

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

HERITAGE LAKES

01832

This DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR HERITAGE LAKES (this "Declaration") is made and executed this 6<sup>th</sup> day of JANUARY 1994 by Planned Development Company of Ohio, an Ohio corporation (the "Declarant").

**W I T N E S S E T H:**

Declarant, as the owner of the real property which is legally described in Exhibit "A" attached hereto and made a part hereof, intends by this Declaration:

(i) to establish a general plan and uniform scheme of development and maintenance of the Property (as hereafter defined) as a community consisting of residential dwelling units and common property to be known as "Heritage Lakes";

(ii) to provide a flexible and reasonable procedure for development of the Property;

(iii) to provide for the preservation of property values within the Property;

(iv) to provide for the addition of real estate into Heritage Lakes; and

(v) to establish a method for the administration, maintenance, preservation, use and enjoyment of the Property and Common Property (as hereafter defined).

Declarant hereby declares that the property described in Exhibit "A" attached hereto and made a part hereof (and any additional property subjected to this Declaration as provided herein) is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, reservations, restrictions, easements, assessments, charges, liens and other provisions hereinafter set forth in this Declaration, as this Declaration may be amended from time to time as more particularly set forth herein.

TRANSFER  
NOT NECESSARY  
JAN 27 1994  
JOSEPH W. TESTA  
AUDITOR  
FRANKLIN COUNTY, OHIO

**ARTICLE I**  
**DEFINITIONS**

CONVEYANCE TAX  
EXEMPT  
M M  
JOSEPH W. TESTA  
FRANKLIN COUNTY AUDITOR

Central City Title Agency, Inc.  
178 E. State Street  
P.O. Box 1008  
Columbus, Ohio 43216

In addition to terms defined elsewhere in this Declaration, the following terms, as used in this Declaration, shall have the following meanings:

Section 1.1. The **Architectural Design Guide** shall mean that certain guide prepared by the Architectural Review Committee (and approved by the Board) as the same may be amended and modified from time to time (with the approval of the Board) setting forth certain design guides and minimum building standards for Improvements to be constructed at Heritage Lakes and procedures to obtain approval for construction of any such Improvements.

Section 1.2. The **Architectural Review Committee** shall mean the Committee appointed by the Board to prepare and implement the Design Review Guide and otherwise oversee construction of, and all subsequent modifications, additions, or alterations to, Improvements.

Section 1.3. The **Articles** shall mean the Articles of Incorporation of the Association.

Section 1.4. The **Assessments** shall mean Base Assessments, Individual Assessments and Special Assessments.

Section 1.5. The **Assessment Cap** shall mean the maximum amount of Base Assessments or Special Assessments, as the case may be, which may be levied against and collected from any Owner during any one calendar year. For the purposes of this Declaration, the Assessment Cap for 1994 shall be \$300 and, for calendar year 1995 and thereafter, the Assessment Cap shall be determined by increasing or decreasing, as the case may be, the Assessment Cap applicable during the preceding calendar year by the increase or decrease, as the case may be, in the CPI during the preceding calendar year. For example, if the CPI increases 2.3% in 1994, the Assessment Cap for 1995 shall be equal to \$306.90 [ $\$300 \times 2.3\% = \$6.90$ ;  $\$300 + \$6.90 = \$306.90$ ]. As a further example, if the CPI decreases 1.9% in 1995, the Assessment Cap for 1996 shall be \$301.07 [ $\$306.90 \times 1.9\% = \$5.83$ ;  $\$306.90 - \$5.83 = \$301.07$ ].

Section 1.6. The **Association** shall mean Heritage Lakes Homeowners Association, Inc., an Ohio corporation not for profit, and its successors and assigns.

Section 1.7. The **Base Assessments** shall mean those charges levied and collected by the Association from Owners of Developed Lots to fund Common Expenses.

Section 1.8. The **Board** shall mean the Board of Trustees of the Association.

Section 1.9. A **Builder** shall mean any Person that (i) acquires a Lot for the purpose of development and sale in the ordinary course of business or (ii) enters into an agreement with an Owner to construct any Improvement on a Lot.

Section 1.10. The **Code of Regulations** shall mean the Code of Regulations of the Association, as in effect from time to time.

Section 1.11. The **Common Expenses** shall mean all expenses incurred by the Association in connection with its ownership and/or maintenance of the Common Property, maintenance of the Median Strips, maintenance of the sanitary pump station (located on the Golf Course Northeast of Lots 23 and 24 of Heritage Lakes Section One), maintenance of property other than Common Property as provided herein, real estate taxes and assessments, if any, attributable to the Common Property, utilities for the Common Property or consumed in furtherance of the Association's duties and obligations and conducting its affairs and generally discharging the duties and obligations imposed upon it by this Declaration or assumed by it pursuant to authorization granted by this Declaration.

Section 1.12. The **Common Property** shall mean all portions of the Property that are intended for the common use and enjoyment of Members (e.g., the entryway to Heritage Lakes and the amenities related thereto including, without limitation, the entryway fences, walls, ponds, signs, irrigation system and landscaping (including, without limitation, the red maple trees planted along Heritage Lakes Drive, between Alton-Darby Road and the intersection of Heritage View Court and Heritage Point Court, located between the curb and sidewalk), and which are identified as Common Property by the Association or which are dedicated to the Association on a Plat of Heritage Lakes or which are conveyed by Declarant to the Association, together with all personal property related thereto, and all real and personal property that may subsequently be acquired by the Association for the common use and enjoyment of the Members.

Section 1.13. The **Community Standard** shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout the Property, as determined by the Board.

Section 1.14. The **CPI** shall mean the Consumer Price Index for all Urban Consumers, U.S. City Average, All Items (1982 - 1984 = 100), as published from time to time by the Bureau of Labor Statistics, United State Department of Labor.

Section 1.15. The **Declarant** shall mean Planned Development Company of Ohio, an Ohio corporation, its successors and assigns, provided those successors and assigns are designated in writing by Planned Development Company of Ohio in an instrument filed in the Public Records as successors or assigns of its rights under this Declaration.

