

Jim Greuch

6-24-96

FILED FOR RECORD

'96 JUN 6 PM 2 35

11

WASHINGTON CO AR
K. HARNESS

**TABLE OF CONTENTS FOR
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HAR-BER MEADOWS PLANNED UNIT DEVELOPMENT**

**ARTICLE I
DEFINITIONS**

Section 1.	"Association"	7
Section 2.	"Board of Directors" and "Board"	7
Section 3.	"Builder"	7
Section 4.	"Common Facilities"	7
Section 5.	"Common Area" and "Common Areas"	7
Section 6.	"Standard Lot"	7
Section 7.	"Village Home Lot" and "Village Home Lots"	7
Section 8.	"Village Home"	8
Section 9.	"Estate Lot"	8
Section 10.	"Apartment"	8
Section 11.	"Church Areas"	8
Section 12.	"Conveyance"	8
Section 13.	"Lot" and "Lots"	8
Section 14.	"Patio Lot"	8
Section 15.	"Declarant"	8
Section 16.	"Declaration"	8
Section 17.	"Development Period"	9
Section 18.	"Member"	9
Section 19.	"Condominium Unit"	9
Section 20.	"Owner"	9
Section 21.	"Property"	9
Section 22.	"Transfer"	9
Section 23.	"School Areas"	9
Section 24.	"Commercial Unit" and "Commercial Units"	9
Section 25.	"Plat"	10

ARTICLE II

RESERVATIONS, EXCEPTIONS, DEDICATIONS AND CONDEMNATION		10
Section 1.	Incorporation of Plat	10
Section 2.	Declarant's Reservation	10
Section 3.	Condemnation	10
Section 4.	Jurisdiction of State and Local Governments	11

ARTICLE III

96-35530

II		
PROPERTY RIGHTS		11
Section 1.	Owner's Easements of Enjoyment	11
Section 2.	Delegation of Use	12
Section 3.	Waiver of Use	13
Section 4.	Flowage Easement and Flood Control Easement	13
ARTICLE IV		
MEMBERSHIP AND VOTING RIGHTS		14
Section 1.	Membership	14
Section 2.	Voting Classes	14
Class A	14
Class B	15
ARTICLE V		
COVENANT FOR MAINTENANCE		
ASSESSMENTS		15
Section 1.	Creation of the Lien and Personal Obligation of Assessments .	15
Section 2.	Purpose of Assessment	15
Section 3.	Amount of Annual Assessment	16
Section 4.	Special Assessments	16
Section 5.	Notice and Quorum for Any Action Authorized Under Section	
3 and 4	17
Section 6.	Effect of Nonpayment of Assessments: Remedies of the	
Association	17
Section 7.	Subordination of the Lien to Mortgage	17
Section 8.	Suspension of Rights of Membership	17
Section 9.	Cancellation and Hearing	18
ARTICLE VI		
ARCHITECTURAL CONTROL		18
Section 1.	Architectural Approval	18
Section 2.	Approval Required in Writing	19
Section 3.	No Liability	19
Section 4.	Notice of Noncompliance or Noncompletion	19
Section 5.	Rules and Regulations	20
Section 6.	Variances	20
ARTICLE VII		
DUTIES AND MANAGEMENT OF THE ASSOCIATION		20
Section 1.	Duties and Powers	20

II

ARTICLE VIII

	UTILITY BILLS, TAXES AND INSURANCE	22
Section 1.	Obligations of Owners	22
Section 2.	Obligations of the Association	22

ARTICLE IX

	RESTRICTIONS OF USE FOR RESIDENTIAL LOTS	23
Section 1.	Single Family Residential Construction	23
Section 2.	Home Businesses: Prohibition of Offensive or Commercial Use	23
Section 3.	Minimum Square Footage	25
Section 4.	Building Materials	25
Section 5.	Location of Improvements Upon the Lots	25
Section 6.	Deviations	26
Section 7.	Composite Building Sites	26
Section 8.	No Lot Split	26
Section 9.	Utility Easement	27
Section 10.	Village Home Lot Universal Easement	27
Section 11.	Village Home Lot Side Yard Easements	27
Section 12.	Village Home Lot Reclassification	29
Section 13.	Audio and Video Communication Service	29
Section 14.	Temporary Structures and Out Buildings	29
Section 15.	Animal Husbandry	29
Section 16.	Walls, Fences and Hedges	30
Section 17.	Antennae and Satellite Dishes	30
Section 18.	Heating and Cooling Devices	31
Section 19.	Visual Screening	31
Section 20.	Visual Obstructions at the Intersections of Public Streets	31
Section 21.	Lot Maintenance	31
Section 22.	Storage of Automobiles, Boats, Trailers, Other Vehicles and Equipment	31
Section 23.	Signs, Advertisements and Billboards	32
Section 24.	Removal of Soil and Trees	32
Section 25.	Roofing Material	32
Section 26.	Lot Drainage	32
Section 27.	Occupation of Dwelling	32
Section 28.	Water and Mineral Operations and Wind Generators	32
Section 29.	Solar Collectors	33
Section 30.	Boats and Boat Docks	33
Section 31.	Enforcement	33
Section 32.	Guidelines	33

II

ARTICLE X

RESTRICTIONS OF USE FOR COMMERCIAL UNITS	33
Section 1. Permitted Uses	33
Section 2. Offensive or Illegal Uses	34
Section 3. Open Space	34
Section 4. Setbacks	35
Section 5. Building Height	35
Section 6. Parking Requirements	35
Section 7. Loading/Unloading	36
Section 8. Outside Storage or Operations	36
Section 9. Mechanical Equipment	36
Section 10. Grading and Drainage	36
Section 11. Underground Utilities	37
Section 12. Easements	37
Section 13. Exterior Illumination	37
Section 14. Signing	38
Section 15. Temporary Structures	38
Section 16. Commercial Unit Consolidation	38
Section 17. Maintenance	38
Section 18. Landscaping	38
Section 19. Standards and Procedures	39
Section 20. Modifications and Changes	39
Section 21. Flowage Easement and Flood Control Easement	39

ARTICLE XI

**MORTGAGEE NOTICE; MANAGEMENT AGREEMENTS;
RESERVE FUNDS; LEASES**

	40
Section 1. Notice to First Mortgagees	40
Section 2. Mortgagee Required Approval	41
Section 3. Reimbursement to Mortgagees for Payment of Taxes or Insurance Premiums	41
Section 4. Insurance on Condemnation Proceeds: Notice	41
Section 5. Reserve Fund	42
Section 6. Leases	42

ARTICLE XII

GENERAL PROVISIONS

	42
Section 1. Enforcement	42
Section 2. Severability	42
Section 3. Duration; Amendment	42
Section 4. Books and Records	43

II

Section 5.	Notices	43
Section 6.	Good Faith Lender's Clause	43
Section 7.	Mergers	44
Section 8.	Annexation	44
Section 9.	Deannexation	45
Section 10.	Additional Phases	45
ACKNOWLEDGMENT		45

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
HAR-BER MEADOWS PLANNED UNIT DEVELOPMENT**

This Declaration is made on the date hereinafter set forth by Har-Ber Meadows Development Company, hereinafter referred to as "Declarant".

KNOW ALL MEN BY THESE PRESENTS:

Declarant is the owner of certain property in Springdale, Washington County, Arkansas, which has been or will be platted and subdivided into a planned unit development known as Har-Ber Meadows Planned Unit Development, hereinafter referred to as "Development".

Declarant desires to develop Development as a residential and commercial subdivision and subject it to this Declaration and to provide and adopt a uniform plan of development, including assessments, conditions, covenants, easements, reservations, and restrictions designed to govern, control, and preserve the values and amenities of this land for the development, improvement, sale, use, and enjoyment of the Property as a planned unit development for the benefit of this land and each owner of any part of this land. The land subject to this Declaration is referred to as the "Property".

The Property shall include the real estate described in Exhibit "A" attached hereto and made a part hereof. Additional plats of new phases of this Development may be, at the discretion of Declarant, filed from time to time hereafter.

It has been deemed desirable, for the efficient preservation of values and amenities in the Property, to create an Association to which shall be delegated and assigned powers of administering and enforcing the provisions of this Declaration including levying, collecting, and disbursing the assessments.

To exercise these functions, the Har-Ber Meadows Property Owners' Association, Inc., a non-profit corporation created under the laws of the State of Arkansas, has or will be incorporated. The directors of the Association will establish By-Laws by which the Association shall be governed.

Declarant declares that the Property shall be developed, improved, sold, used, and enjoyed in accordance with and subject to the following plan of development, including the assessments, conditions, covenants, easements, reservations, and restrictions of this Declaration, all of which are adopted for and placed upon the Property, shall run with the

Property and be binding on all parties who now or hereafter have or claim any right, title, or interest in the Property or any part of the Property, and on the heirs, executors, administrators, successors, and assigns of such parties, regardless of the source of or the manner in which any such right, title, or interest is or may be acquired; and shall inure to the benefit of each owner of any part of the Property.

ARTICLE I DEFINITIONS

Section 1. "Association" shall mean and refer to Har-Ber Meadows Property Owners' Association, Inc., a non-profit corporation incorporated under the laws of the State of Arkansas, and its successors and assigns.

Section 2. "Board of Directors" and "Board" shall mean and refer to the duly elected Board of Directors of the Association.

Section 3. "Builder" shall mean and refer to a department or subsidiary corporation of Declarant to which Declarant conveys Lots or Commercial Units for the purpose of constructing homes or other permitted structures thereon.

Section 4. "Common Facilities" shall mean all real property and any improvements thereon, such as swimming pools, club houses and the like, owned or hereafter acquired by the Association for the exclusive common use and enjoyment of the owners, members of their families and guests.

Section 5. "Common Area" and "Common Areas" shall mean all real property, including lakes, now owned or hereafter acquired by the Association or which is designated as "Common Area" and/or "Common Areas" on any recorded Plat of the Development. Such areas shall be owned by the Association for use either as undeveloped open space buffers or for the exclusive common use and enjoyment of the owners, members of their families and guests and includes restrictive green belt and landscape reserves.

Section 6. "Standard Lot" shall mean and refer to lots as shown on any recorded Plat of the Development as being 75 feet to 149 feet, inclusive, in width either when measured with an adjacent alley or without an adjacent alley, except those lots which may be designated as Estate Lots on any recorded Plat of Development, and such other lots as may be designated on any recorded Plat of Development as being Standard Lots.

Section 7. "Village Home Lot" and "Village Home Lots" shall mean and refer to Lots on any recorded Plat of the Development which are 30 feet to 37 feet, inclusive, in width and upon which there has been or will be constructed a single-family Village Home

with a universal easement as referred to in Article IX, Section 10 and a side yard easement under Article IX, Section 11.

Section 8. "Village Home" shall mean and refer to a single-family residence constructed on a Village Home Lot.

Section 9. "Estate Lot" shall mean and refer to Lots as shown on any recorded Plat of the Development as being an Estate Lot on which there is intended to be constructed a single family residence.

Section 10. "Apartment" shall mean and refer to any residential living unit in an apartment building on land situated within the Property and which land is made subject to residential apartment use restriction by virtue of a deed or other legal instrument of record, including any recorded Plat of the Development.

