



FIRST AMENDMENT TO
AMENDED AND RESTATED DECLARATION
OF PROTECTIVE COVENANTS AND GRANT OF EASEMENTS
FOR
DEER CANYON PRESERVE
TORRANCE COUNTY, NEW MEXICO

WHEREAS, the Amended and Restated Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County, New Mexico was recorded on November 28, 2006, at instrument number 2065305 in Book 311 at Page 00079 in the records of Torrance County, New Mexico, and amended by the Declaration of Annexation of Deer Canyon Preserve Phase 3 to the Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County, New Mexico was recorded on August 22, 2007, at instrument number 2073854 in Book 314 at Page 01962, in the records of Torrance County, New Mexico (collectively, the "Declaration");

WHEREAS, Section 9(D)(2) of the Declaration states, "During the Transition Period, this Declaration may be changed by Heritage upon prior written notification to all Homestead owners.";

WHEREAS, Section 3(C) of the Declaration defines "Heritage" as "Verde Heritage Ranch, LLC, a Delaware limited liability company or its successors in interest in the role of the creator and manager of the Deer Canyon Preserve project.";

WHEREAS, the Association is still under the Transition Period, as set forth in the Declaration;

WHEREAS, Heritage wishes to amend the Declaration, as set forth below, and has provided prior written notification to all Homestead owners of the amendments;

NOW, THEREFORE, Heritage hereby amends the Declaration as follows:

1. Section 3(C) of the Declaration is amended in its entirety as follows:

C. "Heritage" shall mean Verde Heritage Ranch, LLC, a Delaware limited liability company or its successors or assigns to any and/or all of Heritage's rights, as such rights are assigned by Heritage.

2. Section 8(K) is added as follows:

K. RIGHT TO TRANSFER OR ASSIGN HERITAGE'S RIGHTS. Any or all of the special rights and obligations of Heritage set forth in this Declaration or the By-

TORRANCE COUNTY
LINDA KAYSER, COUNTY CLERK
002083096
Book 317 Page 3026
1 of 2
08/27/2008 02:34:40 P
BY SYLVIA

Laws may be transferred in whole or in part to other persons or entities; provided, the transfer shall not reduce an obligation or enlarge a right beyond that which Heritage has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written, recorded instrument signed by Heritage. The foregoing sentence shall not preclude Heritage from permitting other persons or entities to exercise, on a one-time or limited basis, any right reserved to Heritage in this Declaration where Heritage does not intend to transfer such right in its entirety, and in such case it shall not be necessary to record any written assignment unless necessary to evidence Heritage's consent to such exercise.

DATED this 25th day of August, 2008.

"Heritage"

Verde Heritage Ranch, LLC, a Delaware limited liability company

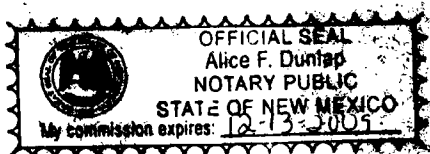
By: [Signature]
Its: Vice President

THE STATE OF: New Mexico)
COUNTY OF: Torrance)
:ss

This instrument was acknowledged before me on this 25th day of August, by Homer Luther, of Verde Heritage, LLC, a Delaware limited liability company, for and on behalf of said limited liability company.

[Signature]
Notary Public in and for the
State of New Mexico

My commission expires:



TORRANCE COUNTY
LINDA KAYSER, COUNTY CLERK
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Book 317 Page 3027
2 of 2
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BY SYLVIA

**DECLARATION OF ANNEXATION
OF DEER CANYON PRESERVE PHASE 2
TO THE
DECLARATION OF PROTECTIVE COVENANTS AND GRANT OF
EASEMENTS FOR DEER CANYON PRESERVE,
TORRANCE COUNTY, NEW MEXICO**



THIS DECLARATION OF ANNEXATION ("Declaration") is made this 2nd Day of May, 2006 by Verde Heritage Ranch LLC, a Delaware limited liability company, as successor in interest to Deer Canyon Preserve LLC;

WITNESSETH

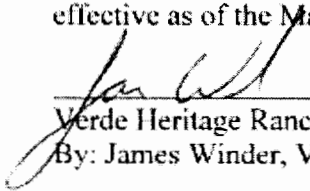
WHEREAS, on November 1st, 2002, Deer Canyon Preserve LLC filed that certain Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County, New Mexico ("Covenants") recorded as Document Number 2025380 in Book 296 at Pages 213-230, of the records of the County Clerk of Torrance County, New Mexico; and


WHEREAS, Verde Heritage Ranch LLC has been assigned all the rights and title of Deer Canyon Preserve LLC and now desires to make additional lands subject to the Covenants.

