

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
EASEMENTS FOR HERITAGE SQUARE ADDITION TO THE  
CITY OF FREMONT, DODGE COUNTY, NEBRASKA

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*Carol Livens*  
REGISTER OF DEEDS  
DODGE COUNTY, NE

This Declaration of Covenants, Conditions, Restrictions and Easements for Heritage Square Addition to the City of Fremont, Dodge County, Nebraska is made on the date hereinafter set forth by Mark F. Ferraina and Laura C. Ferraina, husband and wife, and Einspahr Construction, Inc., hereinafter referred to as Declarants.

PRELIMINARY STATEMENT

The Declarants are the owners of certain real estate located in Dodge County, Nebraska, legally described as:

Lots 1 through 17 of Heritage Square Addition as platted and recorded in Fremont, Dodge County, Nebraska.

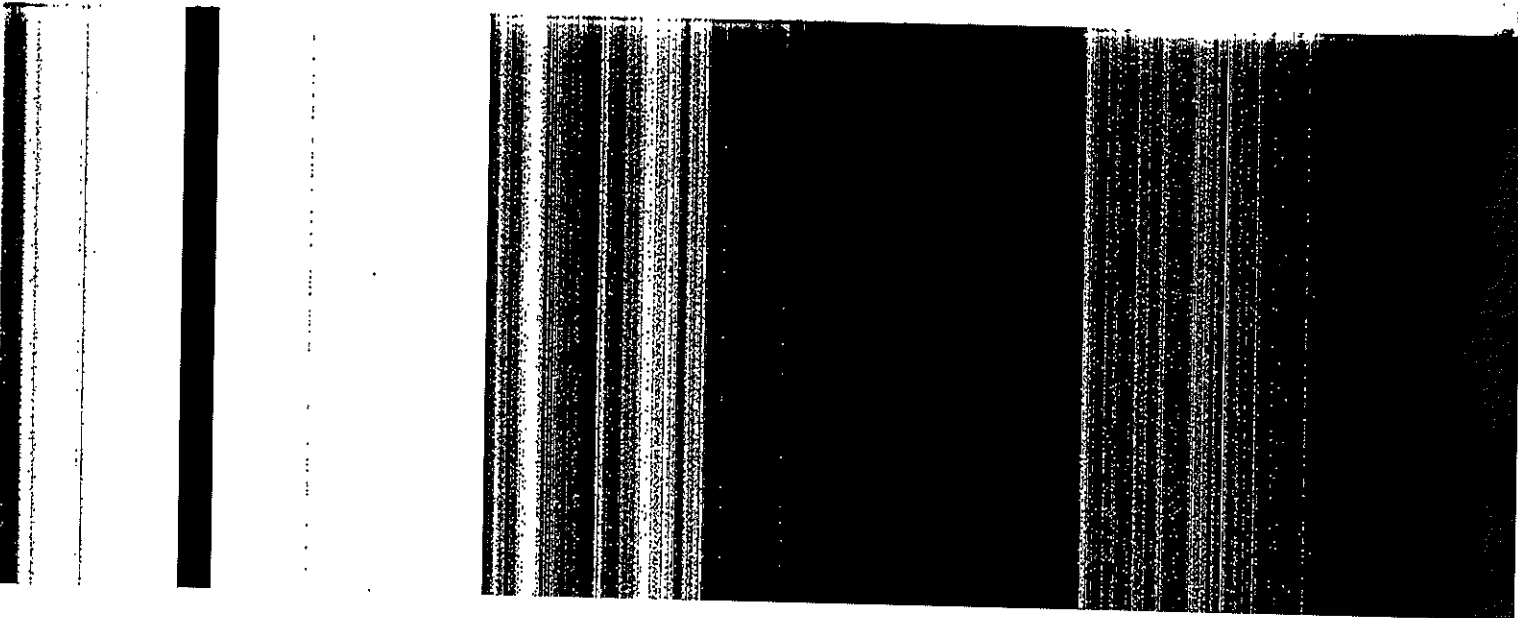
Such property is hereinafter referred to collectively as the "Lots" and individually as each "Lot."