Section 1.16. The **Declaration** shall mean this instrument, and all exhibits hereto, as it may be amended from time to time.

Section 1.17. A **Developed Lot** shall mean any Lot owned by any Person other than Declarant.

Section 1.18. The **Golf Course** shall mean the approximate 175± acre tract of land improved with, among other things, an 18-hole golf course and related amenities, a clubhouse and a driving range, located adjacent to portions of the Property and contiguous to Golf Course Lots.

Section 1.19. A **Golf Course Lot** shall mean any Lot which is contiguous at any point with the Golf Course.

Section 1.20. The **Golf Course Owner** shall mean Heritage Golf Club Limited Partnership, an Ohio limited partnership ("Heritage Ltd."), its successors and assigns, provided those successors and assigns are designated in writing by Heritage Ltd. in an instrument filed in the Public Records as successors or assigns of its rights under this Declaration.

Section 1.21. **Heritage Lakes** shall mean the Property, including Common Property, subject at any time to this Declaration and comprising the residential community created hereby.

Section 1.22. The **Improvements** shall mean all structures or improvements of any kind, including without limitation, any building, fence, pool, hot-tub, wall, sign, paving, grading, parking area, screen enclosure, porch, deck, patio, sewer, drain, disposal system, decorative building, landscaping, landscape device or object, and all alterations and additions thereto.

Section 1.23. An **Individual Assessment** shall mean those charges levied and collected by the Association from an Owner of a Developed Lot for expenses or obligations which are not Common Expenses.

Section 1.24. A **Lot** shall mean a portion of the Property designated on a Plat as a separate building lot and containing a separate tax parcel identification number, and shall include both Developed Lots and Undeveloped Lots.

Section 1.25. The **Median Strips** shall mean those areas within the middle of the rights of way of publicly dedicated streets located within Heritage Lakes which are not paved and which contain grassy areas, trees, shrubs and landscaping and which the Association is required to maintain pursuant to the provisions hereof, but shall not include the areas between the street curb and the right of way.

Section 1.26. A **Member** shall mean and refer to any member of the Association.

Section 1.27. A **Mortgage** shall mean any Mortgage or functionally similar instrument filed in the Public Records which encumbers a Lot or any other portion of the Property.

Section 1.28. A **Mortgagee** shall mean the beneficiary or holder of a Mortgage.

Section 1.29. An **Owner** shall mean the record owner(s) of fee simple title to any Lot.

Section 1.30. A **Person** shall mean any natural person or any artificial entity.

Section 1.31. A **Plat** shall mean any plat of all or any portion of the Property as recorded in the Public Records, as amended or revised from time to time.

Section 1.32. The **Property** shall mean that certain real property described in Exhibit "A" attached hereto and made a part hereof, which is subject to this Declaration, together with such additional real property, if any, as is hereafter subjected to this Declaration.

Section 1.33. The **Public Records** shall mean the records maintained in the Office of the Recorder, Franklin County, Ohio.

Section 1.34. The **Rules and Regulations** shall mean the rules and regulations for the conduct of Members and their respective families, guests, licensees and invitees, as adopted from time to time by the Board.

Section 1.35. A **Special Assessment** shall mean those charges levied and collected by the Association from Owners of Developed Lots to fund extraordinary expenses which are not included in the Association's budget.

Section 1.36. An **Undeveloped Lot** shall mean any Lot owned by Declarant.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

Section 2.1 **PROPERTY.** Upon the recordation hereof, the Property shall be held, transferred, sold, conveyed, improved and occupied subject to this Declaration.

Section 2.2 **ADDITIONS.** Declarant shall have the right and power, but neither the duty nor the obligation, in its sole and absolute discretion and by its sole act, to subject additional property to this Declaration from time to time by executing and recording in the Public Records an amendment to this Declaration

specifying that such additional property is part of Heritage Lakes. An amendment to the Declaration shall not require the joinder or consent of the Association, other Owners, Mortgagees, or any other Person. In addition, such amendments to the Declaration may contain such supplementary, additional, different, new, varied, revised and amended provisions as may be necessary or appropriate, as determined by Declarant, to reflect and address the different character or intended development of any such additional property.

### ARTICLE III

#### THE ASSOCIATION

Section 3.1 FORMATION. Declarant has caused the formation of the Association by the filing of the Articles in the office of the Secretary of State of Ohio. The purposes and powers of the Association shall be all of the purposes and powers set forth in this Declaration and in the Articles and Code of Regulations. The Association shall be responsible for the execution, performance, administration and enforcement of all the terms and conditions of this Declaration. If there is a conflict between the terms and conditions set forth in this Declaration, the Articles or Code of Regulations, the conflict shall be resolved in favor of the terms and conditions as provided in this Declaration.

Section 3.2 MEMBERSHIP. A Person shall become a Member of the Association upon acquisition and/or ownership of fee simple title to any Lot, as evidenced by a deed recorded in the Public Records. If title is held by more than one Person, such multiple Owners shall together constitute one Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of the Lot and simultaneously with the transfer of ownership (whether voluntarily or by operation of law), the membership shall automatically transfer to the new Owner. No person or entity shall become a Member of the Association by reason of holding an interest in a Lot as security for performance of an obligation. By recording an amendment to this Declaration, subjecting additional real property to this Declaration, Declarant may create additional memberships in the Association and, as provided in Section 2.2 hereof, may designate the ownership basis for such additional membership.

Section 3.3 ADMINISTRATION OF THE ASSOCIATION. The affairs of the Association shall be administered by the Board in accordance with this Declaration, the Articles and Code of Regulations. This Declaration may be amended as provided herein and the Articles and Code of Regulations may be amended in the manner set forth therein; provided, however, that no such amendment shall

adversely affect the rights of Declarant, without Declarant's prior written approval.

