

**FOURTH AMENDED DECLARATION OF**

**COVENANTS. CONDITIONS AND RESTRICTIONS**

(Superseding all prior Declarations)

THIS DECLARATION, made on the date hereinafter set forth by HERITAGE GREEN, INC., HEREINAFTER REFERRED TO AS "Declarant"

WITNESSETH:

WHEREAS, Declarant is the owner of the common areas in the development known as "HERITAGE GREEN" (the "Development"), and is the association of Owners of the remaining lots in that Development, which is located in EI Paso County, Texas, and which is more particularly described as:

Block 105, VISTA DEL SOL UNIT 15, an Addition to the City of EI Paso County, Texas, according to the map thereof refiled in Book 46 Page 6 of the Plat Records of EI Paso County, Texas.

AND WHEREAS, this Fourth Amended Declaration, which amends the initial Declaration, executed on April 12, 1973, of record in Volume 451, Page 1289, Real Property Records, EI Paso County, Texas; a first Amended Declaration, executed on August 15, 1975, of record in Volume 630, Page 8, Real Property Records, EI Paso County, Texas; and a second Amendment to Declaration, dated November 24, 1976, of record in Volume 761, Page 1268, Real Property Records, EI Paso County, Texas, and a Third Amended Declaration dated October 2, 2003, of record in Volume VVVVV, Page PTTTT, Real Property Records, EI Paso County, Texas, has been executed and consented to by not less than sixty percent (60%) of the Lot Owners in the Development, whose signatures appear below, and it has been ratified and approved by the Members and Board of Directors of HERITAGE GREEN, INC. ;

AND WHEREAS, this Fourth Amended Declaration only amends certain covenants, conditions and restrictions of the prior Declarations and does not replat or alter the physical dimensions of the real estate in any manner;

NOW, THEREFORE, Declarant hereby declares that all of the properties described above shall be held, sold and conveyed subject to the following easements restrictions, covenants, and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title or interest in the described properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof.

## ARTICLE I

### DEFINITIONS

Section 1. "Association" shall mean and refer to HERITAGE GREEN, INC., its successors and assigns.

Section 2. "Owner" shall mean and refer to the record owner, whether one 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.

Section 3. "Properties" or "Development" shall mean and refer to Block 105 of said subdivision.

Section 4. "Common Area" shall mean all real property owned by the Association for the common use and enjoyment of the Owners, described as follows:

Lots 51, 52, and 53 in Block 105; same being all of said Block 105 of VISTA DEL SOL UNIT IS, as shown on the map referred to above, except Lots 1 to 50 inclusive in said Block, being the platted townhouse lots shown thereon.

Section 5. "Common Open Space" or "Open Space", as may be defined the City Code of the City of El Paso, shall mean and refer to those portions of the Common Area for the common use and enjoyment of the Owners, which are open and not covered by permanent improvements. No part of the "Common Open Space" shall be used as a site for residence or a dwelling.

Section 6. "Lot" or "Lots" shall mean and Lots 1 refer to one or more of to Lot 50 of said Block 105, being the Lots 51, platted townhouse lots; 52, and 53 in said Block are excluded, being the Area.  
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Section 7. "Declarant" shall mean and refer to HERITAGE GREEN, INC., its successors and assigns.

Section 8. "Member" shall mean and refer to every person or entity who holds membership in the Association.

## ARTICLE II

### PROPERTY RIGHTS

Section 1. Owners' Easements of Enjoyment. Every Owner shall have an equal easement of enjoyment with every other Lot Owner in and to the Common Area which right and easement shall be appurtenant to and shall

pass with the title to every Lot, subject to:

(a) The right of the Association to make reasonable charges for the use of recreational facilities situated upon Common Areas.

(b) The right of the Association to suspend the voting rights and right to use of the recreational facilities by an Owner for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed 60 days for any infraction of its published rules and regulations.

(c) During the existence of these covenants, said Common Area, including Common Open Space, shall be maintained in an appropriate manner in accordance with the intent of these covenants and the City Code of the City of El Paso, as same may be hereafter amended.

(d) Upon written consent of not less than two-thirds (2/3) of the Members, the Association may dedicate said Common Area or any part thereof, to the City if the City consents for public use and convenience.

(e) The right of the Association to limit the number of guests of Members.