Section 11. "Church Areas" shall mean all areas designated on any recorded Plat of this Development as dedicated for use by a church.

Section 12. "Conveyance" shall mean and refer to conveyance of a fee simple title of a Lot or Commercial Unit from one Owner to another.

Section 13. "Lot" and "Lots" shall mean and refer to (a) any parcel of land shown upon any recorded Plat of the Property upon which there has been or may be constructed a single-family residence and shall include Standard Lots, Estate Lots, Village Home Lots, and Patio Lots, (b) a Condominium Unit in a Condominium Unit Association, and (c) any parcel of land designated for Apartments.

Section 14. "Patio Lot" shall mean and refer to any parcel of land situated within the Property upon which there has been or may be constructed a residential patio home and which land is made subject to residential patio home use restriction by virtue of a deed or other legal instrument of record, including any recorded Plat of the Development.

Section 15. "Declarant" shall mean and refer to Har-Ber Meadows Development Company or its successors or assigns.

Section 16. "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions and any Amendments hereto applicable to the Property recorded in the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas.

Section 17. "Development Period" shall mean and refer to that period of time in which Declarant is the Owner of any Lot or Commercial Unit.

Section 18. "Member" shall mean and refer to those persons entitled to membership as provided in the Articles of Incorporation of the Association.

Section 19. "Condominium Unit" shall mean and refer to any residence or commercial enterprises owned by an Owner within a multi-unit structure. If used as a residence, the condominium shall be considered a "Lot" for purposes of the assessments and the restrictions contained herein, and if used as a commercial enterprise, the condominium shall be considered a commercial unit for purposes of the restrictions contained herein.

Section 20. "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title in any Lot or Commercial Unit which is a part of the Property, but excluding those having such interest merely as security for the performance of an obligation.

Section 21. "Property" shall mean all that real estate described in Exhibit "A" that is subject to the Declaration and any additions thereto as may hereafter be brought within the jurisdiction of the Association.

Section 22. "Transfer" shall mean and refer to the transfer of the surface estate of a Lot or Commercial Unit from one legal entity to any department thereof or to another legal entity whether or not the owner of record changes.

Section 23. "School Areas" shall mean all areas designated on any recorded Plat of this Development as being dedicated by Declarant for use now or in the future by any public school.

Section 24. "Commercial Unit" and Commercial Units" shall mean all lots, buildings or condominiums now or hereafter designated on any recorded Plat of the Development as commercial property within the Development. Each 10,000 square feet or less of building space, measured on the interior of the building, shall be considered a "Unit" for purposes of voting and assessment of Commercial Units. If a building (or the buildings, collectively, owned by an Owner) is more than 10,000 square feet, it shall be divided by 10,000 and the quotient shall be the number of Units owned by the Owner for voting and assessment purposes. For example, if a Commercial Unit is 24,000 square feet, the Owner shall own 2.4 Commercial Units. Until such time as a building is constructed on any lot designated on the deed or on any Recorded Plat as Commercial Property, each such lot shall be considered one Commercial Unit for purposes of assessment and voting.

Section 25. "Plat" shall mean any Plat of the Development recorded in the Real Estate Records of Washington County, Arkansas, in the Office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas and any other plats to additional phases subsequently filed by Declarant to be under the jurisdiction of this Declaration.

ARTICLE II RESERVATIONS, EXCEPTIONS, DEDICATIONS AND CONDEMNATION

Section 1. Incorporation of Plat. Any recorded Plat of Development dedicates for use as such, subject to the limitations set forth therein, certain streets and easements shown thereon, and such Plat further establishes certain dedications, limitations, reservations and restrictions applicable to the Property. All dedications, limitations, restrictions and reservations shown on any recorded Plat, to the extent they apply to the Property, are incorporated herein and made a part hereof as if fully set forth herein, and shall be construed as being adopted in each contract, deed and conveyance executed or to be executed by or on behalf of Declarant, conveying each Lot or Commercial Unit within the Property.

Section 2. Declarant's Reservation. It is expressly agreed and understood that the title conveyed by Declarant to any Lot or Commercial Unit within the Property by contract, deed, or other conveyance shall not be held or construed in any event to include the title to any roadway or any drainage structure; water, gas, sewer, storm sewer structures, lines or pipes; electric light pole, electric power structure or line; telegraph, telephone, audio, video, security or communication facility, system line, or structure; or any pipes, lines, poles or conduits on or in any utility facility or appurtenances thereto constructed by or under Declarant or its agents through, along or upon the Property or any part of them to serve the Property, and the right to maintain, repair, sell, or lease such appurtenances to any municipality, or other governmental agency or to any public service corporation or to any other party is hereby expressly reserved in Declarant.

Section 3. Condemnation. If all or any part of Common Area is taken or threatened to be taken by eminent domain or by power in the nature of eminent domain (whether permanent or temporary), the Association shall be entitled to participate in proceedings incident thereto. The expense of participation in such proceedings by the Association shall be borne by the Association and paid for out of assessments collected pursuant to Article V hereof. The Association is specifically authorized to obtain and pay for such assistance from attorneys, appraisers, architects, engineers, expert witnesses and

other persons as the Association in its discretion deems necessary or advisable to aid or advise it in matters relating to such proceedings.

All damages or awards for such taking shall be deposited with the Association, and such damages or awards shall be applied as follows. If an action in eminent domain is brought to condemn a portion of the Common Areas, the Association, in addition to the general powers set out herein, shall have the sole authority to determine whether to defend or resist any such proceeding, to make any settlement with respect thereto; or to convey such portion of the Property to the condemning authority in lieu of such condemnation proceeding. With respect to any such taking, all damages and awards shall be determined for such taking as a whole and not for each Owner's interest therein. After the damages or awards for such taking are determined, such damages or awards shall be paid to the Association. The Association, if it deems advisable, may call a meeting of the Owners, at which meeting the Owners, by a majority vote, shall decide whether to replace or restore as far as possible, the Common Areas so taken or damaged. In the event it is determined that such Common Areas should be replaced or restored by obtaining other land, this Declaration shall be duly amended by instrument executed by the Association on behalf of the Owners. If it is determined that the Common Area should not be replaced, the funds received shall be donated to the Association.

Section 4. Jurisdiction of State and Local Governments. Notwithstanding anything to contrary contained herein, Declarant acknowledges that the property is subject to certain laws, rules, regulations, and ordinances of certain state and local governments having jurisdiction over it, and any construction of improvements within the property shall be subject to such certain laws, rules, regulations, and ordinances of such state and local governments having jurisdiction over it in addition to the dedications, limitations, reservations and restrictions contained herein.

ARTICLE III PROPERTY RIGHTS

Section 1. Owner's Easements of Enjoyment. Every Lot and Commercial Unit Owner who owns an interest in the Property shall have a right to an easement of enjoyment in and to the Common Areas and Common Facilities which shall be appurtenant to and shall pass with the title to every Lot or Commercial Unit, subject to the following provisions:

(a) the right of the Association to grant or dedicate easements in, on, under or above the Common Areas or any part thereof to any public or governmental agency or authority or to any utility company for any service to the Property or any part thereof;

11

(b) the right of the Association to prevent an Owner from planting, placing, fixing, installing or constructing any vegetation, hedge, tree, shrub, fence, wall, structure or improvement or storing any personal property on the Common Areas or any part thereof without the prior written consent of the Association. The Association shall have the right to remove anything placed on the Common Areas in violation of the provisions of this subsection and to assess a fine and the cost of such removal against the Owner responsible;

(c) the right of Declarant (and its sales agents and representatives) and its assigns to the non-exclusive use of the Common Areas and the facilities thereof, for display and exhibit purposes in connection with the sale of Lots or Commercial Units within the Property, which right Declarant hereby reserves; provided, however, that such use shall not continue for a period of more than fifteen (15) years after conveyance of the Common Areas within the Property to the Association; provided, further, that no such use by Declarant or its sales agents or representatives shall otherwise unreasonably restrict the Members in their use and enjoyment of the Common Areas;

(d) the right of the Association to limit the number of guests of Owners utilizing the Common Areas and Common Facilities; and

(e) the right of the Association to establish uniform rules and regulations and to charge reasonable admission and other fees pertaining to the use of any Common Facilities owned by the Association; and

(f) the right of the Association to suspend the voting rights of an Owner and the Owner's right to use any Common Areas and Common Facility of the Association during the period the Owner is in default in excess of thirty (30) days in the payment of any maintenance charge assessment against a Lot or Commercial Unit and to suspend such rights for any infraction of its published rules and regulations. The aforesaid rights of the Association shall not be exclusive but shall be cumulative of and in addition to all other rights and remedies which the Association may have by virtue of this Declaration or its By-Laws or at law or in equity on account of any such default or infraction.

Section 2. Delegation of Use. Owners having an easement of enjoyment in and to the Common Areas and Common Facilities may delegate, in accordance with the By-Laws, their right to or enjoyment of the Common Areas and Common Facilities to members of their families, tenants, or contract purchasers who reside in Owner's residential dwelling. Notwithstanding anything to contrary contained herein, Owners of Commercial Units, who do not also own a lot, shall have the right to delegate the right to the enjoyment of Common Facilities to not more than two (2) persons for each Commercial Unit owned by them rounded to the nearest number of Commercial Units owned by such Owner. For example, for purposes of use of the Common Facilities, an Owner of 2.4 Commercial Units

shall have the right to designate four (4) person to use such Common Facilities and an Owner of 2.5 Commercial Units shall have the right to designate six (6) persons to use the Common Facilities. Such rights of delegation by an Owner of the Commercial Unit shall be subject to the By-Laws and to any rules and regulations established by the Association. Except as may be allowed hereinabove and by the By-laws and any rules and regulations established by the association, tenants in Commercial Units and Apartments shall not be entitled to the use of the Common Facilities.

Section 3. Waiver of Use. No Owner may be exempt from personal liability for assessments duly levied by the Association, nor release a Lot or Commercial Unit owned from the liens and charges hereof, by waiver of or suspension of the Owner's rights (pursuant to this Declaration or any By-Law of the Association) with regard to the use and enjoyment of the Common Areas or Common Facilities thereon or by abandonment of Owner's Lot or Commercial Unit.

Section 4. Flowage Easement and Flood Control Easement. All Lots, Commercial Units, or other property (sometimes collectively referred to as "Subject Property") adjacent to or contiguous to any lake, stream or waterway (collectively referred to herein "Waterway") shall be subject to a permanent easement, to the extent set forth below, (hereafter "Easement") in and over such Lot for the following uses and purposes:

(a) The right to overflow, flood and cover such Easement with flood water, slack water or backwater.

(b) The right to enter on such Easement from time to time and clear, destroy or otherwise dispose of any timber or natural growth and any obstructions, accumulations or any other thing that would in any other way interfere with use and enjoyment, navigation or flood control, or tend to render inaccessible, unsafe or unsanitary the Waterway, together with the right to prevent the draining or dumping into the Waterway of refuse, sewerage or any other material that might tend to pollute it.