Section 3.4 VOTING. The total number of votes on any question for which the vote of Members is permitted or required shall be equal to the number of Lots comprising Heritage Lakes at the time of the vote. Each Member shall be entitled to one vote per Lot owned by such Member on any question for which the vote of Members is permitted or required. At all elections for members of the Board, the candidate receiving the greatest percentage of votes cast shall be elected. All other questions shall be determined by the vote of those Members entitled to exercise not less than a majority of the voting power of the Members present or represented by proxy at a meeting, unless for any particular purpose the vote of a greater percentage of all Members is required by this Declaration, the Articles, the Code of Regulations, by law or otherwise.

Section 3.5 SUSPENSION OF MEMBERSHIP RIGHTS. No Member shall have any vested right, interest or privilege in or to the assets, functions, affairs or interests of the Association, or any right, interest or privilege which may be transferable, or which shall continue after his or her membership ceases, or while he or she is not in good standing. A Member shall be considered "not in good standing" during any period of time in which he or she is delinquent in the payment of any Assessments, or in violation of any provision of this Declaration, or of any Rules and Regulations. While not in good standing, the Member shall not be entitled to vote or exercise any other right or privilege of a Member of the Association, including use of the Common Property.

Section 3.6 AUTHORITY TO BORROW FUNDS. In order to secure the repayment of any and all sums borrowed by it, loaned to it, or owed by it, from time to time, the Association is hereby granted the right and power to mortgage, assign and pledge all revenue received and to be received by it under the terms of this Declaration, including, without limitation, the proceeds of the Assessments payable hereunder.

Section 3.7 AUTHORITY TO MAINTAIN SURPLUS. The Association shall not be obligated to spend in any particular year or time period all sums collected or received by it in such year or time period and may carry forward, as surplus, any balances remaining without any obligation to apply such surplus against the budget for the current or next ensuing year.

Section 3.8 AUTHORITY TO ENTER INTO CONTRACTS. The Association shall have the power and authority to contract with any Person, including the Declarant, for the exercise of any one or more of the various powers and authority granted to and duties to be performed by the Association hereunder, and to delegate

such powers and authority to any agent or employee of the Association.

Section 3.9 RULES AND REGULATIONS. In addition to the restrictions and limitations imposed by this Declaration, the Association, through its Board, shall regulate the use of the Property and Common Property by its Members and their respective families, guests, licensees and invitees, and may from time to time promulgate such Rules and Regulations as are consistent with this Declaration, governing the use thereof as it may deem to be in the best interests of its Members.

#### ARTICLE IV

##### COMMON PROPERTY

Section 4.1 COMMON PROPERTY. The Common Property is intended for the use and benefit of Members and their respective social guests, licensees and invitees, subject at all times to the provisions of this Declaration and such Rules and Regulations as may be adopted by the Board from time to time.

Section 4.2 ACQUISITION AND DISPOSITION OF COMMON PROPERTY. The Association shall have the power and authority to acquire and grant such interests in real and personal property and to withdraw or convey such portions of the Common Property as it may deem beneficial to its Members. Such interests may include fee simple or other absolute ownership interests, easements, mortgage liens, leaseholds, or such other possessory use interests as the Association may determine to be beneficial to its Members.

Section 4.3. ASSOCIATION'S RESPONSIBILITY. The Association shall maintain and keep in good condition the Common Property, such maintenance to be funded with Assessments as herein provided. Additionally, the Association shall maintain and keep in good condition and repair the Median Strips, unless the City of Hilliard agrees to assume such maintenance responsibility. Further, the Association may, in its discretion and to the extent determined by the Board, choose to maintain property that it does not own, the maintenance of which would, in the opinion of the Board, benefit Heritage Lakes.

Section 4.4 OWNER'S RESPONSIBILITY. Each Owner shall maintain his or her Lot and the area between the street curb and the right of way and all structures, landscaping (including landscaping planted by Declarant and/or the Association, if any), sidewalks, parking areas and other Improvements located thereon in a manner consistent with the Community Standard, this Declaration and all applicable Rules and Regulations, except to the extent the maintenance responsibility is otherwise expressly assumed by the Association pursuant to this Declaration or by a



governmental authority. If any Owner fails to perform his or her maintenance responsibility, the Association may perform it and assess all costs incurred against the Owner of the Lot as an Individual Assessment.

**ARTICLE V**

**COMMON EXPENSES; ASSESSMENTS**

Section 5.1 AUTHORITY. The Association, through the Board, shall have the power and authority to make and collect Assessments from Owners of Developed Lots to provide for the payment and discharge of the Common Expenses or otherwise incurred or paid by the Association in the performance of its duties and exercise of its powers under this Declaration, the Articles and the Code of Regulations.

Section 5.2 BASE ASSESSMENTS. The Board shall annually estimate the Common Expenses and other expenses, if any, it expects the Association to incur in the Association's next ensuing fiscal year (which may be a calendar year -- as determined by the Board from time to time) for the maintenance, operation and management of the Association, including the Common Property, and shall assess sufficient Base Assessments (which may include amounts for a reasonable reserve fund -- as may be determined by the Board) to meet this estimate. All Developed Lots shall be assessed for Base Assessments at a uniform rate; provided, however, such rate may be prorated for any Developed Lots which were not Developed Lots for the entire calendar year. Base Assessments shall be payable, in advance, monthly, quarterly, semi-annually or annually, as the Board shall determine.

Section 5.3 SPECIAL ASSESSMENTS. In the event during the course of any fiscal year the Board should determine that the Base Assessments are insufficient to meet an extraordinary expense not originally part of the Association's budget, the Board may levy a Special Assessment to cover such extraordinary expense. All Developed Lots shall be assessed for Special Assessments at a uniform rate; provided, however, such rate may be prorated for any Developed Lots which were not Developed Lots for the entire calendar year. Notwithstanding anything to the contrary herein contained, it is recognized and declared that any Special Assessment shall be in addition to and not part of any Base Assessment, and any such Special Assessment assessed against Lots shall be paid by such Owners in addition to any Base Assessments. Special Assessments shall be paid in installments or in a lump sum as the Board shall determine.