The Declarants desire to provide for the preservation of the values and amenities of such community and for the maintenance of the character and residential integrity of the Lots.

NOW THEREFORE, the Declarants hereby declare that each and all of the Lots shall be held, sold and conveyed subject to the following restrictions, covenants, conditions and easements, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Lots. These restrictions, covenants, conditions and easements shall run with such real estate and shall be binding upon all parties having or acquiring any right, title or interest in each Lot, or any part hereof, as is more fully described herein, and all persons claiming under them, and for the benefit of and limitations upon all future owners and lessees of said Lots. The terms and conditions hereof shall be deemed effective and binding upon the recording of this Declaration.

DEFINITIONS

A. "Association" shall mean and refer to Heritage Lane Homeowners Association in connection with Lots 1 through 10 of Heritage Square Addition, Fremont, Dodge County, Nebraska, and Heritage Square Homeowners Association in connection with Lots 11 through 17 of Heritage Square Addition, Fremont, Dodge County, its successors and assigns.



B. "Owner" shall mean and refer to the record Owner, whether or more persons or entities, of a fee simple title to any Lot which is a part of the properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation. "Owner" shall also include Lessees of any Lot which is part of the properties who is also a member of the Association.

C. "Properties" shall mean and refer to that certain real property described herein.

D. "Lot" shall mean and refer to any plot of land shown upon the recorded plat of Heritage Square Addition constituting the Properties.

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

#### ARTICLE I

#### ASSOCIATION MEMBERSHIP, VOTING RIGHTS, AND LOTS OWNED BY DECLARANTS

1. Every Owner of a Lot which is subject to an assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

2. The Association shall have two classes of voting membership:

A. Class A: Class A members shall be all Owners with the exception of the Declarants and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they, among themselves, determine, but in no event shall more than one vote be cast with respect to any Lot.

B. Class B: Class B members shall be the Declarants and shall be entitled to three votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the happening of either of the following events, whichever first occurs:

i) When the total votes outstanding in the Class A membership equal the total votes outstanding in Class B membership, or

ii) On January 1, 2001.

3. Lots owned by Declarants shall not be subject to assessments as are provided for in Article II hereof and the By-Laws of the Association.

## ARTICLE II

### COVENANTS FOR MAINTENANCE ASSESSMENTS

1. Declarants, for each Lot owned within the properties, hereby covenant, and each Owner of any Lot by acceptance of a Deed therefore, whether or not it shall be so expressed in such Deed, is deemed to covenant and agree to pay to the Association:

- A. Annual assessments or charges; and
- B. Special assessments for capital improvements, such assessments to be established and collected as hereinafter provided.

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

Such assessments levied by the Association shall not carry priority over general taxes, special assessments, or bonafide real estate mortgages/Deeds of Trust, now or hereafter placed of record with respect to any such real estate, but shall be prior to any other liens. It is understood that such annual assessments shall not normally be recorded with the Register of Deeds of Dodge County, Nebraska, but that the Board of Directors of the Association have the power and authority, by instrument executed by the President of such Association, to record with the Register of Deeds, within six months after the date of the levy of any assessment, a written document setting forth the amount of the assessments with respect to each Lot or separate property, which document shall be with respect to each Lot a lien against the real estate. Provided, however, the filing of such written document is not necessary to charge said Lot with a lien for such assessment. Provided, further, that a written document executed by the President of the Association recorded with the Register of Deeds of Dodge County, Nebraska, showing that all assessments against any Lot or Lots have been paid through the date of such written document, shall be effective to release the lien of such assessment created hereby.

2. The assessments levied by the Association shall be exclusively to promote the attractiveness, character, and residential integrity of the Lots.