(f) The right of the Association, in accordance with its Articles and By-Laws, to borrow money for the purpose of improving the Common Area, including Common Open Space and facilities, and in aid thereof to mortgage said properties; and the rights of such mortgagee in such properties shall be subject to the rights of the Owners to the easements of enjoyment in said Common Areas, as herein set out, provided that any action under this subsection has the assent of two-thirds (2/3) of the Members.

(g) The right of the Association, through its Board of Directors, to determine the time and manner of use by the Members of the recreation facilities.

Section 2. Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment to the Common Area, including Common Open Space and facilities, to the members of his family, his tenants, or contract purchasers who reside on the property. Said Common Area is not dedicated in any manner for use by the general public, but is limited and specifically restricted to the sole use and enjoyment of said Lot Owners and those to whom the use is properly delegated as herein provided.

## ARTICLE III

### MEMBERSHIP AND VOTING RIGHT

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

Section 2. The Association shall have one class of voting Members.

Members shall be all Owners and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all shall be Members. The vote for such Lot shall be exercised as they themselves determine, but in no event shall more than one vote be cast with respect to any Lot.

## ARTICLE IV

### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. 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: Monthly Assessments and Special Assessments as hereinafter stated, such assessments to be established and collected as hereinafter provided. The Monthly 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 the assessment is made. Each such assessment together with interest, costs, and reasonable attorney's fees, shall also be the personal obligation of the Owner of such property at the time when the assessment fell due. But personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 2. Purpose of Assessments. The Regular Monthly Assessments levied by the Association shall be determined by the Association's Board of Directors and shall be used exclusively to promote the recreation, health, safety, and welfare of the residents in the Properties, the "improvement and maintenance of the Common Area and the exterior of the homes and other buildings situated upon the Properties.

Section 3. Maximum Regular Monthly Assessment. The current (as of the date of this Second Amended Declaration) Regular Monthly Assessment, together with water, sewage and garbage costs, shall be \$173.00 per Lot.

(a) After January 1 of each calendar year, the maximum monthly assessments may be increased for the then current year by up to 5% over the monthly assessment for the previous year by action of the Board of

Directors. If the assessment for the current year is to be more than 5% over that authorized for the previous year, the Board of Directors action shall require ratification by affirmative vote of two-thirds (2/3) of the Members voting in person or by proxy at a meeting duly called for this purpose.

(c) The Board of Directors shall fix said monthly assessment at amounts not in excess of the maximum amounts as here provided.

(d) Any special assessment, payable monthly, shall be paid with the Regular Monthly Assessment, in a single remittance, but shall not be included in computing the maximum under this Section 3.

Section 4. Special Assessments for Capital Improvements. In addition to the Regular Monthly Assessments authorized above, the Association, through the Board of Directors, may levy, in any assessment year, a special assessment for the sole purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Area, including fixtures and personal property related thereto, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of the Members voting in person or by proxy at a meeting duly called for this purpose. Such assessment shall be payable in a lump sum or in installments as determined by the Association. If payment is monthly, same shall be added to and become a non-severable part of the Regular Monthly Assessment until fully discharged.

Section 5. Monthly Assessment for Water, Sewer and Garbage Costs. Water charges and sewer and garbage fees which are assessable with the water charges shall all be paid by the Association and assessed equally to each Owner. Accordingly, in addition to the Regular Monthly Assessments provided in Section 3 above, each Owner shall pay each month an assessment equal to one-twelfth (1/12) of the annual cost of said services for one residential unit as estimated by the Association and adjusted from time to time by the Association to meet changes in the cost of said services. It is understood that the payment here required shall be in addition to the Regular Monthly Assessment but shall be an integral part of the assessment, and its payment and the payment of the other portion of the Regular Monthly Assessment shall not be severable. The total of such assessment shall be remitted each month in a single payment from the Owner and failure to pay the entire assessment shall constitute a default and authorize the invocation of the remedies provided in this Article IV. All other utilities shall be billed to and shall be the sole responsibility of the Owner, and in this regard, it is understood that each residential building site will have a post lamp located on the common areas in front of the building which shall have a timing device or a photoelectric cell. The cost of electric service to this post lamp will be metered to the Owner with his other electric service, but the maintenance and upkeep of the lamp will be the responsibility of the Association.