(c) The right to enter on such Easement and do such drainage and other work as, in the discretion of Declarant or assignee, may be necessary to carry out an adequate program of pest control, including the maintenance of necessary controls and the applications of or the employment of pest control.

(d) The right to enter on such Easement and excavate, erect structures and do such other work as is desirable in connection with the needs of such Waterway.

(e) The right to install, maintain, or remove landscaping or other environmental improvements on such Easement.

¶

(f) The right to make all necessary earth fills and locate or relocate existing drainpipes or structures on such Easement.

(g) The right to remove or prevent the construction of any buildings located on such Easement.

The portion of each Subject Property affected by and subject to the above described easement is that portion of the lot that lies within the flowage and flood control easement as designated on any recorded Plat of the Development. Provided, however, Declarant or its assigns shall have the right of ingress and egress over the entire Subject Property (on any Lot, Commercial Unit, or other property subject to such easement) to provide access to allow Declarant or its assigns to perform the purposes and matters set forth above in this section. Should the water level on in Waterway drop below the level designated on any recorded Plat, the Declarant and its assigns and the Association shall be under no obligation to see that the water level is up to the line shown on such recorded Plat as the flowage and flood control easement.

ARTICLE IV MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Each person or entity who is a record Owner of any of the Property which is subject to assessment by the Association shall be a Member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. No Owner shall have more than one membership. Membership shall be appurtenant to and may not be separated from ownership of the land which is subject to assessment by the Association.

Section 2. Voting Classes. The Association shall initially have two classes of voting membership:

Class A. Class A members shall be all Owners with the exception of the Declarant (except as hereinafter provided) and shall be entitled to one vote for each Lot or Commercial Unit owned; provided, however, the Owners of an Apartment or residential Condominium shall be entitled to 1/3 vote for each Apartment or residential Condominium owned. When more than one person owns an interest in any Lot, Commercial Unit, or Apartment all such persons shall be members. The vote of such Lot, Commercial Unit, or Apartment shall be exercised as the persons among themselves determine, but in no event shall more than one vote be cast with respect to each Lot or Commercial Unit or one-third vote for each Condominium or Apartment owned. Tenants who are also not owners of a

11

Lot, Commercial Unit, or Apartments shall not be members and shall not be entitled to any votes.

Class B. The Class B member shall be the Declarant and shall be entitled to 3 votes for each Lot or Commercial Unit owned. Class B membership shall cease and be converted to Class A membership on the earlier of the following dates:

(a) the date on which the total outstanding votes in the Class A membership equal or exceed the total available votes in the sum of Class B memberships; or

(b) January 1, 2003.

ARTICLE V COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments.

Annual assessments and special assessments are to be established as hereinafter provided. For each Lot or Commercial Unit owned by an Owner, Owner by acceptance of deed for said Lot or Commercial Unit is deemed to covenant and agrees to pay annual and special assessments to the Association, whether or not it shall be so expressed in such deed. Declarant shall not pay annual assessments or special assessments to the Association, except on a voluntary basis; provided, however, Declarant shall be responsible for the cost and expense of maintenance and upkeep of any Common Areas and Common Facilities until December 31, 1999. There shall be no assessment against any School Area, Church Areas, Common Areas or Common Facilities.

The regular and special assessments, together with interest, penalties, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing and contractual lien upon the Lot or Commercial Unit against which each such assessment is made. Each such assessment, together with interest, penalty, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Lot or Commercial Unit at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to the Owner's successors in title unless expressly assumed by them.

Section 2. Purpose of Assessment. The assessments levied by the Association shall be used exclusively for the community, civic and social welfare and benefit of the Property and the Owners, for the purposes determined by the Association to be appropriate in accordance with its Articles of Incorporation and By-Laws, which may include, but is not

required to include: municipal services; educational and recreational services and facilities; improvement and maintenance of the Common Areas and Common Facilities; maintenance and lighting of streets within the Properties; police and security service; garbage and refuse removal and collection; mosquito abatement; maintenance of lakes, streams and waterways (including those that may be private lakes and not designated as Common Area, if any); and other services, facilities, and activities that may be in the community's interest.

Section 3. Amount of Annual Assessment. The amount of the annual assessment shall be \$288.00 per Lot or Commercial Unit which shall be payable on January 1 of each year; provided, however, after the completion of construction of an Apartment building or residential Condominium the amount of the annual assessment for each Condominium or Apartment shall be \$60.00. On any sale of a new Lot or Commercial Unit by Declarant or Builder, the Owner shall pay such assessment in advance on the date of conveyance to such Owner with the amount to be prorated based upon the number of months from the month of the conveyance to January 1. Prior to the initial sale of a particular Lot or Commercial Unit, Declarant may establish an annual assessment in excess of the above amount which additional assessment shall be evidenced by the filing of supplementary declarations of covenants, conditions and restrictions. The maximum annual assessment may be increased above the rate specified above by a vote of a majority of the votes of members entitled to vote in person or by proxy, at a meeting duly called for such purpose.

From and after January 1, 1997 the maximum annual assessment may be increased each year above the maximum assessment for the previous year by a majority vote of the Board by the percentage change by which the Consumer Price Index (for the area in which Springdale, Arkansas is located, for all items, issued by the Bureau of Labor Statistics of the United States Department of Labor), for the immediately preceding calendar year exceeds such Index for the calendar year prior thereto or by 5%, whichever is greater. If the publication of such Index is discontinued, comparable statistics on the cost of living for the area in which the City of Springdale is located, as they may be published by any other agency of the United States, shall be used.

Section 4. Special Assessments. In addition to the annual assessments authorized above, in any year after the calendar year 1996, the Association may levy a special assessment applicable to that year only for the purpose of defraying in whole or in part, the cost for necessary purposes of the Association, such as the construction, reconstruction, repair or replacement of a capital improvement in the Common Areas or Common Facilities, including fixtures and personal property related thereto, or for counsel fees or the fees of other retained experts provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of Members entitled to vote in person or by proxy, at a meeting duly called for this purpose.

Section 5. Notice and Quorum for Any Action Authorized Under Section 3 and 4. Written notice of any meeting called for the purpose of taking any such action authorized under Section 3 or 4 hereof shall be sent to all Members not less thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting. Subsequent meetings can continue to be called in the aforesaid manner with the required quorum at any subsequent meeting(s) being one-half (½) of the required quorum at the preceding meeting until a quorum is present and votes are cast. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 6. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the maximum lawful rate. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or Commercial Unit.

Section 7. Subordination of the Lien to Mortgage. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot or Commercial Unit shall not affect the assessment lien. However, the sale or transfer of any Lot or Commercial Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer; provided, however, that the proceeds from any such sale, to the extent they exceed the first mortgage shall be used to satisfy the lien for assessments. No sale or transfer shall relieve such Lot or Commercial Unit from liability of any assessments which thereafter become due or from the lien thereof.

Section 8. Suspension of Rights of Membership. Prior to foreclosure of any lien upon any Lot or Commercial Unit subject to this Declaration, the Board of Directors of the Association may elect to suspend all membership rights of any Member or Members of the Association who are delinquent in any payment due to the Association for more than 30 days, with such suspension to continue for so long as any such delinquency exists, and said Board of Directors may further suspend membership rights for a period not to exceed 30 days for the infraction of any rules or regulations by the Member, family of the Members or guests of the Members, relating to the use of any of the Common Areas or Common Facilities, with such suspension not to exceed 30 days in duration. Suspension of membership rights shall be effective from the date that notice of suspension is mailed to the Member via U. S. Certified Mail, Return Receipt Requested, postage prepaid, to the last

known address of the said Member, and a copy of the notice shall be posted on any or all of the Common Areas and Common Facilities during said suspension.

Section 9. Cancellation and Hearing. The said Board of Directors may elect to permanently cancel the membership and all membership rights of any Member who is delinquent in any payment due to the Association for more than 90 days or when such Member, family of the Member, or guest of the Member are guilty of repeated or flagrant violation after a hearing conducted by said Board of Directors, with notice of such hearing mailed to such Member at least 30 days in advance of said hearing date, and further provided that such Member may appeal any such decision of said Board of Directors to the membership of the Association by such affected Member calling a special meeting of the membership of the Association by notice mailed to each Member at least ten days in advance of the desired special meeting date, and said notice setting forth the time, date, place and purpose of said meeting. A majority vote of the Members of the Association attending such special meeting shall be necessary to override the decision of the Board of Directors, and all votes shall be by secret ballot. Notice shall be mailed by the Member via U. S. Certified Mail, postage prepaid, return receipt requested.

ARTICLE VI ARCHITECTURAL CONTROL

Section 1. Architectural Approval. The overall plan for the Development contemplates centralization of architectural control to enhance, insure and protect the attractiveness, beauty and desirability of the area as a whole while at the same time permitting compatible distinctiveness of individual developments within the area. For this purpose, Declarant shall have the right and responsibility to review and approve plans and specifications for all new construction on the Property. Declarant also reserves the right to delegate to an Architectural Review Committee or to another party all or any part of its rights and responsibilities to create, administer, review and/or approve plans and specifications for new construction on any part or all of the Property. At any time after ten years from the date of this Declaration, or the date upon which Declarant is no longer the Owner of Lots and Commercial Units, whichever occurs first, Declarant shall relinquish to the Association all its rights and responsibilities pertaining to the reviewing and approving of plans and specifications for construction on the property provided that the Association has an Architectural Review Committee designated for the purpose of reviewing and approving the plans and specifications for construction on the property; provided, that Declarant shall have the option of relinquishing such control at any earlier time Declarant elects.

It is accordingly covenanted and agreed that no building, fence, wall, or other structure shall be commenced, erected, or maintained upon the Property, nor shall any

exterior addition to or change or alteration to such structures or the color thereof (including, without limitation, site landscaping visible from any part of the Property and grading plans, reroofing materials, patio covers and trellises, plans for off-street parking of vehicles and utility layout), be made until the plans and specifications of such showing, among other things, the nature, kind, shape, height, materials, color, and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by Declarant or any Architectural Review Committee established by it or by any person or entity to which Declarant has delegated such authority and responsibility. (Hereafter for purposes of this Declaration as it pertains to approving plans and specifications, Declarant, Architectural Review Committee, or such person or entity authorized to approve such plans and specifications shall be referred to herein as the "ARC".) In the event said ARC fails to approve or disapprove such design or location within forty-five (45) days after said plans and specifications have been received by it, approval will not be required, and this Article will be deemed to have been fully complied with. All plans and specifications shall be submitted in writing over the signature of the Owner of the Lot or Commercial Unit or the Owner's authorized agent. The ARC shall have the right to require any Owner to remove or alter any structure which has not received approval or is built other than in accordance with the approved plans and to receive reimbursement from Owner for any costs expended in this effort. The requirement of this Article is in addition to any approvals or permits required by any appropriate governmental entity. Approval of plans as complying with the applicable Har-Ber Meadows Design Guidelines adopted and promulgated from time to time for the Property by ARC, shall be only for such purposes and shall not serve as approval for any other purpose.

Section 2. Approval Required in Writing. All approvals shall be granted only in writing and by Declarant or Architectural Review Committee as applicable.