WHEREAS, Verde Heritage Ranch LLC has made certain tracts of land more particularly described as Deer Canyon Preserve 2, Lots 54, 57, 59, 64-67, 77-80, 82-87, 89-90, 92-88, 100-105 on a Plat filed in the records of the County Clerk of Torrance County, New Mexico on February 6th, 2004 in Plat Record E1 on Page 211 subject to all the provisions of the Covenants by reference in the deeds filed for these lots.

NOW, THEREFORE, Verde Heritage Ranch LLC hereby subjects certain tracts of land more particularly described as Deer Canyon Preserve 2, Lots 1-53, 55-56, 58, 60-63, 68-76, 81, 88, 91, 99, 106-146 on a Plat filed in the records of the County Clerk of Torrance County, New Mexico on February 6th, 2004 in Plat Record E1 on Page 211 to all the provisions of the Covenants. Such real property shall be sold, transferred, used, conveyed, occupied and mortgaged or otherwise encumbered pursuant to the provisions of the Covenants, which shall run with the title to the property and shall be binding upon all persons having any right, title or any interest in such property, their respective heirs, legal representatives, successors, successors-in-title, and assigns. The provisions of this Declaration of Annexation shall be binding upon the Deer Canyon Preserve Homeowners Association in accordance with the terms of the Covenants.

IN WITNESS WHEREOF, Declarant has executed this Declaration of Annexation to be effective as of the May 2, 2006.


Verde Heritage Ranch LLC as Declarant
By: James Winder, Vice President

State of New Mexico County of Torrance
I, hereby certify that this instrument was filed for record on 05/02/2006 A.D. at
9: 33 AM and duly recorded as instrument # 2062012 in book 309 at page
00282 in the records of Torrance County. 1+ 1 pages. Witness my hand and
Seal of Office, Linda Keeser, County Clerk, Torrance County, NM
Deputy Clerk 

STATE OF NEW MEXICO)

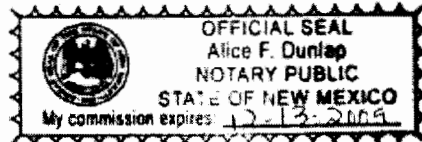
COUNTY OF *Serrano*)
:SS

This instrument was acknowledged before me on this 2nd day of May, 2006, by James R. Winder, Vice President of Verde Heritage Ranch LLC, a Delaware limited liability company, for and on behalf of said limited liability company.

Alice Dunlap

Notary Public in and for the
State of New Mexico

My commission expires:



**FIRST AMENDMENT TO THE
DECLARATION OF PROTECTIVE COVENANTS
AND GRANT OF EASEMENTS
FOR
DEER CANYON PRESERVE
Torrance County, New Mexico
November 27, 2006**



WHEREAS, Deer Canyon Preserve LLC, a New Mexico limited liability company as owner of the affected property executed a certain Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve ("Declaration") dated October 30, 2002 and recorded in the records of the Torrance County Clerk on November 1, 2002 in Book 296 at Pages 213-230, and;

WHEREAS, Verde Heritage Ranch LLC, a Delaware limited liability company, as success or in interest to Deer Canyon Preserve LLC has the right to amend the Declaration under the terms of Paragraph 9D(2);

NOW, THEREFORE Verde Heritage Ranch hereby amends the Declaration in the following manner;

1. Paragraph "3C. DEFINITIONS" is hereby replaced with the following:

- C. "Heritage" shall mean Verde Heritage Ranch, LLC, a Delaware limited liability company or its successors in interest in the role of the creator and manager of the Deer Canyon Preserve project.