Section 6. Insurance Coverage. Insurance shall be provided and paid for as follows:

(a) The Board of Directors of the Association, or its duly authorized agent, shall have the authority to, and is hereby directed to, obtain insurance for all buildings owned by the Association and located in common areas, insuring the same against loss or damage by fire. Additionally, the Association shall purchase and keep in force workmen's compensation insurance (if required) and a Texas Comprehensive General Liability form of policy with a combined single limit for Bodily Injury Liability of at least \$300,000.00, and Property Damage Liability of \$50,000.00 for each occurrence, covering all common areas against the hazards named in the policy. Said insurance may include coverage against vandalism. All such insurance shall be written in the Association's name. The Association shall pay said insurance and the total cost shall be prorated equally among the owners as a part of the Regular Monthly Assessment.

(b) Each Owner shall carry his own liability coverage in limits deemed adequate to him and shall also carry fire and extended insurance coverage in adequate limits covering his own properties, a certificate of which (and continuous renewal certificates thereafter) shall be issued to the Association. The Association shall make arrangements for a Master Fire and Extended Coverage insurance policy but Owners shall not be required to write their insurance under said policy. However, each Owner who wishes to have coverage under the blanket policy shall repay the premium for his residential unit for one year and thereafter, for so long as the participation under the blanket policy is desired, each such Owner shall pay to the Association, as a special insurance assessment, an amount equal to one-twelfth (1/12) of the premium for his unit which assessment shall be payable monthly with, and as an integral part of, the Regular Monthly Assessment. In such case, in the event damage occurs to a residential unit covered by the blanket policy, the proceeds shall be paid to the Association which, with the consent of the mortgagees, shall use the proceeds to repair the residence. If the blanket policy proceeds be insufficient to repair the residence, the Owner shall either pay the deficiency in a lump sum or shall pay the deficiency in the manner and at the times determined by the Board of Directors in the nature of a special assessment for capital improvements against said residence as provided in Section 4 above. In such case, until the deficiency be paid in full, said special assessment shall likewise be paid, with and as an integral part of the monthly assessment of the participating Owner and not as a separate remittance. It shall be the individual responsibility of each Owner, at his own expense, to provide, as he sees fit, homeowner's liability insurance, theft and other insurance covering personal property damage loss.

(c) In the event of damage to Common Areas, which damage is covered by insurance as provided in (a) above, the Board of Directors shall with time concurrence of the mortgagee, if any, upon receipt of the insurance

proceeds, contract to repair such property to its former condition. All insurance proceeds shall be deposited in a federally insured bank account against which funds may be withdrawn only by signature of at least one third (1/3) of the members of the Board of Directors, or by an agent duly authorized by it. Wherever, in the opinion of the Board of Directors, the cost of repairs justifies, it shall advertise for sealed bids from licensed contractors and it may then negotiate with any such contractor who may be required to provide a full performance and/or payment bond covering the work. Should the insurance proceeds be insufficient to pay all such costs of repair, the Board of Directors shall levy a special assessment against all Owners, as provided in Section 4 above, to make up said deficiency in the costs of repair:

Section 7. Notice and quorum for an Action Authorized Under Sections 3, 4, 5, and 6. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3, 4, 5, and 6 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 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 (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than 60 days following the preceding meeting.

Section 8. Assessments to Run with the Land. It is understood that all assessments, both regular and special, which are duly assessed in accordance with these Declarations and any Amendments hereto, shall run with the land and constitute a lien to secure the payment thereof. These Declarations shall constitute notice to any prospective purchaser of the possibility of unpaid assessments against the property proposed to be purchased and the lien herein created to secure the payment thereof.

Section 9. Non-Waiver or Abandonment. No Owner may waive the benefits or the right of enjoyment of any of the common facilities in an attempt to exempt his property from liability for those regular and special assessments which may be fixed the property in accordance with these Declarations, or any Amendments hereto, nor may liability for the assessments and the lien against the property be avoided by abandonment by any Owner of his residential unit.