Section 5.4 CAP ON BASE AND SPECIAL ASSESSMENTS. Anything in Sections 5.1, 5.2 and/or 5.3 or elsewhere herein to the

contrary and notwithstanding the annual budget approved by the Board pursuant to Section 5.2 above, the Board may not assess Base Assessments for any one calendar year or Special Assessments (alone or when added to previously approved Special Assessments for that calendar year), as the case may be, against any Owner of a Developed Lot in an amount in excess of the then applicable Assessment Cap unless approved by Members (exclusive of Declarant) entitled to exercise not less than 75% of the voting power of all Members (exclusive of Declarant) in the Association.

Section 5.5 INDIVIDUAL ASSESSMENTS. The Association may levy and collect an Individual Assessment against a particular Owner for the cost of (i) any benefits, goods or services provided to a particular Lot and not otherwise provided to all Lots in Heritage Lakes; (ii) maintenance, repairs or replacements of the Lot, which the Owner thereof has failed to perform and which failure or refusal to perform has in the opinion of the Association, violated the Community Standard or endangered or impaired the use, value or appearance of the Property, (iii) maintenance, repairs or replacements of Common Property and related improvements resulting from damage or destruction attributable to the Owner's family, guests, agents, invitees, contractors or representatives, and/or (iv) liquidated damages arising under Section 7.10 hereof. All Individual Assessments shall be collectible in such manner as the Board shall determine.

Section 5.6 COVENANT TO PAY ASSESSMENTS. In order to fulfill the terms, provisions, covenants and conditions contained in this Declaration, and to maintain, operate, preserve and improve the Common Property for the recreation, use and benefit of the Members and their respective families, guests, invitees and licensees, there is hereby imposed upon each Owner of a Developed Lot the affirmative covenant and obligation to pay the Association all Assessments. Each and every Owner of a Developed Lot shall be obligated and jointly and severally agrees to pay to the Association all Assessments in accordance with this Declaration and each consents and agrees to the lien rights set forth hereunder.

Section 5.7 EFFECT OF NON-PAYMENT OF ASSESSMENT LIENS. All notices of Assessments from the Association to the Owners of Developed Lots shall designate when the Assessment is due and payable. If an Assessment is not paid on the date when due, it shall then become delinquent and shall bear interest at a rate equal to the lesser of (i) National City Bank Prime plus 4%, or (ii) the maximum rate allowed by law, until paid, unless, at the discretion of the Board, such interest is waived in whole or in part. The Assessments, together with interest thereon, and the cost of collection thereof, including attorneys fees, shall constitute both a personal, joint and several obligation of the Owner against whom they are assessed and a charge and continuing lien against the Developed Lot they are attributable to. If any

Assessments, or any installment thereof, shall not be paid within thirty (30) days after the due date, the Association may, at any time thereafter, accelerate the entire amount due for the balance of the year for which the Assessments were made and declare the same immediately due and payable.

Section 5.8. CERTIFICATE OF LIEN. The Association may also record a certificate of lien in the Public Records if any Assessment, or any installment thereof, shall not be paid within thirty (30) days after the due date. Any lien recorded pursuant to this Declaration shall secure payment of all delinquent Assessments, any accelerated Assessments, penalties and costs, including attorneys' fees of the Association in collection of all such sums due, theretofore accrued and thereafter becoming due and owing, until paid in full. Such certificate of lien shall contain a legal description of the Developed Lot against which the lien exists, the name of the Owner thereof and the amount due and owing the Association. Such certificate of lien shall be signed by such officer of the Association as the Board may determine. The Association may at any time thereafter bring an action to foreclose the lien against the Developed Lot and/or a suit on the personal obligation of the Owner. Any successor or subsequent holder of an interest in title to a Developed Lot shall be held to have constructive notice of the records of the Association to determine the existence of delinquency in the payment of Assessments.

Section 5.9 CERTIFICATE OF ASSESSMENTS. At the request of a Member, the Board shall prepare a certificate (a "Certificate of Assessments"), signed by an officer of the Association, setting forth the date to which Assessments have been paid with respect to any Developed Lot, and the amount which is due as of the date of the Certificate of Assessments.

Section 5.10 SUBORDINATION TO LIEN OF MORTGAGES. The lien of the Assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed first Mortgage on a Developed Lot, unless such Assessments and other charges are secured by a certificate of lien which is recorded prior to the recording of such Mortgage, and any holder of such first Mortgage which comes into possession of a Developed Lot pursuant to the remedies provided in the Mortgage, foreclosure of the Mortgage, or deed in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the Developed Lot free of any claims for unpaid installments of Assessments and other charges against the Developed Lot which became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor Owner.

Section 5.11 BASE ASSESSMENTS BUDGET DEFICIENCY. Declarant acknowledges that the Assessment Cap may create a deficiency

between the annual budget approved by the Board pursuant to Section 5.2 above and the aggregate amount of Base Assessments the Board may assess Owners of Developed Lots in Heritage Lakes for any given year. Accordingly, in consideration for the rights and privileges set forth in Article IX of this Declaration, Declarant hereby agrees, for so long as Declarant owns any Lot in Heritage Lakes, to be responsible for and to pay to the Association the deficiency, if any, between the annual budget approved by the Board for a given year pursuant to Section 5.2 above and the aggregate amount of Base Assessments assessed by the Board for that year against all Owners of Developed Lots. Any such deficiency shall be payable in such manner as the Board may determine. Each Owner hereby acknowledges and agrees that Declarant's obligations under this Section 5.11 shall arise only in the event and for so long as Declarant owns a Lot in Heritage Lakes and only in the event the Assessment Cap prevents the Association from assessing Owners of Developed Lots for the entire budget approved by the Board pursuant to Section 5.2 above.