Section 3. No Liability. Neither Declarant and its assigns, the Association, its Board of Directors, nor the ARC or the Members thereof shall be liable in damages to anyone submitting plans or specifications to them for approval, or to any Owner of a Lot or Commercial Unit affected by these restrictions by reason of mistake in judgment, negligence, or disapproval or failure to approve or disapprove any such plans or specifications and no approval or required modification of plans submitted shall be considered a warranty of any nature whatsoever pertaining to the suitability of such plans and specifications. Every person who submits plans or specifications to the ARC for approval agrees, that no action or suit for damage will be brought against Declarant, the Association, its Board of Directors, the ARC, or any of the members thereof.

Section 4. Notice of Noncompliance or Noncompletion. Notwithstanding anything to the contrary contained herein, after the expiration of one (1) year from the date

of issuance of a building permit by a municipal or other governmental authority, provided that such building permit was submitted to the ARC and provided the improvement was constructed, said improvement shall, in favor of purchasers and encumbrances in good faith and for value, be deemed to be in compliance with all provisions of this Article VI unless actual notice of such noncompliance or noncompletion, executed by the ARC, or its designated representative, shall appear of record in the Real Estate Records of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas, or unless legal proceedings shall have been instituted to enforce compliance or completion. This presumption of compliance is conditioned upon said building permit having been submitted to the ARC within thirty (30) days after its issuance.

Section 5. Rules and Regulations. Declarant may, in its sole discretion, adopt, promulgate, amend and repeal rules and regulations interpreting and implementing the provisions of this Article VI, including Har-Ber Meadows Design Guidelines.

Section 6. Variances. The ARC may recommend to the Board, and the Board may, by the vote or written consent of a majority of the members thereof, allow reasonable variances as to the covenants, conditions or restrictions contained in Article IX of this Declaration under the jurisdiction of ARC pursuant to this Article VI, on such terms and conditions as it shall require; provided, however, that all such variances shall be in keeping with the general plan for the improvement and development of the Property.

ARTICLE VII DUTIES AND MANAGEMENT OF THE ASSOCIATION

Section 1. Duties and Powers. In addition to the duties and powers enumerated in its Articles of Incorporation and By-Laws, or elsewhere provided for herein, and without limiting the generality thereof, the Association shall:

(a) Own, maintain and otherwise manage all Common Areas and all Common Facilities, improvements and landscaping thereon, and all other property acquired by the Association.

(b) Pay any real and personal property taxes and other charges assessed against the Common Areas, Common Facilities, School Areas and Church Areas, unless such areas come into private ownership by some Owner other than the Association or Declarant.

(c) Have the authority to obtain, for the benefit of all of the Common Areas, Common Facilities, School Areas and Church Areas, all water, gas and electric services and refuse collection.

(d) Grant easements where necessary for utilities, drainage, and sewer facilities over the Common Areas, Common Facilities, School Areas, and Church Areas to serve the Common Areas, Common Facilities, School Areas, and Church Areas and the Property in general.

(e) Maintain such policy or policies of insurance as the Board of Directors of the Association may deem necessary or desirable in furthering the purposes of and protecting the interests of the Association and its Members.

(f) Have the authority to contract with a management company for the performance of maintenance and repair and for conducting other activities on behalf of the Association; provided, no such contract shall exceed one year without Board approval.

(g) Have the power to establish and maintain a working capital and contingency fund in an amount to be determined by the Board of Directors of the Association.

(h) Have the power to establish and charge reasonable fees pertaining to home business registration.

(i) Have the power to establish and charge fines or penalties for violations of any restrictions, conditions, or covenants.

(j) Have the duty to landscape and maintain the improvements, landscaping and entry markers upon the Common Areas and Common Facilities and that hereafter may be further determined by Supplementary Declaration(s) of Covenants, Conditions and Restrictions.

(k) Have the duty to maintain the perimeter walls or fences, if any, located at entrances to the Property, Common Areas and Common Facilities, greenbelt buffers, parks and fencing and walls located on the Common Areas, portions of Lots or Commercial Units and that hereafter may be further determined by Supplementary Declaration(s) of Covenants, Conditions and Restrictions.

(l) Have the duty to maintain all brick or concrete pavers located in the streets and sidewalks; all street lights and poles (other than the standard street lights and poles provided by the electric company); all parks in Common Areas; all landscaping located within street islands or within street right of ways; all street and regulatory signs and post (other than the standard street and regulatory signs and post).

II
ARTICLE VIII
UTILITY BILLS, TAXES AND INSURANCE

Section 1. Obligations of Owners.

(a) Each Owner shall have separate electric, gas and water meters and shall directly pay for all electricity, gas, water, sanitary sewer service, telephone service, security systems, cable television and other utilities used or consumed by Owner.

(b) Each Owner shall directly render for taxation Owner's Lot or Commercial Unit and improvements thereon, and shall at Owner's own cost and expense directly pay all taxes levied or assessed against or upon Owner's Lot or Commercial Unit.

Section 2. Obligations of the Association.

(a) The Association shall pay, as a common expense of all Owners, for all water, gas, electricity and other utilities used in connection with the enjoyment and operation of the Common Areas and Common Facilities or any part thereof.

(b) The Association may render for taxation and, as part of the common expenses of all Owners, shall pay all taxes levied or assessed against or upon the Common Areas and Common Facilities and the improvements and the property appertaining thereto.

(c) The Association shall have authority to obtain and continue in effect, as a common expense of all Owners, a blanket property insurance policy or policies to insure the structures and facilities in the Common Areas and Common Facilities and the contents thereof and the Association against risks of loss or damage by fire and other hazards as are covered under standard extended coverage provisions, in such amounts as the Association deems proper, and said insurance may include coverage against vandalism and such other coverage as the Association may deem desirable. The Association shall also have the authority to obtain comprehensive public liability insurance in such amounts as it shall deem desirable, insuring the Association, its Board of Directors, agents and employees and each Owner (if coverage for Owners is available) from and against liability in connection with the Common Areas and Common Facilities.

(d) All costs, charges and premiums for all utility bills, taxes and any insurance to be paid by the Association as hereinabove provided shall be paid as a common expense of all Owners and shall be paid out of the assessments.

II
ARTICLE IX
RESTRICTIONS OF USE FOR RESIDENTIAL LOTS

Section 1. Single Family Residential Construction. No prefabricated, manufactured, mobile or modular housing shall be placed on any Lot. Subject to Subparagraph (b) and Section 2 and 13 of this Article, each Lot shall be used only for single-family residence purposes.

(a) On a Standard Lot, no building shall be erected, altered or permitted to remain other than one single-family detached residential dwelling not to exceed two (2) stories in height, and a private garage for not more than three (3) cars. Except as prohibited by Har-Ber Meadows Design Guidelines, occupied space may be built above a detached garage provided that the detached garage structure shall not exceed the main dwelling in height or number of stories.

(b) On an Estate Lot, no building shall be erected, altered or permitted to remain other than one single-family detached residential dwelling and bonafide servants quarters not to exceed two (2) stories in height, and a private garage for not more than three (3) cars on a lot of one-half (½) acre or a private garage for not more than five (5) cars on a lot larger than one-half (½) acre. Except as prohibited by Har-Ber Meadows Design Guidelines, occupied space may be built above a detached garage provided that the detached garage structure shall not exceed the main dwelling in height or number of stories.

(c) On a Village Home Lot, no building shall be erected, altered or permitted to remain other than one single-family detached residential dwelling not to exceed two (2) stories in height, and a private garage for not more than two (2) cars.

(d) On a Patio Lot, no building shall be erected, altered or permitted to remain other than one single-family patio home residential dwelling not to exceed two (2) stories in height, and a private garage for not more than two (2) cars.

No such residence shall be constructed on less than the equivalent of one full Lot as defined in this Declaration or that may appear on any recorded Plat or replat approved by Declarant or its assignee. No garage shall be converted to livable, occupied space without the approval of the ARC.

Section 2. Home Businesses: Prohibition of Offensive or Commercial Use. No activity which may become an annoyance or nuisance to the neighborhood or which shall in any way unreasonably interfere with the quiet enjoyment of each Owner of such Owner's Lot or which shall degrade property values or distract from the aesthetic beauty of the Property, shall be conducted thereon. No repair work, dismantling, or assembling of boats,

II

motor vehicles or other machinery shall be done in any driveway or adjoining street. No part of the Property shall ever be used or caused to be used or allowed or authorized in any way, directly or indirectly, for any business, commercial, manufacturing, mercantile, storing, vending or other such nonresidential purposes except that a single-family residence may also be used to conduct a home business if the Owner (1) has registered with the Association, (2) has paid any applicable assessments or fees levied by the Association and (3) is in compliance with the following standards:

(a) No person other than an Owner and resident of the house shall be engaged or employed in the home business and the number of residents employed in the home occupation shall not exceed two;

(b) A home business shall not create significant additional vehicular or pedestrian traffic to the residence;

(c) No sign for the home business shall be displayed on the house or property;

(d) There shall be no visible or outdoor storage or display of materials or products;

(e) There shall be no exterior evidence of the conduct of a home business;

(f) The conduct of any home business shall not reduce or render unusable areas provided for the off-street parking for the residents nor prevent the number of cars intended to be parked in the garage from being parked; and

(g) There shall be no process used in the home business that is hazardous to public health, safety or welfare. No toxic, explosive, radioactive or other restrictive materials not normally used in a single-family dwelling shall be used or stored on the site.

The Association is authorized to promulgate rules and regulations to insure that home businesses comply with the above standards and to make factual determinations regarding the impact of the home business on the residential character of the neighborhood. If, in the judgment of the Association, a home business has a detrimental impact on the residential quality of the neighborhood or otherwise constitutes a nuisance, it is authorized to revoke the Owner's home business registration and pursue any other available remedies.

Notwithstanding the above, Declarant, its successors and assigns, or Builders may use the Property for model homes display and sales offices during the Development Period, during construction or until all new homes on the Property have been sold. Notwithstanding the above, no home business shall be allowed on a Lot in violation of any applicable

municipal ordinance and only after the approval of any governmental bodies required to approve such home business.

Section 3. Minimum Square Footage. No living area shall be less than the minimum square footage as set forth below. Living area includes finished and habitable space exclusive of porches and garages.

- (a) For Standard Lots, the minimum square footage is 1500
- (b) For Estate Lots, the minimum square footage is 2700 for one story and 3000 for 2 stories.
- (c) For Village Home Lots, the minimum square footage is 1000
- (d) For Patio Lots, the minimum square footage is 1000

Declarant shall have the right to modify these minimum square footage requirements for any additional land annexed into the Association and made subject to this Declaration.

Section 4. Building Materials. The predominant exterior materials of the main residential structure, garage, accessory buildings and other structures, whether attached or detached, shall be masonry, stucco, stone, wood, or other materials approved by the ARC.