Section 10. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessments which are not paid when due shall be delinquent. If any assessment is not paid within thirty (30) days after its due date, the principal amount of the assessment shall bear interest from the date of delinquency at the rate of 10 percent per annum. Likewise, if any assessment is not paid within 2 months after its due date, the Association may, after written notice has been posted to the Owner's residence address, terminate all services provided by or through

the Association and all rights and privileges to use, occupy or enjoy the common facilities (other than the driveways, the sidewalks, and the parking areas) provided by or through the Association by means of any Regular or Special Assessment then in effect. Since all assessments which are not paid in a lump sum shall, until they are fully discharged, be an integral non-severable part of the Regular Monthly Assessment, each Owner shall understand that a two (2) month delinquency in the payment of such assessment shall authorize the Association (in addition to its other remedies) to discontinue water and other services which are paid by the Association from the assessments levied against the Owner's property. Further, the Association may bring an action at law against the Owner on his personal obligation to pay the same or may foreclose the lien against the property covering the assessment, interest, costs and reasonable attorney's fees accruing or incurred thereby. Each such Owner, by his acceptance of a deed to a Lot, hereby expressly vests in HERITAGE GREEN, INC., or its agents, the right and power to bring all actions against such Owner personally for the collection of such charges as a debt and/or to enforce the aforesaid lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage, vendor's lien or improvement lien on real property, and such Owner hereby expressly grants to the Association a power of sale in connection with said lien. The Lien provided for in this section shall be in favor of the Association and shall be for the benefit of all other Lot owners. The Association, acting on behalf of the Lot Owners, shall have the power to bid at foreclosure sale and to acquire and hold, lease, mortgage and convey any properties so acquired; and it may subrogate so much of its right to such liens as may be necessary or expedient to any insurance company which continues to give insurance coverage, notwithstanding nonpayment of such defaulting Owner's portion of the premium.

Section 11. Subordination of the Lien to Mortgage. The lien for the assessments provided for herein shall be subordinate to any first lien mortgage. 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 assessment thereafter becoming due or from the lien thereof.

Section 12. Exempt Property. All properties dedicated to, and accepted by, a local public authority, the Common Area, and all properties owned by a charitable or nonprofit organization exempt from taxation by the laws of the State of Texas shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

Section 13. Management Agreements. The Board of Directors of the Association shall provide for management of its affairs, and it may employ a management agent at a rate of compensation established by said



Board to perform such duties and services as the Board shall direct including, but not limited to, the performance of all obligations of the Association with respect to common areas, common facilities, and the receipt, discharge and accounting for all assessment payments made of the Association under the provisions of these Declarations. Each Owner of a Lot hereby agrees to be bound by the terms and conditions of any such management agreement and a copy of each such agreement shall be available to each Owner. Such management agreements may be terminated by action of the Board of Directors.

Section 14. Payment to Mortgage. If an Owner is required by any townhouse mortgagee to escrow assessments, any assessment paid to the mortgagee shall be deemed to have been made to the Association, to which the mortgagee shall then remit, each month, the total amount of the assessments paid to it by the mortgagor.

## **ARTICLE V**

### **ARCHITECTURAL CONTROL**

No building, fence, wall or other structure shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials, 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 the Board of Directors of the Association, or by an Architectural Committee composed of three (3) or more representatives appointed by the Board. In the event said Board, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## **ARTICLE VI**

### **PARTY WALLS**

Section 1. General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties amid placed on the dividing line between the lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

Section 2. Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the owners who make use of the wall in equal proportions to such use.

Section 3. Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

Section 4. Weatherproofing. Notwithstanding any other provisions of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

Section 5. Right to Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

Section 6. Arbitration. In the event of any dispute arising under any provision of this Declaration, the parties may agree to arbitration in which case each party shall choose one arbitrator, and the two arbitrators shall then choose one additional arbitrator and a decision of a majority of the three shall be binding. However, arbitration of disputes shall not be mandatory and this Section shall not preclude the right of any party to a determination of the dispute by legal proceedings if such party does not agree to arbitration of the dispute.

## ARTICLE VII

### INTERIOR/EXTERIOR MAINTENANCE

Generally, the Owner of each unit is responsible for the maintenance of his unit, from beneath the slab (with attendant utility runs) to twenty-five-feet above the roof, including a proportionate share of shared/common storage roofs. Air conditioners, whether on the surface or the roof are the sole responsibility of the townhouse owner.

