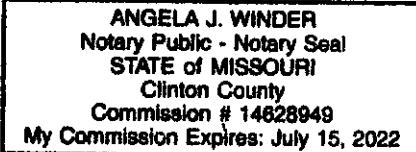


Exhibit "A"
Legal Description of the Property

ALL OF LOTS 1-14 ESTATES AT THE RANCH A SUBDIVISION IN SECTION 1-52-33
SMITHVILLE, CLAY COUNTY, MISSOURI