2. Paragraph "4A HOMESTEAD IMPROVEMENT RESTRICTIONS" is hereby replaced in its entirety with the following:

A. HOMESTEAD IMPROVEMENT RESTRICTIONS.

Each Homestead shall be used for single-family residential purposes and purposes customarily incident thereto only. No Homestead shall be improved except with a residential structure designed to accommodate no more than a single family and its staff and occasional guests plus one separate building for staff quarters, one guest house, one attached or detached garage, one out-building or barn, one corral and such other improvements and structures as are customarily incident to a single-family residence. All structures must be site built and those structures which are constructed outside of the Preserve including manufactured and mobile homes are prohibited, however small non-site built structures, such as storage or garden sheds, may be allowed with the approval of the Design Committee. Structures or above ground improvements shall be located within a reasonably compact area adjacent to the principal residential structure and designed as a single visual element. The principle residence structure shall have a minimum living floor area of one thousand six hundred (1,600) square feet, exclusive of garages, porches, decks, patios and accessory structures. No structure may be taller than 25 feet as measured from any point at ground level. All structures shall be constructed with non-flammable roofing material and all chimneys shall have spark arrestors, including outdoor

State of New Mexico County of Torrance
I, hereby certify that this instrument was filed for record on 11/28/2006 A.M. at
10:44 AM and duly recorded as Instrument # 20063004 in Book 311 on page
00074 in the records of Torrance County. 1+ 4 pages. Witness my hand and
Seal of Office. Linda Kayser, County Clerk, Torrance County, NM.
County Clerk 11/28

fireplaces or similar structures. All improvements shall be contained within the Designated Building Envelope area designated by Heritage and the specific location of the improvements within the Designated Building Envelope must be reviewed and approved by the Design Committee prior to any construction. No building or structures shall be placed outside of the Designated Building Envelope or within the road or utility easements.

2. Paragraph "4F NO BUSINESS ACTIVITY" is hereby replaced in its entirety with the following:

- F. NO BUSINESS ACTIVITY.** No Homestead shall be used at any time for business or commercial activity, except home occupations. A home occupation shall consist of any occupation or profession carried on by a member of a family residing on the Homestead, in connection with which (i) there is used no sign other than one (1) non-illuminated name plate attached to the building entrance which is not more than one (1) square foot in area; (ii) no more than 2 people are employed at the Homestead who are not members of the immediate family of the Homestead owner residing at the Homestead; (iii) no mechanical equipment is installed or used in a manner which generates noise which is audible off the Homestead on which the equipment is located, or otherwise is in violation of this Declaration, or which otherwise constitutes a nuisance; (iv) the business activity is clearly incidental and secondary to the use of the home as a residence and is consistent with the residential character of the Homestead; (v) generates ten (10) or fewer vehicle round trips per day to and from the Homestead, which total shall include the round trips made by employees who do not live at the Homestead, but shall not include round-trips made by residence of that Homestead and (vi) shall not involve receiving compensation for people staying overnight or recreating on the Preserve.

3. Paragraph "4M RESTRICTIONS ON SIGNS" is hereby replaced in its entirety with the following:

- M. RESTRICTIONS ON SIGNS.** Except as expressly allowed pursuant to Section 4F, no signs or advertising devices of any nature shall be erected or maintained on the Homestead except as necessary to identify the ownership of the property and its address or to give directions, warn of danger or advise of rules or regulations, or to denote any approved home occupation. Any such signs allowed shall be compatible with the scenic nature of the area and be as small in size as reasonably possible and shall have the prior written approval of the Design Committee.

4. Paragraph "4U WATER CONSERVATION" is hereby replaced in its entirety with the following:

- U. WATER CONSERVATION.** Water-saving fixtures shall be installed in all new residential and non-residential buildings, including, but not limited to, low-flush toilets, low-flow shower heads, low-flow faucets, and insulation of hot water

pipes. At the discretion of the Design Committee, grey water or rainwater catchment systems may be required. Evaporative cooler air conditioners are prohibited.