In addition to maintenance upon the Common Area, the Association shall provide certain exterior maintenance upon each Lot in Block 105 which is assessed hereunder, as follows: paint, repair, replace and care for gutters, downspouts, exterior building surfaces, trees, shrubs, grass, walks, all water lines outside of the Owner's residence. Such exterior maintenance shall not include glass surfaces, screens and screen doors, patio floors, patio covers, patio screening, exterior doors, wrought iron add-ons, window fixtures, heating and cooling equipment, hot water heaters, exterior door or window hardware, non-conforming room additions, patio enclosures and other add-ons, even though these improvements may have been authorized by the architectural committee or the Board of Directors. (The Board may, but is not obligated to, upon request, provide exterior paint for Owner maintenance in order to maintain color conformity.

In the event that the need for maintenance or repair is caused through the willful or negligent act of the Owner, his family, or guests, or invitees, and not covered or paid for by insurance on such lot, the cost of such maintenance or repairs shall be added to and become a part of the assessment to which such lot is subject.

## ARTICLE VIII

### USE RESTRICTIONS

Section 1. Lots are hereby restricted to residential dwellings for residential uses. All buildings or structures erected upon said Property shall be of new construction and no buildings or structures shall be move from other locations onto said Property and no subsequent buildings or structures other than townhouse apartment buildings, being single family townhouses joined together by a common exterior roof and foundation, shall be constructed. No structures of a temporary character, trailer, basement, tent, shack, garage, barn or other outbuilding shall be used on any portion of said Property at any time as a residence either temporarily or permanently.

Section 2. Each Lot shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof.

Section 3. No animals, livestock or poultry of any kind shall be raised, bred or kept on any of said Lots, except that dogs, cats or other household pets may be kept provided that they are not kept, bred or maintained for any commercial purpose.

Section 4. No advertising signs (except one of not more than five square feet "for rent" or "for sale" sign per parcel), billboards, unsightly objects, or nuisances shall be erected, placed or permitted to remain on said Property, nor shall said Property be used in any way or for any purpose which may endanger the health or unreasonable disturb the Owner of any Townhouse or any resident thereof. No business activities of any kind whatever shall be conducted in any building or in any portion of said Property except by HERITAGE GREEN, INC., a nonprofit corporation incorporated or to be incorporated under the laws of the State of Texas, its successors and assigns, in furtherance of its powers and purposes as herein set forth.

Section 5. All clotheslines, equipment, garbage cans, service yards, woodpiles, or storage piles shall be kept screened by adequate planting or fencing so as to conceal them from view of neighboring Townhouses and streets. All rubbish, trash, or garbage shall be regularly removed from the premises, and shall not be allowed to accumulate thereon. All clotheslines shall be confined to patio areas.

Section 6. Except in the individual patio areas appurtenant to a Townhouse, no planting or gardening shall be done, and no fences, hedges

or walls shall be erected or maintained upon said Property except such as are installed in accordance with the initial construction of the buildings located thereon or as approved by the Associations Board of Directors or their designated representative. Except for the right of ingress and egress, the Owners of Lots are hereby prohibited and restricted from using any of said Property outside the exterior building lines, patio and carport areas, except as may be allowed by the Associations Board of Directors. It is expressly acknowledged and agreed by all parties concerned that this paragraph is for the mutual benefit of all Owners of lots in HERITAGE GREEN, INC., and is necessary for the protection of said Owners.

Section 7. Maintenance, upkeep and repairs of any patio, screens and screen doors, exterior door and window fixtures, and other hardware shall be the sole responsibility of the individual Owner of the Lot appurtenant thereto and not in any manner the responsibility of the Board of Directors. Any cooperative action necessary or appropriate to the proper maintenance and upkeep of the Common Area and all exteriors including but not limited to, recreation and parking areas and walks, shall be taken by the Board of Directors or by its duly delegated representative.

Section 8. All fixtures and equipment installed within a Townhouse, commencing at a point where the utility lines, pipes, wires, conduits or systems enter the exterior walls of a Townhouse, shall be maintained and kept in repair by the Owner thereof. An Owner shall do no act nor any work that will impair the structural soundness or integrity of another Townhouse or impair any easement or hereditament, nor do any act nor allow any condition to exist which will adversely affect the other Townhouses or their Owners.

Section 9. Without prior written approval and the authorization of the Board of Directors, no exterior television or radio antennas of any sort shall be placed, allowed or maintained upon any portion of the improvements to be located upon the Property, nor upon any structure situated upon the Property other than an aerial for a master antenna system, should any such master system or systems be utilized and require any such exterior antenna.