3. Maximum Assessment. Unless the written consent of the then Owners of a sixty-seven percent majority in interest of the Lots which are governed by the respective Association of which said Owner is a member, to a greater amount is obtained by the Association, the maximum assessment shall not exceed the following:

A. For Heritage Lane Homeowners Association the sum of \$100.00 per year.

B. For Heritage Square Homeowners Association the sum of \$100.00 per month.

Provided, however, said maximum assessment for each year after 1999 may be increased each year to not more than five percent above the maximum assessment for the previous year without a vote of the membership. The maximum assessment for each year after 1999 may be increased by more than five percent over the previous maximum by a vote of sixty percent of the members who are voting in person or by proxy, at a meeting duly called for said purpose.

4. The Board of Directors of the Association shall have the authority to set the level of the maximum assessment at an amount not in excess of the maximum, provided that no such assessment shall be effective if the Owners of more than sixty-seven percent of the Lots governed by each respective Association, in any calendar year shall execute and file with the Register of Deeds of Dodge County, Nebraska, an acknowledged instrument rescinding the assessment for such year.

5. Special Assessments for Capital Improvements. In addition to the annual assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement within the area governed by the respective Association, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of sixty-seven percent of the votes of the membership who are voting in person or by proxy at a meeting duly called for this purpose. Such assent shall be obtained prior to the incurring of any such cost.

6. Notice And Quorum For Any Action Authorized Under This Article II. Written notice of any meeting called for the purpose of taking any action authorized under Article II shall be sent to all members not less than 30 days nor more than 60 days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty percent 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 of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

7. Uniform Assessment. All annual, monthly and special assessments must be fixed equally for each Lot within the area governed by each respective Association.

8. Date of Commencement of Assessments. Due Dates. The assessments provided for herein shall commence as to all Lots on the first day of January, 2000. The Board of Directors of each Association shall fix the amount of the annual or monthly assessment against each Lot and written notice of the amount of each assessment shall be sent to every Owner subject thereto at least thirty (30) days in advance of any assessment which is changed from a prior assessment. The due dates for each assessment shall be established by the Board of Directors. The Association, shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specific Lot have been paid.

9. Effect of Nonpayment of Assessment; Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall be deemed delinquent, shall bear interest from the due date at the rate of sixteen percent (16%) per annum, and shall cause the entire unpaid portion of said assessment for said year to be deemed delinquent. The association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property through proceedings in any Court in Dodge County, Nebraska, having jurisdiction of suits for the enforcement of such liens. No Owner may waive or otherwise escape liability for the assessments provided for herein by abandonment of his Lot.

10. Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage now or hereafter placed upon any property subject to assessment. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

11. Exempt Property. All properties dedicated to and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of Nebraska shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be

exempt from said assessments.

### ARTICLE III

#### RESTRICTIONS AND COVENANTS

1. Each Lot shall be used exclusively for single-family residential purposes, except for such Lots or Parts thereof as may hereafter be conveyed or dedicated by Declarants or their successors or assigns, for use as a church, school or park, or for other non-profit use.

2. For a period of twenty years after the filing of this Declaration, no residence, building, fence, wall, driveway, patio, patio enclosure, swimming pool, dog house, tree house, antenna, satellite receiving stations ("discs"), flag pole, basketball hoop, solar heating or cooling device, tool shed, windmill, or other external improvement, above or below the ground (herein all referred to as any "Improvement") shall be constructed, erected, placed or permitted to remain on any Lot, nor shall any grading or excavation for any Improvement be commenced, except for Improvements which have been approved by Declarants as follows:

(i) An Owner desiring to erect an Improvement shall deliver two sets of construction plans, landscaping plans and plot plans to Declarants (herein collectively referred to as the "plans"). Such plans shall include a description type, quality, color and use of materials proposed for the exterior of such Improvement. Concurrent with submission of the plans, Owner shall notify Declarants of the Owner's mailing address.

(ii) Declarants shall review such plans in relation to the type and exterior of improvements constructed, or approved for construction, on neighboring Lots and in the surrounding area, and any general scheme or plans formulated by Declarants. In this regard, Declarants intend that the Lots shall be developed as a residential community with homes constructed of high quality materials. The decision to approve or refuse approval of a proposed Improvement shall be exercised by Declarants, to promote development of the Lots and to protect the values, character and residential quality of all Lots. If Declarants determine that the proposed Improvement will not protect and enhance the integrity and character of all the Lots and neighboring Lots as a quality residential community, Declarants may refuse approval of the proposed Improvement.