## ARTICLE VI

### EASEMENTS, RIGHT OF ENTRY

Section 6.1 OWNERS' EASEMENTS OF ENJOYMENT. Subject to the provisions of this Declaration and the Rules and Regulations, each Owner shall have a non-exclusive right and easement of enjoyment in and to the Common Property to share in common with all other Owners, which easement shall be appurtenant to and shall pass with the title to each Lot. However, each Member of the Association, by acceptance of a deed or other instrument conveying any part of the Property, acknowledges and agrees that (i) there are no light, air, access, view or similar easements or rights appurtenant to any Lot in Heritage Lakes and constituting a burden on the Golf Course and that nothing in this Declaration shall prevent or prohibit the Golf Course Owner from constructing landscaping, mounding, fencing and/or other improvements on the Golf Course in such manner and locations as the Golf Course Owner may determine and (ii) no easement shall be granted, conveyed, permitted or established over, under or through any Lot without Declarant's prior written consent and approval, which consent and approval may be withheld for any reason or no reason.

Section 6.2 ENTRY EASEMENT TO ASSOCIATION. The Association, through its authorized representatives, shall have the right of entry and access to, over, upon and through all of the Property, to enable the Association to perform its obligations, exercise its rights, and fulfill its duties pursuant hereto, and such representatives shall not be deemed to have committed a trespass as a result thereof.

Section 6.3 UTILITY EASEMENT. Declarant reserves to itself, to the Association and to any public utility a perpetual easement in, through, under and over those portions of each Lot, as designated on a Plat as an easement, for the construction, operation and maintenance of electrical, telephone and cable lines and conduits and water, gas and sanitary and storm sewer lines and conduits, or any other public utility facilities. Within these easement areas, no Improvements shall be placed or permitted to remain, unless such Improvements have been installed by Declarant or approved in accordance with the terms of this Declaration.

Section 6.4 GOLF COURSE EASEMENTS. Each Owner hereby acknowledges and agrees that the Property is burdened with an easement permitting golf balls unintentionally to come upon the Common Property and Lots. Each Owner by acceptance of a deed to any Lot acknowledges the possibility of personal injuries and/or property damage resulting from errant golf balls as a consequence of living in a residence situated on or near a golf course. EACH OWNER HEREBY WAIVES AND RELEASES AND AGREES TO INDEMNIFY AND HOLD HARMLESS THE GOLF COURSE OWNER (AND ANY PERSON RETAINED BY THE GOLF COURSE OWNER TO OPERATE THE GOLF COURSE), DECLARANT, THE ASSOCIATION AND ANY AUTHORIZED USER OF THE GOLF COURSE FROM ANY AND ALL ACTION, CAUSE, SUIT, CLAIM OR DEMAND WHATSOEVER, IN LAW OR IN EQUITY, AS A RESULT OF PROPERTY DAMAGE OR PERSONAL INJURY TO SUCH OWNER, THEIR GUESTS, FAMILY MEMBERS, EMPLOYEES, LICENSEES OR INVITEES CAUSED BY AN ERRANT GOLF BALL OR OTHERWISE ATTRIBUTABLE TO THE DESIGN, PLAY OR MAINTENANCE OF THE GOLF COURSE.

Section 6.5 ADDITIONAL EASEMENTS. Declarant reserves to itself and to the Golf Course Owner a perpetual easement in, through, under and over a 10' strip of land on Golf Course Lots located contiguous to and parallel with the property line of the Golf Course for the purpose of maintaining the Golf Course including, without limitation, any landscaping and fencing located thereon.

## ARTICLE VII

### ARCHITECTURAL CONTROLS

Section 7.1 ARCHITECTURAL REVIEW COMMITTEE. The Architectural Review Committee, established hereby, shall consist of three individuals or such other number as the Board may determine from time to time (who need not be Members and who may or may not be members of the Board), all of whom shall be appointed and may be removed by the Board, to serve such terms and to be subject to such purposes, restrictions and limitations as the Board may determine from time to time. The Architectural Review Committee shall prepare, or cause to be prepared, the

Architectural Design Guide and shall, subject to the terms of this Declaration, have exclusive jurisdiction over construction, modifications, additions, or alterations of and to all Improvements.

Section 7.2 APPROVAL REQUIRED. No construction, which term shall include grading, clearing, staking and other site work, shall take place and no Improvements (including Improvements to previously approved Improvements) shall be erected, constructed, placed, altered, removed, or maintained on a Lot until and unless the same, and the Builder thereof, shall have first been approved in writing by the Architectural Review Committee and, pursuant to Article IX hereof (if applicable), the Declarant and/or Golf Course Owner. Neither the Architectural Review Committee, the Board, Declarant nor the Golf Course Owner shall be liable to anyone submitting plans for approval by reason of mistakes in judgment, negligence or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve any proposed Improvements.

Section 7.3 FAILURE TO APPROVE OR DISAPPROVE. If the Architectural Review Committee, Declarant and/or Golf Course Owner, as the case may be, fails either to approve or disapprove such plans and specifications within thirty days after the same have been delivered to the Architectural Review Committee, Declarant and/or Golf Course Owner, as the case may be, it shall be presumed that the Architectural Review Committee, Declarant and/or Golf Course Owner, as the case may be, has disapproved said plans and specifications.

Section 7.4 NO WAIVER. The approval or disapproval by the Architectural Review Committee, Declarant and/or Golf Course Owner, as the case may be, of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the Architectural Review Committee, Declarant and/or Golf Course Owner, as the case may be, shall not be deemed to constitute a waiver of any right to approve or withhold approval or consent as to any similar proposals, plans and specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent nor to prohibit the Architectural Review Committee from modifying and amending the Architectural Design Guide from time to time (with the approval of the Board) to specifically permit any Improvement previously prohibited or prohibit any Improvement previously permitted.

Section 7.5 VARIANCE. The Architectural Review Committee may authorize variances from compliance with the Architectural Design Guide when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate, as determined by the Architectural Review Committee, and no variance shall (a) be effective unless in writing, or (b) estop the Architectural

Review Committee from denying a variance in other circumstances.

Section 7.6 EXPENSE OF APPROVALS. The Architectural Review Improvement Committee may charge a reasonable fee in connection with reviewing materials submitted for approval in accordance with this Declaration, the amount of such fee and the manner of payment of such fee to be determined from time to time by the Board.