Section 5. Location of Improvements Upon the Lots. No building shall be located on any Lot nearer to the front line nor nearer to the side street line than the minimum building set back distances shown on any recorded Plat. Except as set forth below, no building shall be located on any Lot nearer than ten (10) feet to any side or rear street line. Building setbacks from interior side and rear lot lines shall be subject to the following provisions:

- (a) Subject to the provisions of Article VI, Sections 1 and 6 and Article IX, Section 6, no building on Standard Lots listed in this paragraph shall be located nearer than ten (10) feet to an interior side lot line, except that a detached garage located sixty (60) feet or more from the front lot line may be a minimum distance of five (5) feet from an interior side lot line. For the purpose of this provision, eaves, steps, box-type windows and unroofed ground-level terraces shall not be considered as part of a building; provided, however, that this shall not be construed to permit any improvement on a Standard Lot to encroach within ten (10) feet of the side or rear lot line or upon another Standard Lot.
- (b) Subject to the provisions of Article VI, Sections 1 and 6, and Article IX, Section 6, Article XII, Section 8 the dwelling on each Village Home Lot shall be designed

and constructed in such a manner as to incorporate a privacy wall of masonry construction and shall be constructed from the side wall of one Village Home to the side wall of the adjacent Village Home so as to shield the side yard from view of the street. All walls and fencing on Village Home Lots shall be maintained by the Owner with the same materials, at the height and location and with the same openings as originally constructed on the Village Home Lot. Any changes to walls or fencing and any additional walls and fencing on the Village Home Lot must be submitted to and approved by the ARC pursuant to Article VI, Section 1. Each dwelling on a Village Home Lot shall be constructed a minimum of ten (10) feet from the rear lot line, excluding patios.

For the purpose of these restrictions, carports or porte cocheres located on Lots shall be considered as garages and shall meet all the requirements for detached garages, including location, materials, and construction. Access to corner lot garages directly from side streets is prohibited unless specifically approved by Declarant or its assignee.

Declarant shall have the right to modify these setback criteria for any additional land annexed into the Association and made subject to this Declaration, and Declarant shall establish building setback criteria for uses other than single-family residential on a case-by-case basis.

Section 6. Deviations. Declarant, or the person or entity to whom it delegates such authority (i.e. ARC), at its sole discretion, is hereby permitted to approve deviations in these restrictions on building area, location of improvements and building materials in instances where in its judgment, such deviation will not adversely affect the development of the Property as a whole. Such approvals must be granted in writing and when given will automatically amend these restrictions for that Lot or Commercial Unit only.

Section 7. Composite Building Sites. Any Owner of two (2) adjoining Lots (or portions thereof if such lot split is approved as set forth in Section 8 below) may consolidate such Lots or portions into one (1) building site not to exceed two (2) lots total, with the privilege of placing or constructing improvements on such resulting site, in which event setback lines shall be measured from the resulting side property lines rather than from the lot lines as indicated on the recorded Plat. Any such composite building site must have a frontage at the building setback line of not less than the minimum frontage of lots in the same block on the recorded Plat of which it is a part. Any revision of lot sizes is subject to all applicable regulations and laws.

Section 8. No Lot Split. No Lot shall be split, divided or replatted without the express written approval of Declarant or the ARC.

Section 9. Utility Easement. Easements for installation and maintenance of utilities are reserved as shown on the recorded Plat, and no structure shall be erected on any of such easements. Declarant shall not be liable for any damage done by it or its assigns, agents, employees or contractors to shrubbery, trees, flowers or improvements located on the land covered by such easements.

Utility companies shall not be liable for such damage unless they have agreed in writing to be responsible for such damage or an easement granted to them conditions such grant upon such responsibility.

Section 10. Village Home Lot Universal Easement. The Owner of each Village Home Lot within the Property is hereby declared to have a Universal Easement, and the same is hereby granted to Declarant, over all adjoining Village Home Lots for the purpose of accommodating any encroachment due to engineering errors, errors in original construction, settlement or shifting of the buildings, and for maintenance or any other cause. There shall be easements for the maintenance of said encroachment, settling or shifting; provided, however, that in no event shall an easement for encroachment be created in willful misconduct of said Owner or Owners. In the event a structure on any Village Home Lot is partially or totally destroyed, and then repaired or rebuilt, the Owners of each Village Home Lot agree that minor encroachments over adjoining Village Home Lots shall be permitted and there shall be easements for the maintenance of said encroachments so long as they shall exist. In addition, each Village Home Lot within the Property is hereby declared to have an easement for overhanging roofs and eaves as originally constructed over each adjoining Village Home Lot for the maintenance thereof. Each of the easements hereinabove referred to shall be deemed to be established upon the recordation of this Declaration and shall be appurtenant to the Village Home Lot being served and shall pass with each conveyance of said Village Home Lot. Said Universal Easement will continue so long as completed dwellings or dwellings under construction remain on any Village Home Lots.

Section 11. Village Home Lot Side Yard Easements. Village Home Lots within the Property shall be conveyed subject to one side yard easement, which easement shall be for the benefit of the adjacent Village Home Lot, and the right to create, grant and reserve such easements is hereby preserved by the Declarant for itself and its successors in interest. Said side yard easement shall be the width of the distance from the side yard property line to the foundation of the adjacent Village Home, as built, and shall extend from the privacy wall referred to in Article IX, Section 5 (b) as built, back to the rear Lot line. Said side yard easement shall be located on the North side of Village Homes constructed in Blocks 13 and 15 and on the South side of the Village Homes constructed in Blocks 14 and 16 in Phase I of the Development. The following rules prescribe the terms, conditions

and uses of said easements, both by the Owner of the easement (the dominant tenement) and the Owner of the land under the easement (the servient tenement).

(a) The servient Village Home shall be constructed so as to have no openings, doors or windows, on the ground floor on the side where it is subject to the side yard easement unless they are in front of the privacy wall so as not to look into the side yard easement area, and any windows on the second floor of the side which is subject to the side yard easement shall be translucent but not transparent.

(b) The Owner of the Village Home Lot which is benefitted by the easement (the dominant tenement), except as otherwise provided in this Section, shall have the use of the surface of the easement area for the sole and only purpose of a side yard and shall maintain the yard and landscaping within said easement.

(c) The Owner of the land under the easement (the servient tenement) shall have the right at all reasonable times to enter upon the easement area for normal residential maintenance.

(d) The Owner of the servient tenement shall have the right of surface drainage over, along and upon the easement area for water resulting from the normal use of the servient tenement and the dominant tenement shall not use the easement area in such a manner as will interfere with such drainage.

(e) The Owner of the dominant tenement shall not attach any object to the side of the adjacent Village Home. No structure shall be constructed or placed upon the side yard easement by either the Owner of the dominant or servient tenement, except the Owner of the dominant tenement may construct a patio or a deck on, over, and across said side yard easement so long as it does not attach to or touch the wall of the Village Home of the servient tenement. Any patios or decks located on said side yard easement shall be subject to any utility easements and utility lines located along or within said side yard easement and the right of maintenance by the servient tenement, and the Owner of the dominant tenement shall bear the expense and cost of the removal and/or replacement and repair of any such patios and decks caused by the need to maintain said utility easement or utility lines or the adjacent patio home.

(f) The Owner of the dominant tenement as a condition to the exercise of the right of access provided for shall indemnify and hold harmless the Owner of the servient tenement from damage to the Village Home of the servient tenement caused by such Owner's use of the side yard easement.

(g) The aforesaid side yard easements will continue so long as completed dwellings or dwellings under construction remain on any Village Home Lots.

Section 12. Village Home Lot Reclassification. In the event Village Home Lots, upon which no construction of any type has commenced, are reclassified to a Standard Lot status, the provisions of Article IX, Section 5 (b), Section 10, and Section 11, shall no longer apply.

Section 13. Audio and Video Communication Service. In the event that audio and video communication services and facilities are made available to any Lot by means of an underground coaxial cable system, there is hereby reserved to the company furnishing such services and facilities a two feet wide easement along and centered on the underground wire or cable when and as installed by the company furnishing the service from the utility easement nearest to the point of connection on the permanent improvement of structure constructed, or to be constructed, upon the Lot and in a direct line from the nearest utility easement to the point of connection.

Section 14. Temporary Structures and Out Buildings. No structures of temporary character, nor any recreational vehicle, mobile home, trailer, tent, shack, garage, barn, playhouse or other outbuilding shall be constructed, erected, altered, placed or permitted to remain on any Lot at any time as a residence. Temporary structures may be used as sales offices or as construction offices and for other related purposes by Declarant or Builder during the construction and sales period. Such structures shall be maintained and shall be removed at completion and sale of all construction of this Development.

(a) On a Standard Lot, Village Home Lot or Patio Lot, outbuildings or structures, whether temporary or permanent, used for accessory, playhouse, storage or other purposes shall be limited to eight (8) feet in height and one hundred (100) square feet in area and must be approved in accordance with Article VI, Section 1 of this Declaration.

(b) On an Estate Lot, outbuildings or structures, whether temporary or permanent, used for playhouse, storage or other purposes shall be limited to 8 feet in height and 100 square feet in area and must be approved in accordance with Article VI, Section 1 of this Declaration.

Section 15. Animal Husbandry. No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot except dogs, cats and other common household pets (not to exceed two of each category) provided they are not kept, bred or maintained for commercial purposes. Notwithstanding the foregoing, no animals or fowl may be kept on the Property which result in an annoyance or are obnoxious to residents in the vicinity. Animals are not permitted to roam the Property and must be controlled on a leash if they are not on a Lot. No dog runs shall be allowed except with the permission of the ARC.

Section 16. Walls, Fences and Hedges. All walls, fences, planters and hedges shall be controlled strictly for compliance with this Declaration and architectural standards established by the Declarant or the ARC.

Perimeter fencing on all Lots shall be maintained to a fence standard equivalent to original construction and all fencing must be consistent with this Declaration and architectural standards established by Declarant or the ARC.

Fences of wire or chain link construction are prohibited on Lots, and the design and materials of all fences shall be approved by the ARC prior to construction pursuant to the approval requirements of Article VI, Section 1, of this Declaration.

(a) Subject to the provisions of Article VI, Section 1 and 5, Section 6 of this Article and Article XII, Section 8, the location and materials of walls, fences, planters, and hedges on Standard Lots, Estate Lots and Patio Lots shall be further determined by Supplementary Declaration(s) of Covenants, Conditions and Restrictions or Har-Ber Meadows Design Guidelines.

(b) Subject to the provisions of Article VI, Section 1 and 5, Section 6 of this Article and Article XII, Section 8, on a Village Home Lot no wall, fence, planter, or hedge shall be erected or maintained nearer to the front building setback line. No rear fence, wall, or hedge and no side fence, wall, or hedge shall be more than six feet high. The ownership of any wall, fence, or hedge erected as protective screening on a Village Home Lot by Declarant, its agents or assigns, or Builder shall pass with title to the Village Home Lot, and it shall be the Owner's responsibility to thereafter maintain said protective screening.

Declarant, at its sole discretion, is hereby permitted to grant deviations in height, location, and construction materials related to fences and walls which in its judgment will result in a more beneficial use.

Section 17. Antennae and Satellite Dishes. Subject to Section 14 of this Article, no electronic, radio, television or any other type of antenna for receiving or transmitting visual or sound communications or any electronic antennae of any kind shall be constructed, erected, placed or permitted to remain on any Lot or any residential dwelling or outbuilding or any other structure thereon.