(iii) Written notice of any refusal to approve a proposed Improvement shall be mailed to the Owner at the address specified by the Owner upon submission of the plans. Such notice shall be mailed, if at all, within thirty (30) days after the date of submission of the plans. If notice of refusal is not mailed within such period, the

proposed Improvement shall be deemed approved by Declarants.

(iv) No Lot Owner, or combination of Lot Owners, or other person or persons shall have any right to any action by Declarants or to control, direct or influence the acts of Declarants with respect to any proposed Improvement. No responsibility, liability or obligation shall be assumed by or imposed upon Declarants by virtue of the authority granted to Declarants in this Section, or as a result of any act or failure to act by Declarants with respect to any proposed Improvement.

3. No single-family residence shall be created, altered, placed or permitted to remain on any Lot other than one detached single-family dwelling, together with an attached side load garage, which does not exceed two and one-half stories in height. Said side load garage shall contain a minimum of two (2) car bays and a maximum of four (4) car bays. Under no circumstance shall any garage door be allowed to face either Heritage Lane or 16th Street. Each single-family dwelling which rests upon Lots 11 through 17, Heritage Square Addition, shall consist of at least 1400 square feet of living space exclusive of basement, garage, and other areas appurtenant to the principal dwelling. With regard to Lots 1 through 10, Heritage Square Addition, Fremont, Dodge County, Nebraska, the following minimums of square footage for living space exclusive of basement, garage, and other areas appurtenant to the principal dwelling shall apply:

- (a) Single story - at least 2,000 square feet.
- (b) One and one-half story a minimum of 2,400 square feet with at least 1,500 square feet on the main level.
- (c) Two story - at least 2,400 square feet with 1,200 feet on the main level.

No mobile homes or homes substantially constructed "off-site" (modular) shall be allowed. No residence shall be occupied prior to the completion of all exterior improvements to the principal residence and yard, unless control of such completion has been reserved in Declarants (such as seeding, sodding, or landscaping to be completed by Declarants with adequate security for the cost thereof).

4. The exposed front foundation wall, any foundation wall facing a street of all main residential structures and at least 50% of the surface area of the front elevation shall be constructed of or faced with brick, stone or other approved material. No stucco, synthetic stucco or EFIS system veneer materials shall be permitted on any elevation of any residence. No masonite or vinyl lap or vertical style siding materials shall be permitted on any elevation of any residence. All exposed side and rear concrete or

concrete block foundation walls not facing a street must be painted. No vertical siding or siding vertical in appearance will be permitted on any side of any residential structure. All driveways must be constructed of concrete, brick, paving stone, or laid stone. All foundations shall be constructed of concrete, concrete blocks, brick or stone. All fireplace chimneys shall be covered with or enclosed by materials comparable to the whole house. Unless other comparable materials are specifically approved by Declarants the roof of all Improvements shall be covered as follows:

(a) Lots 1 through 10 Heritage Square Addition shall use cedar shake shingles.

(b) Lots 11 through 17 Heritage Square Addition shall use 40 year grade "Heritage" style asphalt shingles with "weatherwood" coloration.

5. No advertising signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on any Lot except one sign per Lot, consisting of not more than six square feet, advertising a Lot as "For Sale"; nor shall the premises be used in any way for any purpose which may endanger the health or unreasonably disturb the Owner or Owners of any Lot or any resident thereof. Further, no business activities of any kind whatsoever shall be conducted on any Lot. Provided, however, the forgoing paragraph shall not apply to the business activities, signs and billboards or the construction and maintenance of building, if any, by Declarants, its agents or assigns, during the construction and sales of the Lots.

6. No exterior television, radio antenna, satellite viewing stations (discs) of any sort shall be permitted on any Lot. However, one (1) small satellite dish of approximately 18" in diameter may be attached to the residence in such a way that it is not visible from the front street. Said dish may not be installed on a pole or in the ground.