Section 7.7 COMPLIANCE WITH LAWS. Review and approval of plans and specifications by the Architectural Review Committee, Declarant and/or Golf Course Owner, as the case may be, shall not imply or infer compliance with any law, ordinance or regulation, or structural integrity or safety of any Improvements described in any approved plans and specifications. Review and approval as provided in this Article is for aesthetic purposes only. It is each Owner's sole responsibility to plan and construct any and all Improvements in a manner which complies with all applicable codes, statutes, laws, ordinances and regulations and in compliance with any approval granted hereunder.

Section 7.8 DUTY TO BUILD. An Owner of a Developed Lot shall commence construction of a residential dwelling thereon within the earlier to occur of: (i) 6 months following the date an Owner obtains approval for the construction of Improvements upon a Lot from the Architectural Review Committee, Declarant and/or the Golf Course Owner, as the case may be, or (ii) 18 months following the month in which such Owner acquired title to such Developed Lot; or such longer time as the Architectural Review Committee may agree, in writing, upon good cause shown. For the purposes of this Declaration, an Owner shall be deemed to have commenced construction of an Improvement at such time as footers are poured and the foundation is completed.

Section 7.9 DUTY TO COMPLETE IMPROVEMENTS. An Owner shall complete all approved Improvements, subject to unforeseen circumstances and causes beyond the reasonable control of such Owner, as reasonably determined by the Architectural Review Committee, within 12 months following commencement of construction of such approved Improvements.

Section 7.10 FAILURE TO COMMENCE OR COMPLETE CONSTRUCTION. In the event construction of a residential dwelling is not commenced within the time-period provided in Section 7.8 above, Declarant may, but shall not be obligated to, elect to exercise the "Repurchase Option" contained in the deed from Declarant to Owner or Owner's predecessor in interest. In the event construction of any Improvement is not completed within the time-period provided in Section 7.9 above, as such may be extended, in writing, by the Architectural Review Committee for good cause shown, the Owner shall pay the Association as liquidated and agreed damages, since actual damages would be difficult if not impossible to

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accurately ascertain, the sum of \$20.00 per day, or such other sum as the Board may from time to time determine, that the construction remains incomplete after the date required herein for completion. This payment shall be in addition to any other remedies at law or equity and shall not be exclusive thereof and any liquidated damages arising hereunder may constitute an Individual Assessment and entitle the Association to file a certificate of lien to secure the same.

Section 7.11 SIDEWALKS; MAILBOX. Each Owner of a Developed Lot shall install and maintain on their Lot (i) sidewalks adjacent to all public rights-of-way in accordance with and as required by governmental regulations, and (ii) a mailbox which complies with the Architectural Design Guide or as otherwise required by the Architectural Review Committee.

## ARTICLE VIII

### RESTRICTIONS

Section 8.1 RESIDENTIAL USE. All Lots shall be used only for residential dwellings and for no other purpose. No business or commercial building may be erected on any Lot and no business may be conducted on any part thereof except for use by Declarant in connection with the sale of Lots in the Property.

Section 8.2 TEMPORARY STRUCTURES. No structure or object of a temporary character such as, but not limited to, house trailers, vans, tents, shacks, or sheds shall be constructed, erected, kept or maintained on any Lot. This restriction shall not apply to temporary structures used by Declarant or with Declarant's consent, for development, construction or sale of the Lots, nor to temporary structures such as tents, canopies or awnings erected for special events, provided that such structures are removed within 72 hours and otherwise comply with the Community Standard, nor to temporary construction trailers used by Builders in the course of construction of Improvements.

Section 8.3 NUISANCES. No use or practice which is either an annoyance to Members or on interference with the peaceful possession and proper use of the Property by Members or which may become an annoyance or other nuisance shall be allowed. No Member shall commit or permit any nuisance or any illegal activity in or about the Property. For example, no Member shall knowingly or wilfully make or create any unnecessary, excessive or offensive noise or disturbance which destroys the peace, quiet and/or comfort of other Members as reasonably determined by the Board. No plant, animal, device or thing shall be kept or maintained, whose normal activities or existence is in any way considered noxious, dangerous, unsightly, unpleasant or of a



nature which may diminish or destroy the enjoyment of Lots by the Owners or occupants thereof.

Section 8.4 UTILITY CONNECTIONS. Permanent building connections for all utilities including, but not limited to, water, electricity, gas, telephone and cable, shall be run underground from the proper connecting points to the building structure in such a manner to be consistent with governmental requirements and acceptable to the Association.

Section 8.5 PETS. Owners may keep companion pets such as birds, domesticated cats, fish, dogs and other small mammals. Owners may not keep a number of pets which the Association, in its sole and absolute discretion, shall deem excessive. No Owner may keep exotic cats, horses, fowl, reptiles, obnoxious, vicious or dangerous animals, farm livestock or zoo-type animals on the Property. The determination of what is or what may be an obnoxious animal, fowl or reptile shall be determined by the Board in its sole and absolute discretion. Pets must be kept under control. Owners are responsible for their pets at all times. Pets shall not be permitted to make noise for extended periods of time or to rummage through refuse, such actions being deemed a nuisance. The Owner shall remove and properly dispose of its pet's waste from the Property. Failure to remove and dispose of a pet's waste material shall be deemed a nuisance. The Board shall have the right to order the removal of any pet which, in the Board's sole and absolute discretion, is considered a nuisance, and the same shall be done without compensation to the Owner. In such event, the Board shall give written notice thereof to the pet owner, and the pet shall immediately thereafter be permanently removed from the Property. An Owner, by the purchase of a Lot, agrees to indemnify the Association, and hold it harmless against loss or liability of any kind arising from the Owner having any animal on the Property.

Section 8.6 FENCES. No fence, wall, or barrier of any kind (including shrubbery and hedges) may be erected, except as may be approved by the Architectural Review Committee.

Section 8.7 ANTENNAE. No radio, satellite dish, television or other electronic antennae or aerial may be erected or maintained on any Lot or the exterior of any Improvement, without the prior written approval of the Architectural Review Committee.