No electronic, radio, or television satellite dish or any other type of receiving or transmitting dish or any other similar equipment is permitted on any Lot unless it is erected, placed or mounted in such a manner that is not visible from a street, adjacent lot or land.

Section 18. Heating and Cooling Devices. No single-family construction, private garage or any other structure located on the Property shall be permitted to have a heating or cooling device located in a window or any other opening which can be viewed from any portion of the Property. Heating and cooling devices may be used in windows or other openings of any structure used by Declarant or a Builder during the construction and sale of all structures of this subdivision.

Section 19. Visual Screening. All clothesline, equipment, garbage cans, service yards, woodpiles, refuse containers, or storage piles and household projects such as equipment repair and construction projects shall be screened by adequate planting or fencing so as to conceal them from view of neighboring lots, streets, parks and public areas. All rubbish, trash, and garbage shall be kept in sanitary refuse containers with tightly fitting lids and shall be regularly removed from the lots and not allowed to accumulate thereon.

Section 20. Visual Obstructions at the Intersections of Public Streets. No object or thing which obstructs sight lines at elevations between two (2) and six (6) feet above the roadways within the triangular area formed by the junction of street curb lines and a line connecting them at points twenty-five (25) feet from the junction of the street curb lines (or extensions thereof) shall be placed, planted or permitted to remain on any corner lots.

Section 21. Lot Maintenance. All Lots shall be kept at all times in a sanitary, healthful and attractive condition, and the Owner or occupant of all Lots shall keep all weeds and grass thereon cut and neatly maintained and shall in no event use any Lot for storage of material and equipment except for normal residential purposes or incident to construction of improvements thereon as herein permitted, or permit the accumulation of garbage, trash or rubbish of any kind thereon, and shall not burn any garbage, trash or rubbish.

Section 22. Storage of Automobiles, Boats, Trailers, Other Vehicles and Equipment. No automobiles, boats, trailers, campers, recreational vehicles, motorcycles, buses, inoperative vehicles of any kind, camp rigs off truck, or boat rigging shall be parked or stored permanently or semi-permanently on any public street right-of-way, front yard area or on driveways. Permanent or semi-permanent storage of such vehicles or items must be completely screened from public view either within the garage or behind a solid fence. For the purposes of these restrictions, the words "semi-permanent" shall be defined as remaining in the same location without movement for forty-eight (48) or more consecutive hours. No eighteen-wheel vehicles and other similar large van or flat-bed type vehicles may be parked on any public street right-of-way, front yard area or on driveways except to deliver merchandise or other materials to residents or construction sites.

Section 23. Signs, Advertisements and Billboards. No sign, advertisement, billboard or advertising structure of any kind shall be displayed to the public view on any portion of a Lot or Common Areas except for one sign for each Lot of not more than 28 inches by 38 inches solely advertising the Lot for sale or rent, and except signs used by Declarant or Builder to advertise the Lot during the construction and sales period. The Declarant and the Association shall have the right to remove any signs, advertisements or billboard or structure which is placed on said Lot or Common Areas, in violation of this section and in so doing shall not be subject to any liability for trespass or other tort in connection therewith or arising from such removal.

Section 24. Removal of Soil and Trees. The digging of soil or the removal of soil from any Lot is expressly prohibited except as necessary in conjunction with the landscaping of or construction on said Lot. No trees shall be cut except to provide room for construction of improvements or to remove dead or unsightly trees and then only following the obtaining of written approval for such cutting by Declarant or the ARC, given in their sole discretion.

Section 25. Roofing Material. Roofing materials shall include composition shingles having a minimum warranty period of 20 years. Composition shingle roofs shall be comparable in color to weathered wood shingles and comparable in surface textural appearance to wood shingles. Other roofing materials and colors may be approved individually by the Declarant, its assigns, or the ARC.

Section 26. Lot Drainage. Each Owner of the Lot agrees for himself, his heirs, or successors in interest that he will not in any way interfere with the established drainage pattern over his Lot from adjoining or other Lots in said tract; he will make adequate provisions for the proper drainage in the event it becomes necessary to change the established drainage over his Lot. For the purpose hereof, "established drainage" is defined as the drainage which occurred at the time that the overall grading of said tract, including landscaping of any Lots, and said tract was completed by Declarant.

Section 27. Occupation of Dwelling. Each single-family dwelling may be occupied by only one (1) family consisting of one or more persons related by birth, adoption, marriage or no more than two (2) unrelated persons living and cooking together as a single housekeeping unit together with not more than one (1) household servant. Each single-family dwelling shall contain no more than one (1) housekeeping unit.

Section 28. Water and Mineral Operations and Wind Generators. No oil or water drilling, oil or water development operations, oil refinery, quarry or mining operations or any kind shall be permitted on any Lot, nor shall oil or water wells, tanks, pumps, derricks,

structures, mineral excavations or shafts be permitted on any Lot. No wind generators shall be erected or maintained on any Lot.

Section 29. Solar Collectors. No solar collectors shall be installed without written approval from the ARC. Such installation shall be in harmony with the design of the residence. When reasonably possible, solar collectors shall be installed in a location not visible from the public street in front of the residence.

Section 30. Boats and Boat Docks. No private boat docks shall be allowed on any lakes or waterways within the Development. No privately owned boats for use on the lakes and waterways within the Development shall be stored or maintained or used.

Section 31. Enforcement. In the event of default on the part of the Owner or occupant of any Lot in observing any or all of the requirements herein set forth, such default continuing after ten (10) days written notice thereof, the Declarant or the Association may, without liability to the Owner or occupant, in trespass or otherwise, enter upon said Lot, cut, or cause to be cut, such weeds and grass, and remove or cause to be removed, such garbage, trash or rubbish or do any other thing necessary to secure compliance with these restrictions, so as to place said Lot in a neat, attractive, healthful and sanitary condition, and may charge the Owner or occupant of such Lot for the cost of such work. The Owner or occupant, as the case may be, agrees by the purchase or the occupation of the Lot to pay such statement immediately upon receipt thereof. To secure the payment of such charges in the event of nonpayment by the Owner, a vendor's and continuing contractual lien shall be retained by Declarant at the time of conveyance of each Lot in favor of Declarant or Association, but inferior to a purchase money lien or mortgage. Such vendor's and continuing contractual lien shall be applicable and effective whether mentioned specifically or omitted in each conveyance of a Lot by Declarant.

Section 32. Guidelines. The requirement, limitations, and prohibitions set forth in this Article IX, as to building materials, uses and otherwise, are in addition to and not in substitution for the rules and regulations and the Har-Ber Meadows Design Guidelines authorized under Article VI, Section 5.

ARTICLE X RESTRICTIONS OF USE FOR COMMERCIAL UNITS

Section 1. Permitted Uses. Only those uses which are permitted within the Residential Office (R-O), Neighborhood Commercial (C-1) and Central Commercial (C-3) Districts as enacted by the Code of Ordinances in effect in Springdale, Arkansas on the date of the filing this Declaration shall be permitted within the Commercial Units on the Property. In the event the zone classifications or districts are redesignated in the future by

11

the City of Springdale, this Article may be amended by Declarant to substitute the zoning classifications which most closely meet the same zoning criteria and permitted uses as the current zoning classifications by the filing of a Supplementary Declaration of Covenants, Conditions and Restrictions. Provided, however, that in addition to complying with applicable zoning classification as to a particular use, the Owner of a Commercial Unit shall also submit its proposed use to the ARC for its review, to determine if the proposed use is consistent with the overall pattern of development of the Property and meets the needs of its residents. In order to obtain such approval the Owner of any Commercial Unit shall submit to the ARC a request in writing for a particular use. Within forty-five (45) days after submission of such request for permitted use, the ARC shall provide to the Owner of such Commercial Unit a Certificate of Permitted Use, in recordable form, indicating the approval by the ARC. Notwithstanding anything contained herein to the contrary, nothing prohibited herein shall prohibit Declarant or the Association or any other Owner within the Property from enforcing any failure of the Owner of the Commercial Unit to abide by the use permitted by the Certificate of Permitted Use, and the Declarant, Owner or Association shall have the authority to compel conformity by the Owner of a Commercial Unit to the use permitted by the applicable Certificate of Permitted Use, and, in the event litigation is necessary to enforce such conformity, the nonconforming Owner shall be liable to the enforcing party for its costs, fees, and expenses.

Section 2. Offensive or Illegal Uses. No use of the Property shall be permitted which is illegal or offensive in the opinion of Declarant by reason of odor, fumes, dust, smoke, noise or pollution, or which is hazardous by reason of excessive danger of fire or explosion. Furthermore, no Commercial Unit shall store, use, or sell any chemicals, products, materials or other substances nor engage in any activity that would violate any state or federal environmental laws of any nature whatsoever. In addition, no activity or use shall be permitted on or with respect to any part of the Property which is obnoxious to or out of harmony with the development of a distinctive office, retail, commercial, and service distribution subdivision, including, but not limited to, any trailer court, junk yard, scrap metal yard or waste material business, any dumping, disposal, incineration or reduction of garbage or refuse, not including compacting devices which temporarily hold refuse for disposal off-site, and any fire or bankruptcy sale or auction house operation.

Section 3. Open Space. Building and parking area coverage for office, commercial and retail use shall allow for minimum open space areas in accordance with the following table unless otherwise approved in writing by ARC:

<u>Site Size (x)</u>	<u>Open Space</u>
Less than 1 acre	20%
1 to 5 acres	2.5 (9-X)%, where "X" equals the number of acres
Greater than 5 acres	10%

Open space areas must be landscaped by the Owner, provided, however, that the Association may landscape and maintain Common Areas held in fee or easement by the Association. Designated landscape easements within Property boundaries may be included in open space calculations.

Section 4. Setbacks. Minimum building and parking setbacks shall be shown on any recorded Plat of the Development unless otherwise indicated in the deed of conveyance from Declarant to Owner.

The ARC reserves the right during its review of construction plans to relax setback requirements on the Properties where necessary or desirable to accomplish a more effective and compatible land utilization.

Section 5. Building Height. Buildings within Commercial Units shall be limited to a maximum of two stories in height. Residential building heights within commercial areas (save and except condominiums and any areas designated by Declarant as Senior Care Units or Areas) shall be limited to three stories.

Section 6. Parking Requirements. Adequate automobile parking spaces including spaces for employee and customer/visitor parking, shall be provided on-site and all parking areas shall be internally drained, curbed, and paved. Minimum parking requirements/spaces shall be in accordance with the following table:

Retail - 3 spaces per 1,000 gross saleable footage (gsf)

Restaurants/Fast Foods - 8 spaces per 1,000 gsf

Office - professional (anything less than 16,000 gsf) 3 spaces per 1,000 gsf
campus (anything greater than 16,000 gsf) 2.5 spaces per 1,000 gsf

Residential - high density (apartments or condominiums) 1.5 spaces/unit plus 10%
of total units for guests
medium density (all other residential) 2 spaces per unit

Design and construction of parking areas should recognize the changing mix of full size, mid-size and compact size parking spaces. The ARC reserves the right during its review of construction plans to relax parking requirements to recognize the changing mix of automobile size, carpooling, vanpooling and flex-time office hours. Notwithstanding anything contained herein to the contrary, in the event the parking requirements as set forth above are less than the minimum requirements of the ordinances of the City of Springdale, the ordinances of the City of Springdale shall control, unless Declarant receives from the City of Springdale a variance to allow the parking requirements it seeks.