7. No repair of any boats, automobiles, motorcycles, trucks, campers or similar vehicles requiring a continuous time period in excess of twenty-four (24) hours shall be permitted on any Lot at any time; nor shall vehicles offensive to the neighborhood be visibly stored, parked or abandoned on any Lot. No unused building materials, junk or rubbish shall be left exposed on the Lot except during actual building operations, and then only in as neat and inconspicuous a manner as possible.

8. No boat, camper, trailer, auto-drawn or mounted trailer of any kind, mobile home, truck, aircraft, camper truck or similar chattel shall be maintained or stored on any part of a Lot (other than in an enclosed structure) for more than twenty (20) days within a calendar year. No motor vehicle may be parked or stored outside on any Lot, except



vehicles driven on a regular basis by the occupants of the dwelling located on such Lot. No grading or excavating equipment, tractors or semi-tractors/trailers shall be stored, parked, kept or maintained in any yards, driveways or streets. However, this section shall not apply to trucks, tractors or commercial vehicles which are necessary for the construction of residential dwellings during their period of construction. All residential Lots shall provide at least the minimum number of off-street parking areas or spaces for private passenger vehicles required by the applicable zoning ordinances of the City of Fremont, Nebraska.

9. No incinerator or trash burner shall be permitted on any Lot. No garbage or trash can or container shall be permitted unless completely screened from view, except for pick up purposes. No garden lawn or maintenance equipment of any kind whatsoever shall be stored or permitted to remain outside of any dwelling or suitable storage facility, except when in actual use. No garbage, refuse, rubbish or cuttings shall be deposited on any street, road or Lot. No clothes line shall be permitted outside of any dwelling at any time except one retractable clothes line per Lot.

10. Exterior lighting installed on any Lot shall either be indirect or of such a controlled focus and intensity as not to disturb the residents of adjacent Lots.

11. No fence shall be permitted to extend beyond the front line of a main residential structure unless written approval is first obtained from Declarants. No hedges or mass planted shrubs shall be permitted more than ten (10) feet in front of the front building line. No fences or walls shall exceed a height of six (6) feet. All fences shall be constructed of wood and designed to match the fence surrounding the development except other ornamental fencing such as black wrought iron, but only upon the prior written approval of Declarants. No chain link fencing shall be permitted. All produce or vegetable gardens shall be maintained only in rear yards.

12. No swimming pool shall be permitted which extends more than one (1) foot above ground level.

13. Construction of the single-family residence to be located on any Lot must be commenced within twelve (12) months after title to such Lot has been conveyed by the Declarants. Once construction of any single-family residence is begun on any Lot, such single-family residence shall be completed in accordance with the building and landscaping plans within twelve (12) months from the date construction was commenced on such residence.

14. A public sidewalk shall be constructed of concrete four (4) feet wide by four (4) inches thick in front of each dwelling built upon each Lot and upon the street side of

each dwelling built upon each corner Lot. The sidewalk shall be placed in accordance with City directions and shall be constructed by the Owner of the Lot prior to the time of completion of the main structure and before occupancy thereof; provided, however, this provision shall vary as needed to comply with any requirements of the City of Fremont.

15. Driveway approaches between the sidewalk and curb on each Lot shall be constructed of concrete. Should repair or replacement of such approach be necessary, the repair or replacement shall also be of concrete. No asphalt overlay of driveway approaches will be permitted. The street curbing shall be ground down at each driveway approach location.

16. No stable or other shelter for any animal, livestock, fowl or poultry shall be erected, altered, placed or permitted to remain on any Lot, except that of a dog house constructed for one (1) dog shall be permitted; provided always that the construction plans, specifications and the location of the proposed structure have been first approved by Declarants, or its assigns, if required by this Declaration. Dog runs and dog houses shall only be allowed at the rear of the building, concealed from public view.