Section 8.8 SUBDIVISION OF LOTS. No Lot shall be subdivided to permit property lines to be altered in any manner except as may be approved in writing by the Association provided, however, that a single Lot may be combined with another Lot or portion thereof, to form a larger Lot, with the prior written approval of the Association. To the extent that any resubdivision is approved, the same shall be reflected by an appropriate document recorded in the Public Records, which shall

also state how the properties are to be assessed, as determined by the Board.

Section 8.9 REFUSE CONTAINERS. No Lot shall be used or maintained as a dumping ground for rubbish. Trash, garbage and other waste shall be kept in covered sanitary refuse containers. Trash, refuse or waste materials shall not be burned on the Property. The foregoing provisions shall be subject to such Rules and Regulations as may be promulgated by the Association, including, without limitation, such rules that may require the sorting of refuse for recycling purposes.

Section 8.10 MINERAL EXPLORATION. The Property shall not use in any manner to explore for, use, or exploit commercially any water, oil, or other hydrocarbons, minerals of any kind, gravel, earth, soil, or any other substance located on or under the ground.

Section 8.11 MACHINERY AND EQUIPMENT. No commercial machinery or equipment of any kind shall be placed, operated or maintained upon any Lot except such machinery or equipment reasonably necessary for use in connection with maintenance or construction of Improvements on the Property.

Section 8.12 VEHICLES, TRAILERS, BOATS AND MOTOR HOMES. No automobile may be left on any Lot (except if stored in a fully enclosed garage) for a period longer than five days in a condition such that it is incapable of being operated, after which time the vehicle shall be considered as a nuisance and must be removed from the Lot. No boat, motor home or mobile home may be kept or stored on any portion of a Lot for periods longer than 24 hours unless stored within a fully enclosed garage. No commercial vehicles may be parked, stored or temporarily kept on any Lot, except when there temporarily to service existing Improvements, or to be used in connection with construction of Improvements on the Property.

Section 8.13 INTERFERENCE WITH PLAY ON GOLF COURSE. Owners of Golf Course Lots shall be obligated to refrain from any actions which would detract, in the reasonable determination of the Board or Golf Course Owner, from the playing qualities and conditions on the Golf Course. During any golf tournament held on the Golf Course which is sanctioned by any professional golfers association or amateur golf organization, Owners of Golf Course Lots shall suspend all construction activity, lawn maintenance and other noisy activities which may cause disturbance to play.

Section 8.14 SWIMMING POOLS AND HOT TUBS. Above ground and portable swimming pools are strictly prohibited. In ground swimming pools and hot tubs may be permitted if appropriate

approvals have been obtained in accordance with the provisions of this Declaration.

Section 8.15 SIGNS. No sign or billboard of any kind or nature including, but not limited to, commercial and similar signs, whether permanent or temporary, shall be erected or maintained on any Lot except signs required as a matter of law, signs approved by the Architectural Review Committee in accordance with the terms of this Declaration and customary and ordinary signs which offer real estate for sale and which are located in the front yard of any Lot (defined to mean that portion of a Lot located between the public street and front building setback line as depicted on the applicable Plat or, if not so depicted, 30' from such public street right-of-way).

## ARTICLE IX

### ADDITIONAL RIGHTS

Section 9.1 RIGHTS OF DECLARANT. Anything in this Declaration, the Articles or Code of Regulations to the contrary notwithstanding, for so long as Declarant owns any Lot in Heritage Lakes:

- (a) This Declaration, the Articles, the Code of Regulations and/or the Architectural Design Guide may not be amended or modified without Declarant's prior written consent;
- (b) No Improvements may be constructed on any Lot unless and until the proposed Improvements have been approved in writing by Declarant as being in conformity with the Architectural Design Guide and this Declaration;
- (c) Declarant shall have the sole and absolute right and authority to appoint trustees to and remove trustees from the Board;
- (d) Declarant shall have the right and authority to enforce the provisions of and restrictions imposed by this Declaration in any manner or the same manner as is available to the Association hereunder; and
- (e) Declarant may amend this Declaration in whole or in part without the consent or approval of any Member, the Association or any other Person provided no such amendment may eliminate the vote of any Member in the Association or increase the then applicable Assessment Cap unless approved by Members (exclusive of Declarant) entitled to exercise not less than 75% of the voting

power of all Members (exclusive of Declarant) in the Association).

Section 9.2 RIGHTS OF HERITAGE LTD. Anything in this Declaration, the Articles or Code of Regulations to the contrary notwithstanding, for so long as Heritage Ltd. owns the Golf Course:

- (a) The Architectural Design Guide may not be amended or modified as it relates to Golf Course Lots without the prior written consent of Heritage Ltd.;
- (b) No Improvements may be constructed on any Golf Course Lot unless and until such proposed Improvements have been approved in writing by Heritage Ltd. as being in conformity with the Architectural Design Guide and this Declaration; and
- (c) Heritage Ltd. shall have the right and authority to enforce the provisions of and restrictions imposed by this Declaration as the same relate to Golf Course Lots in any manner or the same manner as is available to the Association hereunder.

## ARTICLE X

### ENFORCEMENT

The Association, through its Board and officers, shall have the authority to enforce the provisions of and restrictions imposed by this Declaration in any manner provided by law or equity. As the remedy at law for any breach of any of the terms of this Declaration or the Rules and Regulations may be inadequate, the Association shall have a right of temporary and permanent injunction, specific performance, self help and other equitable relief that may be granted in any proceeding that may be brought to enforce any provision hereof, without the necessity of proof of actual damage or inadequacy of any legal remedy. Additionally, should any violation exist for a period of thirty (30) days after notice from the Association and the Member shall fail to remedy such violation within such thirty (30) day period then the Board or any other person authorized by it, shall have the right, but not the obligation, to enter upon the affected property and effect such remedy, which may include, but shall not be limited to, removal of any element, repair, replacement, mowing, painting, trimming or other action necessary to effect compliance with the terms of or as authorized by this Declaration. Violation or breach of any condition, covenant or restriction herein contained shall give the Association a right of action before any court of competent jurisdiction, whether in law or in equity, to compel compliance with the terms of the

covenants or restrictions, and to prevent the violation or breach of any of them, and the expense of such litigation shall be borne by the Member in violation, provided such proceeding results in a finding that such Member was in violation of the covenants or restrictions. Expenses of litigation shall include reasonable attorney's fees incurred by the Association in seeking such enforcement.