Section 7. Loading/Unloading. Delivery vehicle loading and unloading shall occur on-site only; on street delivery vehicle loading and unloading shall not be permitted. Loading/Unloading facilities shall be separated from employee, customer and visitor circulation and parking areas shall be screened from public view in a manner approved in writing by the ARC prior to construction. The ARC reserves the right to relax screening requirements for service distribution/warehouse land usage where operation of said uses warrant special consideration due to access requirements and volume of traffic.

Section 8. Outside Storage or Operations. No outside storage or operations of any kind shall be permitted unless such activity is visually screened from public view in a manner which is architecturally compatible and approved in writing by the ARC. No boats, trailers, campers, horse trailers, buses, inoperative vehicles of any kind, camping rigs off truck, boat rigging, or other vehicles or associated equipment of a recreational or commercial nature shall be parked or stored permanently or semi-permanently on any Property unless properly screened from public view in a manner approved in writing by the ARC. All retail sales equipment, fixtures and merchandise shall be displayed only in the interior of a building, unless done in a manner acceptable to the ARC. Water towers, cooling towers, communication towers, storage tanks, and other structures or equipment shall be architecturally compatible with the aesthetics of the project or effectively shielded from public view. All utility/service system components and trash pickup stations shall be integrated with the building or screened by a fence or wall of compatible materials and shall not be visible above such screening.

Section 9. Mechanical Equipment. All roof-top mechanical equipment shall be screened from the view of adjacent streets and buildings and with material compatible with the building architecture or by the use of a parapet wall. Ground-mounted equipment such as power transformers and air conditioning equipment shall be screened from public view by fencing or landscaping, all of which must be approved in writing by the ARC.

Section 10. Grading and Drainage. Site grading shall be designed to collect and convey surface drainage in a manner that conforms to the Storm Sewer Design for Har-Ber Meadows Development, on file in the Springdale City Engineer's office. Storm water

systems shall provide for collection and conveyance of on-site drainage and of any upland watershed which may flow across the property being developed and where possible be connected to existing underground drainage structures. Care shall be taken not to cause damage to adjacent properties during construction or after completion of the project. Grading of the site shall be done without damaging existing trees in Common Areas.

Section 11. Underground Utilities. Any pipe, conduit, cable, or line for water, gas, sewage, drainage, electricity, telephone, steam, shall not be installed or maintained (outside of any building) above the surface of the ground within any Commercial Unit, unless otherwise approved in writing by the ARC.

Section 12. Easements. Easements for installation and maintenance of utilities are reserved as shown on the recorded Plats and as provided for in the deeds of conveyance to particular Commercial Units. No structure shall be erected on any of said easements, and no improvements may be placed within said easements without the prior written approval of the ARC and any utility company using such easements. Easements may be crossed by driveways and walkways provided the Owner secures the prior approval, if required, of the utility companies furnishing services, and provides and installs any special conduit and other equipment of approved type and size, under such driveways and walkways prior to construction thereof. Declarant shall not be liable for any damage done by it or its assigns, its agents, employees or contractors to shrubbery, trees, flowers or other improvements (except the aforementioned special conduit) located on the land covered by said easements. Utility companies shall not be liable for such damages unless they have agreed in writing to be responsible for such damage or an easement granted to them conditions such grant upon such responsibility.

Declarant hereby reserves, for itself and its successors and assigns, a 6 feet wide maintenance easement, adjacent and as applicable, parallel to each of the property lines of all Commercial Units that abut a landscape reserve in cases where Declarant has constructed or intends to construct a fence or entry treatment within the landscape reserve, together with the right of ingress and egress for the purposes, without liability to Owner, of constructing, repairing, and/or reconstructing said fence or entry treatment. The easement area shall remain unobstructed of any structures or plantings that would prohibit access to the fence or entry treatment for the purposes set forth herein.

Section 13. Exterior Illumination. Exterior illumination, if such is to be provided, shall be designed to light only buildings, parking areas and walkways and shall not produce glare on adjacent streets or Commercial Units. All ground level floodlighting fixtures shall be depressed or screened from public view in a manner approved in writing by the ARC. Parking area lighting, arcade lighting and all other illumination shall be in a style in accordance with ARC Guidelines.

Section 14. Signing. All signs and their locations must be approved by the ARC in writing prior to installation. No sign of a flashing or moving character shall be installed and no sign shall project above the roofline of a building unless approved in writing by ARC. Any sign installed without ARC approval may be removed by ARC, without liability for trespass or other legal wrong in the ARC. For the purposes of this provision signing shall include flags/flagpoles, awnings, and canopies.

Section 15. Temporary Structures. No temporary building or structure other than construction offices and structures for related purposes during the construction period shall be installed or maintained on any Commercial Unit without the prior written approval of the ARC. All temporary structures used for construction purposes must receive approval by the ARC with regard to location and appearance, and must be removed promptly upon completion of construction.

Section 16. Commercial Unit Consolidation. If the Owner of any Commercial Unit becomes the Owner of one or more contiguous and adjoining Commercial Units, side yard line building and parking setbacks common to the contiguous Commercial Units may be waived by the ARC at its discretion.

Section 17. Maintenance. The Owner and lessee of any Commercial Unit shall have the duty of and responsibility for keeping the premises, building, improvements, appurtenances and landscaping in a well maintained, safe, clean and attractive condition at all times. If, in the opinion of the Association, any such Owner or lessee is failing in this duty and responsibility, then the Association may elect to give notice of such fact to such Owner or lessee, who shall within ten (10) days of such notice, undertake the care and maintenance required to restore said Owner's or lessee's Commercial Unit to a safe, clean and attractive condition. Should any such Owner or lessee in the opinion of Declarant fail to fulfill this duty and responsibility after such notice, the Association shall have the right and power to perform such care and maintenance, and the Owner or lessee shall be liable for the cost thereof. If such Owner or lessee shall fail to reimburse the entity performing the work, the amount of such charge shall constitute a lien upon the Commercial Unit enforceable as any mortgage lien, but subordinate to any mortgage lien and any lien securing a construction loan to the Owner or lessee.

Section 18. Landscaping. All sites shall be landscaped in accordance with plans submitted to and approved by the ARC. All plant material shall be installed within thirty (30) days following the occupancy of a building. This period may be extended in writing by the ARC in the event of delays caused by adverse weather conditions or other causes beyond reasonable control. Any Common Areas owned by the Association shall be landscaped by the Association and not by the Owner of such Commercial Unit.

Section 19. Standards and Procedures. The ARC shall establish and promulgate rules, standards and procedures which it deems necessary and appropriate for the orderly development of the Property including but not limited to those with respect to workmanship, materials, building methods, observance of requirements concerning installation and maintenance of public utility facilities and services and compliance with governmental regulations. The ARC shall be guided by industry standards and may amend such rules, standards and procedures when deemed necessary and appropriate. Such rules, standards and procedures shall be binding and enforceable against each Owner in the same manner as any other restriction set forth herein, but nothing contained herein shall be deemed to affect any approval granted by the ARC in accordance with the terms of this Declaration prior to the amendment of such rules, standards or procedures.

Section 20. Modifications and Changes. Declarant reserves the right to modify and change the conditions contained herein for any additional land made subject to the Declaration if such modifications and changes in Declarant's judgment will result in a more common beneficial use and enhance the overall development plan for the Property, but nothing contained herein shall permit Declarant to modify or change conditions applicable to the Property or any additional land heretofore made subject hereto except as hereinafter provided in Article XII, Section 3 of this Declaration.

Section 21. Flowage Easement and Flood Control Easement. All Commercial Units adjacent to or contiguous to any lake, stream or waterway (collectively referred to herein "Waterway") shall be subject to a permanent easement, to the extent set forth below, in and over such Commercial Unit for the following uses and purposes:

- (a) The right to overflow, flood and cover each easement with flood water, slack water or backwater.
- (b) The right to enter on such easement from time to time and clear, destroy or otherwise dispose of any timber or natural growth and any obstructions, accumulations or any other thing that would in any other way interfere with navigation or flood control, or tend to render inaccessible, unsafe or unsanitary the Waterway, together with the right to prevent the draining or dumping into the Waterway the refuse, sewerage or any other material that might tend to pollute it.
- (c) The right to enter on such easement and do such drainage and other work as, in the discretion of Declarant or assignee, may be necessary to carry out an adequate program of pest control, including the maintenance of necessary controls and the applications of or the employment of pest control.

¶

(d) The right to enter on such Commercial Unit and excavate, erect structures and do such other work as is desirable in connection with the needs of such Waterway.

(e) The right to install, maintain, or remove landscaping or other environmental improvements on such easement.

(f) The right to make all necessary earth fills and locate or relocate existing drainpipes or structures on such easement.

(g) The right to remove or prevent the construction of any buildings located on easement.

The portion of the Commercial Unit affected by and subject to the above described easement is that portion of the Commercial Unit that lies within the flowage and flood control easement as designated on any recorded Plat of the Development. Provided, however, Declarant or its assigns shall have the right of ingress and egress over the entire Subject Property (on any Lot, Commercial Unit, or other property subject to such easement) to provide access to allow Declarant or its assigns to perform the purposes and matters set forth above in this section. Should the water level on in Waterway drop below the level designated on any recorded Plat, the Declarant and its assigns and the Association shall be under no obligation to see that the water level is up to the line shown on such recorded Plat as the flowage and flood control easement.

ARTICLE XI MORTGAGEE NOTICE; MANAGEMENT AGREEMENTS; RESERVE FUNDS; LEASES

Section 1. Notice to First Mortgagees. Upon written request to the Association at the address of the Association's registered agent filed with the Secretary of State for the State of Arkansas, all holders of first mortgage liens on Lots and Commercial Units, hereinafter called "First Mortgages," shall be entitled to:

(a) inspect the books and records of the Association during normal business hours at a time mutually convenient to Declarant and First Mortgagee;

(b) receive an annual audited financial statement of the Association within ninety (90) days following the end of any fiscal year;

¶

(c) receive written notice of all meetings of the Association and designate a representative to attend all such meetings;

(d) upon request, receive notice of any default in the performance by the First Mortgagee's mortgagor of any obligation under this Declaration, the By-Laws or Articles of Incorporation of the Association which is not cured within sixty (60) days;

(e) receive notice of any abandonment or termination of the development;

(f) receive notice of any material amendment to this Declaration, or to the By-Laws or Articles of Incorporation of the Association; and

(g) receive notice of any decision to terminate professional management and assume self-management.

Section 2. Mortgagee Required Approval. Unless all of the First Mortgagees who have notified the Association pursuant to Section 1 of this Article have given their prior written approval, the Association shall not be entitled to:

(a) fail to maintain fire and extended coverage on insurable improvements in Common Areas and Common Facilities, if any, on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost); and

(b) use hazard insurance proceeds for losses to any improvements in Common Areas and Common Facilities, if any, for other than the repair, replacement or reconstruction of such improvements.