17. Any exterior air conditioning condenser unit shall be placed in the rear yard or any side yards so as not to be visible from public view. No grass, weeds or other vegetation will be grown or otherwise permitted to commence or continue, and no dangerous, diseased or otherwise objectionable shrubs or trees will be maintained on any Lot so as to constitute an actual or potential public nuisance, create a hazard or undesirable proliferation, or detract from a neat and trim appearance. Vacant Lots shall not be used for dumping of earth or any waste materials, except for construction purposes, in which case any piles of fill material will be permitted to remain for no longer than thirty (30) days prior to grading leveling. No vegetation on vacant Lots shall be allowed to reach a height in excess of twelve (12) inches.

18. No structure of a temporary character, trailer, basement, tent, outbuilding or shack shall be erected upon or used on any Lot at any time, either temporarily or permanently, except during the construction of any primary residence. No structure or dwelling shall be moved from outside of the property to any Lot unless the written approval of Declarants is first obtained.

19. All waste property or debris resulting from construction or improvements shall be removed from the site and delivered to a waste disposal site holding an appropriate government issue license.

20. Mailboxes shall be of brick construction, which brick shall match the brick of the residence, shall be free standing, and shall be set adjacent to the driveway apron

which serves the residence.

21. In the event that the dwelling constructed on any Lot is damaged or destroyed by fire, storm, or other cause, repair and/or reconstruction shall commence within sixty (60) days of the date of such damage and shall progress continuously until completion, such completion to be not more than one (1) year following the date of such damage or destruction.

22. Declarants Have the Right of First Refusal to Buy Back Undeveloped Lot. The purchaser of any Lot, upon acceptance of the Deed to such Lot from Declarants, or any one or more of them, hereby covenants that if he/she elects not to develop or build upon said Lot, but rather decides to resell the Lot undeveloped, then he/she must first offer the Lot for sale to the Declarants from whom said Lot was purchased or its successors or assigns, at the following price:

- (a) The original purchase price paid when the Lot was purchased from Declarants, plus;
- (b) The said purchaser's closing costs at that time, including survey, title search, or title insurance, and recording fees, only, plus;
- (c) Local real property and school taxes which the purchaser may have paid during his/her ownership of the Lot, plus;
- (d) Interest on the aggregate of the sums above, from the date of the purchase of the Lot from the Declarants to the date of the sale back to the Declarants at the rate of six percent (6%) per annum.

Declarants shall have thirty (30) days from its receipt of a written offer to sell the Lot in order to notify the Lot seller (original purchaser from Declarants) of its intent to repurchase. The written offer shall contain the sale price, together with the calculations used by such seller to arrive at said price. In the event Declarants send a timely notice of intent to repurchase, the closing shall occur within thirty (30) days following the notice of intent to repurchase. In the event that Declarants fail to send a timely notice of intent to repurchase, said seller may sell the Lot free and clear of this restriction. This paragraph shall apply only to vacant Lots.

ARTICLE IV

## SERVICE LINES

All utility lines from each Lot line to a dwelling or other improvement shall be underground.

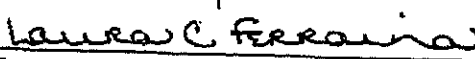
ARTICLE V

## GENERAL PROVISIONS

1. Except for the authority and power specifically granted to any Declarant, each Declarant or any Owner of a Lot named herein shall have the right to enforce by a proceeding at law or in equity, all reservations, restrictions, conditions and covenants now or hereinafter imposed by the provisions of this Declaration either to prevent or restrain any violation or to recover damages or other dues to such violation. Failure by any Declarant 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.
2. The covenants and restrictions of this Declaration shall run with and bind the land for a term of thirty (30) years from the date this Declaration is recorded. Thereafter this Declaration may be amended by an instrument signed by the Owners of not less than seventy-five percent (75%) of the Lots covered by this Declaration.
3. Invalidity of any covenant by judgment or Court order shall in no way affect any of the other provisions hereof, which shall remain in full force and effect.

IN WITNESS WHEREOF, the Declarants have caused these presents to be executed this 24 day of May, 1999.

  
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 Mark F. Ferraina

  
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 Laura C. Ferraina

EINSPAHR CONSTRUCTION, INC.

By   
 \_\_\_\_\_  
 President