## ARTICLE XI

### DECLARANT AND ASSOCIATION LIABILITY

Section 11.1 DISCLAIMER. Notwithstanding anything contained herein or in the Articles, Code of Regulations, the Rules or Regulations or any other document governing or binding the Association (collectively, the "Association Documents"), the Association, the Declarant and the Golf Course Owner shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Member, occupant or user of any portion of the Property including, without limitation, Owners and their respective families, guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. It is the express intent of the Association Documents that the various provisions thereof that are enforceable by the Association and govern or regulate the uses of the Property have been written, and are to be interpreted and enforced, for the sole purpose of maintaining the enjoyment of the Property. The Association, the Declarant and the Golf Course Owner are not empowered, and have not been created, to act as an entity which enforces or ensures any other individual or entity's compliance with the laws of the United States, State of Ohio or any other jurisdiction or the prevention of criminal, tortious or other like regulated activities. Every Owner, by taking title to any part of the Property, covenants and agrees to hold harmless and to indemnify the Association, the Declarant, the Golf Course Owner and their respective directors, trustees, officers, agents, parties and affiliates from and against all claims of any kind whatsoever by any invitee, licensee, family member, employee or other representative or agent of that Member for any loss or damage arising in connection with the use, ownership or occupancy of any portion of the Property including, without limitation, any claim by any invitee, licensee, family member, employee or other representative relating to personal injuries and/or property damage resulting from errant golf balls from the Golf Course (as provided in Section 6.4 hereof).

Section 11.2 INDEMNIFICATION. Every officer of the Association, every trustee, every member of the Architectural Review Committee, and every member of any committee of the

Association shall be indemnified by the Association against all expenses and liability, including attorney fees, reasonably incurred by or imposed upon him in connection with any proceeding to which he may be a party or in which he may become involved by reason of his being or having been an officer, trustee, or member, whether or not he is an officer, trustee or member at the time such expenses are incurred, except in such cases wherein the officer, director or member is adjudged guilty of willful misfeasance or malfeasance in the performance of his duties, provided that, in the event of any claim for reimbursement or indemnification hereunder based upon a settlement by the officer, director, or member seeking such reimbursement or indemnification, the indemnification herein shall apply only if the Board approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such officer, trustee or member may be entitled.

**ARTICLE XII**

**INSURANCE AND CASUALTY LOSSES**

The Association shall obtain and maintain a comprehensive policy of public liability insurance insuring the Association, the Board and officers of the Association with such limits as the Board may determine, covering claims for personal injury and/or property damage arising by reason of acts by or on behalf of the Association. Such insurance shall include protection against such risks as are customarily covered with respect to developments similar in construction, location and use, as determined by the Board. The Board, in its sole and absolute discretion, may maintain such other insurance on behalf of the Association, or others, as the Board may determine from time to time.

**ARTICLE XIII**

**GENERAL PROVISIONS**

Section 13.1 DURATION. The covenants and restrictions of this Declaration shall run with and bind the Property and shall inure to the benefit of and be enforceable as provided herein for an initial term of thirty (30) years from the date this Declaration is recorded. The covenants, restrictions and other provisions hereof shall automatically be extended for successive periods of ten (10) years unless those Members which possess and constitute not less than 75% of the voting power of all Members in the Association sign an instrument acknowledging and agreeing to terminate this Declaration. Any such instrument shall contain a certification by the Secretary of the Association that the

Members signing possess and constitute not less than 75% of the voting power of all Members in the Association. Such instrument shall become effective upon recordation thereof in the Public Records.

Section 13.2 ADDITIONAL RIGHTS OF DECLARANT. All parties owning or otherwise making use of any portion of the Property shall be deemed, by virtue of accepting such ownership or making such use, to have covenanted and agreed that (i) "Heritage Lakes", "Heritage Golf Club" and other names and phrases using the word "Heritage" and/or the logo and emblem used by Declarant in connection with the development of the Property are registered marks owned by Declarant and may be used by Declarant in connection with the development of the Golf Course and/or other property which may not become part of Heritage Lakes, (ii) except as provided below, no usage of that mark or name will be made in naming or referring to any activity within or outside the Property and (iii) no usage of that mark or name shall be made without the express prior written approval of Declarant. Declarant reserves the right to require any Person that Declarant may grant the right to use the name or the mark to enter into a license agreement with Declarant and to charge a fee or royalty therefor.

Section 13.3 NOTICE. Any notice required to be delivered to any Member under the provisions of this Declaration shall be deemed to have been properly delivered when mailed, postpaid, to the last known address of the Person as it appears on the records of the Association at the time of such mailing.

Section 13.4 SEVERABILITY. Invalidation of any one of these covenants and restrictions by judgment or court order shall in no way affect any other provision, which shall remain in full force and effect.

Section 13.5 AMENDMENTS. Subject to the provisions of Article IX hereof, this Declaration may be amended in whole or in part with the approval of Members entitled to exercise not less than 75% of the voting power of all Members in the Association. Unless amended by Declarant, any such amendment shall contain a certification by the Secretary of the Association that the Members signing the amendment possess and constitute not less than 75% of the voting power of all Members in the Association. Any amendment, including an amendment by Declarant, shall become effective upon recordation thereof in the Public Records.

Section 13.6 VENUE. The venue for any action filed in appropriate courts regarding this Declaration shall be Franklin County, Ohio.

Section 13.7 USAGE. Whenever used, the singular shall include the plural and the singular, and the use of any gender shall include all genders.

Section 13.8 DISSOLUTION OF ASSOCIATION. In the event of the dissolution of the Association, its property rights and interests shall be transferred as provided in the Articles of Incorporation.