Section 10. No action shall at any time be taken by the Association or its Board of Directors which in any manner would discriminate against any Owners or Owners in favor of the other Owners.

## **ARTICLE IX**

### **EASEMENT**

Section 1. Easements, in addition to those on the map and those filed separately in the Public Records, are reserved to public utilities and to the Association, in the discharge of its duties, for the

installation, maintenance, repair or service of improvements or of utilities. Said easements shall extend over and/or under the Common Areas and those open areas within the property lines of a Lot wherever necessary in providing required service to the townhouse located thereon. These easements shall provide ingress and egress to open areas outside of the exterior walls of any townhouse for the purpose of installing, replacing, repairing and maintaining utilities, including, but not limited to, water, sewer, gas, telephone, electricity, CATV and master television antenna system. By virtue of this easement, it shall be expressly permissible for each utility company to install and maintain conduits, pipes, wires, mains, circuits and other necessary equipment in, on, under and across all open areas of said property. It is understood that before attaching any such equipment under or to the exterior walls of any townhouse or in entering any townhouse, the express consent of the Owner must be obtained. Metering equipment shall be located as agreed upon with the several utility companies.

Section 2. Easements Non-Exclusive. Easements for the underground service may be crossed by driveways, walkways, carports and other facilities or improvements subject to prior arrangement with the utility company whose easement is thus traversed.

Section 3. Easements for Police, etc. An easement is further granted to all police and police equipment, firemen and fire fighting equipment, ambulance, garbage collection and all similar emergence or service persons so as to permit them to enter upon the streets and common areas in the performance of their required duties. Further, an easement is hereby granted to the Association, its officers, agents, employees and to any management company elected by the Association, to enter in or to cross over the Common Areas provided for herein.

## ARTICLE X

### GENERAL PROVISIONS

Section 1. Enforcement. The Association, or any Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and 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. For the purpose of obtaining compliance with the general intent or the specific requirements of the City Code, or as same may be hereafter amended, the City of EI Paso may enforce these covenants for the benefit of any such Owner or Association, or under its general zoning authority.

Section 2. Severability. Invalidation of anyone of the covenants or restrictions by judgment or court order shall in no wise affect any other provisions which shall remain in full force and effect.

Section 3. Duration. The covenants and restrictions of this Second Amended Declaration shall have a duration of 40 years from the date of the recording of such Declaration in the Deed Records of El Paso County, Texas.

Section 4. Amendment. This Second Amended Declaration of Covenants, Conditions and Restrictions upon Block 105 may be amended by an instrument signed by not less than 60 percent (60%) of the then Lot Owners in said Block. Any such amendment must be recorded.

Section 5. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

IN WITNESS WHEREOF, the Undersigned, being the Declarant herein, has hereunto set its hand and seal this 4<sup>th</sup> day of May, 2005.

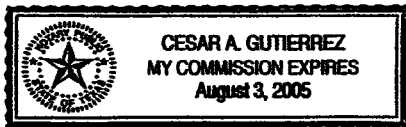
HERITAGE GREEN, INC.

ATTEST AND SEAL NOT REQUIRED

By: *Isaac Camacho*  
Isaac Camacho, President

STATE OF TEXAS                   §  
  §  
COUNTY OF EL PASO           §

BEFORE ME, the undersigned authority, on this day personally appeared ISAAC CAMACHO, the President of HERITAGE GREEN, INC., and acknowledged that he executed the foregoing for the purposes and considerations therein expressed.



*Cesar A. Gutierrez*  
NOTARY PUBLIC, STATE OF TEXAS

amended and updated by the full Board, this date:  
Jan 15, 2006,

*Cesar A. Gutierrez* *M. Edie Merrill*  
PRESIDENT, HERITAGE GREEN, INC.

Doc# 20140071347  
#Pages 14 #InPages 1  
11/4/2014 5:18:13 PM  
Filed & Recorded in  
Official Records of  
El Paso County  
Delia Briones  
County Clerk  
Fees \$78.00

15  
A

I hereby certify that this instrument was filed on the date and time stamped hereon by me and was duly recorded by document number in the Official Public Records of Real Property in El Paso County.



*Delia Briones*

EL PASO COUNTY, TEXAS