Section 3. Reimbursement to Mortgagees for Payment of Taxes or Insurance Premiums. First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Areas and may pay overdue premiums of hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for improvements in the Common Areas and Common Facilities, if any, and First Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

Section 4. Insurance on Condemnation Proceeds: Notice. No provision of this Declaration or of the By-Laws or Articles of Incorporation of the Association shall be construed as giving an Owner or other party priority over any rights of a First Mortgagee pursuant to its mortgage in the case of a distribution of such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Areas or Common

¶

Facilities. An institutional holder of a first mortgage shall be entitled to receive timely written notice of substantial damage to or a taking of the Common Areas or Common Facilities.

Section 5. Reserve Fund. Association budgets shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Areas and Common Facilities that must be replaced on a periodic basis and will be payable in regular installments as part of the common assessment.

Section 6. Leases. Any lease agreement between an Owner and a lessee shall be subject in all respects to the provisions of this Declaration, the By-Laws and Articles of Incorporation of the Association whether or not reference is made to the Declaration, By-Laws and Articles of Incorporation in the lease.

ARTICLE XII GENERAL PROVISIONS

Section 1. Enforcement. The Association and any Owner shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens or charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability. Invalidation of any one of these covenants, conditions or restrictions shall not affect any other provision, which shall remain in full force and effect.

Section 3. Duration; Amendment. The provisions of this Declaration shall run with and bind the Property for a term of twenty-five years from this date, after which time they shall be automatically extended for successive periods of ten years.

Deeds of conveyance of Lots or Commercial Units or any part thereof, may contain the above restrictive covenants by reference to this document, but whether or not such reference is made, each and all of such restrictive covenants shall be valid and binding upon the restrictive grantees.

This Declaration may be amended during the first twenty-five year period by an instrument signed by a sufficient number of Owners representing not less than two-thirds (2/3) of the votes in the Association, and thereafter by an instrument signed by a sufficient number of Owners representing not less than fifty percent of the votes. In addition, any amendment hereto (i) to change the method of determining the obligations, assessments,

||

dues or other charges which may be levied against an Owner, or (ii) to change, waive, or abandon any scheme of regulations, or enforcement thereof, pertaining to the maintenance of Common Areas, or (iii) to use hazard insurance proceeds for losses to the improvements in Common Areas, if any, for other than the repair, replacement or reconstruction of such improvements shall require the additional approval of two-thirds (2/3) majority of the First Mortgagees (based upon one vote for each mortgage owned).

The Declarant reserves the right during the Development Period, without joinder or consent of any Owner, Developer, Builder or mortgagee, to amend this Declaration or the By-Laws by an instrument in writing duly signed, acknowledged and filed for record, for the purpose of resolving or clarifying any ambiguities or conflicts herein, or correcting any inadvertent misstatements, errors or omissions herein, or to comply with the requirements of Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Veteran's Administration, Federal Housing Administration, or other government related financing party, provided that no such amendment shall change the vested property rights of any Owner or adversely affect the general development plan of Declarant or Builder, except as otherwise provided herein. Furthermore, Declarant reserves the right to make additional restrictions in any deed conveying title to a Lot or Commercial Unit.

All amendments shall be recorded in the Official Public Records of Real Property of Washington County, Arkansas.

Section 4. Books and Records. The books and records of the Association shall, during reasonable business hours, be subject to reasonable inspection by any Member. The Board of Directors may, by resolution, establish rules and regulations governing the frequency of inspection and other matters to the end that inspection of the books and records by any Member will not become burdensome to nor constitute harassment of the Association. The Declaration, the Articles of Incorporation and By-Laws of the Association shall be available for inspection by any Member at the principal office of the Association, where copies may be purchased at reasonable cost.

Section 5. Notices. Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, postpaid, to the last known address of the person who appears as Owner on the records of the Association at the time of such mailing.

Section 6. Good Faith Lender's Clause. Any violation of these covenants, conditions or restrictions shall not affect any lien or deed of trust of record held in good faith, upon any Lot or Commercial Unit, which liens may be enforced in due course, subject to the terms of this Declaration.

Section 7. Mergers. Upon a merger or consolidation of the Association with another association as provided by its Articles of Incorporation, its properties, assets, rights and obligations may be transferred to another surviving or consolidated association or, alternatively, the properties, assets, rights and obligations of another association may be transferred to the Association as a surviving corporation. The surviving or consolidated association shall administer the covenants, conditions and restrictions contained in this Declaration, under one administration. No such merger or consolidation shall cause any revocation, change or addition to this Declaration.

Section 8. Annexation.

(a) Additional land or lands may be annexed to the Property with the consent of two-thirds (2/3) of each class of members, and the approval of the Owner(s) of the land to be annexed.

(b) Notwithstanding anything contained in Subparagraph (a) above, or any other provisions herein, Declarant, its successors or assigns, shall have the right, without the consent of any other Owners or any First Mortgagee, to bring additional property within the scheme of the Declaration, in one (1) or more future stages, sections or additions, within fifteen (15) years of the date of recording of this instrument. Further, any land annexed to the Property and subject to this Declaration may be acquired (by gift, purchase or otherwise) and/or designated as Common Areas by the Association without the consent of any Owners or any First Mortgagee. Additional land that is added or annexed shall become subject to the annual assessment in accordance with Article V.

(c) The additions authorized under this Section shall be made by filing of record:
 (a) Supplementary Declaration(s) of Covenants, Conditions and Restrictions with respect to the additional lands which shall (i) extend the scheme of the covenants and restrictions or this Declaration to such lands and (ii) provide, if applicable, that the proportionate ownership interests in the Common Areas or the Owners by virtue of Association membership immediately prior to the filing of such Supplementary Declaration shall be equal to the number of Lots and Commercial Units owned by such Owner divided by the total number of Lots and Commercial Units within the lands then subject to this Declaration after such annexation; and (b) a deed from Declarant or Builder to the Association which shall convey to the Association the area within such additions (except for the Lots or Commercial Units therein) as Common Areas for the sole benefit and use of the Owners, with reservation of Declarant's rights set forth herein.

Section 9. Deannexation.

(a) Land or lands may be deannexed from the Property with the consent of two-thirds (2/3) of each class of members and the approval of the Owner(s) of the land to be deannexed.

(b) Notwithstanding anything contained in Subparagraph (a) above, or any other provision herein, Declarant, its successors or assigns, shall have the right, without the consent of any other Owners or any First Mortgagee, to deannex land from the scheme of the Declaration if the Owner of the land is agreeable to the deannexation and if the deannexation would benefit the general development process or general development plan.

(c) The deannexations authorized under this Section shall be filed of record.

Section 10. Additional Phases. The Declarant reserves the right, without joinder or consent of any Owner, Developer, Builder or Mortgagee, to file additional plats in the office of the Circuit Clerk and Ex-Officio Recorder of Washington County, Arkansas to add additional phases which shall be under the jurisdiction of this Declaration.

IN WITNESS WHEREOF, the undersigned being the Declarant herein, has hereunto set its hand and seal this 6th day of June, 1996.

HAR-BER MEADOWS DEVELOPMENT
COMPANY

BY: Ken Childress
Ken Childress, President

ACKNOWLEDGMENT

STATE OF ARKANSAS)
)ss.
COUNTY OF WASHINGTON)

On this 6th day of June, 1996, before the undersigned, a Notary Public, duly commissioned, qualified and acting within and for the County and State, appeared in person the within named Ken Childress to me personally

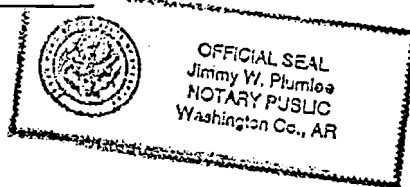
known, who stated that he was the President of the Har-ber Meadows Development Company, a corporation, and was duly authorized in his respective capacity to execute the foregoing instrument for and in the name and behalf of said corporation, and further stated and acknowledged that he had so signed, executed and delivered said instrument for the consideration, uses and purposes therein mentioned and set forth.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal this 6th day of June, 1996.

Jimmy W. Plumlee
Notary Public

My Commission Expires:

5/20/2001



LEGAL DESCRIPTION

Phase I

¶

Part of the Northwest Quarter (NW ¼) of Section Five (5), Township Seventeen (17) North, Range Thirty (30) West and a part of the Southwest Quarter (SW ¼) of Section Thirty-two (32), Township Eighteen (18) North, Range Thirty (30) West of the Fifth Principal Meridian, Washington County, Arkansas and being more particularly described as follows:

From the Southeast Corner of said Northwest Quarter (NW ¼) of Section 5, Township 17 North Range 30 West run North 01° 22' 52" West 45.47 feet to the north right of way line of US Highway 412, thence along said right of way line as monumented North 88° 50' 54" West 521.30 feet, thence continuing along said right of way line as monumented North 88° 51' 57" West 147.27 feet to the POINT OF BEGINNING; and run thence along said right of way line as monumented North 88° 51' 57" West 453.65 feet, thence continuing along said right of way line North 84° 17' 20" West 158.09 feet to the beginning of a curve concave to the left, said curve having a radius of 50 feet and a chord which bears North 47° 51' 20" East, thence along said curve 83.52 feet to its end; thence North 1201.68 feet to the beginning of a curve concave to the left, said curve having a radius of 25 feet and a chord which bears North 31° 47' 23" West, thence along said curve 27.74 feet to the end of said curve and the beginning of a curve concave to the right, said curve having a radius of 136.75 feet and a chord which bears North 31° 47' 00" West, thence along said curve 151.72 feet to its end, thence North 946.03 feet, thence North 1° 40' 06" West 103.04 feet, thence North 28.50 feet to the beginning of a curve concave to the right, said curve having a radius of 76.50 feet and chord which bears North 45° 00' 00" East, thence along said curve 120.17 feet to the end of said curve; thence East 330.00 feet, thence South 965.00 feet to the beginning of a curve concave to the left, said curve having a radius of 28 feet and a chord which bears South 45° 00' 00" East, thence along said curve 43.98 feet to the end of said curve; thence East 652.00 feet; thence South 156.50 feet; thence South 1° 17' 38" West 158.63 feet; thence North 88° 45' 28" West 588.10 feet; thence North 01° 17' 38" East 119.37 feet; thence West 203.43 feet to the beginning of a curve concave to the left, said curve having a radius of 25 feet and a chord which bears South 53° 37' 20" West, thence along said curve 31.74 feet to the end of said curve and the beginning of a curve concave to the right, said curve having a radius of 136.75 feet and a chord which bears South 40° 24' 38" West, thence along said curve 110.54 feet to the end of said curve and the beginning of a curve concave to the left, said curve having a radius of 25.00 feet and chord which bears South 31° 47' 01" West, thence along said curve 27.74 feet; thence South 1205.43 feet to the beginning of a curve concave to the left, said curve having a radius of 50 feet and a chord which bears South 44° 27' 55" East, thence along said curve 77.61 feet; thence South 88° 55' 49" East 412.90 feet; thence South 13.02 feet to the POINT OF BEGINNING, CONTAINING 19.08 ACRES, more or less, and subject to all easements and rights of way of record, if any.

EXHIBIT A