5. Paragraph "7ACOMMITTEE STRUCTURE/APPOINTMENT" is hereby replaced in its entirety with the following:

- A. COMMITTEE STRUCTURE/APPOINTMENT.** During the Transition Period, the Design Committee shall consist of three (3) individuals, two (2) of whom shall be appointed by Heritage. The third Design Committee member shall be appointed by the Board of Directors of the Association. After the Transition Period, the Board of Directors of the Association shall set the number of the Design Committee member and shall thereafter appoint all Design Committee members for a term not to exceed three (3) years. Persons eligible for appointment to the Design Committee shall include directors of the Association, officers of the Association, other employees of the Association, Homestead owners, and other individuals who may have unique abilities and talents in the areas of architectural or environmental design, construction, real estate development, or engineering. Said Design Committee members shall serve at the pleasure of the Board of Directors of the Association. At the sole discretion of Heritage during the Transition Period and the Board of Directors of the Association after the Transition Period, the duties of one or more members of the Design Committee may be assigned to a third party company or organization who will be compensated by the Association.

6. Paragraph "8A FORMATION AND POWERS" is hereby replaced in its entirety with the following:

- A. FORMATION AND POWERS.** Heritage shall form a non-profit corporation which shall serve as the "Deer Canyon Preserve Homeowner's Association," which shall carry out all duties and responsibilities with which the Association is charged under the terms of this Declaration, and which shall maintain and manage those common roadways, easements, common use areas, and equipment and facilities associated with The Preserve, to the extent required by this Declaration, the governmental approvals affecting The Preserve, and as required by law. Heritage shall be entitled to appoint a majority of the directors of the Board of Directors of the Association during the Transition Period. The remaining directors shall be elected by vote of the Association membership as provided in the By-Laws of the Association in effect from time to time. Upon the expiration of the Transition Period, Heritage shall no longer be entitled to appoint members to the Board of Directors of the Association, and the Association shall hold an election to appoint such directors in accordance with its By-Laws. The powers of the Association shall be prescribed in the Articles of Incorporation and By-Laws of the Association, and rules and regulations adopted from time to time, including, but not limited to, the power to assess each Homestead owner for the purpose of : (i) purchasing liability and casualty insurance; (ii) purchasing errors and omissions insurance for all directors, officers, and employees; (iii) the

maintenance and repair of facilities, roads, runways, entry ways, signs, barns, corrals, perimeter fences, gates and other improvements within The Preserve which the Association has or may acquire for the benefit of all Homestead owners from time to time; (iv) employee expenses including salaries and benefits for Association employees, including maintenance staff; (v) fees paid to third party contractors performing work for the Association; (vi) the acquisition and maintenance of fire tanks and other emergency facilities; and (vii) maintaining appropriate capital reserves. The Association may provide for the enforcement of any By-laws, and rules or regulations or standards through reasonable and uniformity applied penalties, through exclusion of violators from property and facilities controlled by the Association or otherwise. The Association may establish reasonable and uniformly applied charges for use of property and facilities under the direction and control of the Association to assist the Association in offsetting the costs and expenses attributable thereto. At the sole discretion of Heritage during the Transition Period and the Board of Directors of the Association after the Transition Period, the operational management of the Association may be assigned to a third party company or organization who will be compensated by the Association.

6. Paragraph "8D TRANSFER FEES" is hereby replaced in its entirety with the following:

- D. TRANSFER FEES.** In addition to assessments, there shall be a fee payable to the Association by each Homestead purchaser upon the initial purchase or resale of a Homestead equal to one and one half percent (1.5%) of the total purchase price including land, buildings and improvements. Two Thirds (2/3) of this fee shall be deposited in a capital account of the Association, One Sixth (1/6) of this fee shall be payable to the Heritage Land Conservancy or any other non-profit environmental management organization designated by Heritage and One Sixth (1/6) of the fee shall be paid to the land trust which holds the conservation easement(s) on lands designated as Open Space on plats described in Paragraph 2.

WITNESS MY HAND this 27th day of November, 2006.

Verde Heritage Ranch LLC


By: Jim Winder
Vice President

THE STATE OF NEW MEXICO)

COUNTY OF DONA ANA)

:SS

This instrument was acknowledged before me on this 27 day of November, 2006 by
Jim Winder.

Nicia A. Xray

Notary Public in and for the
State of New Mexico

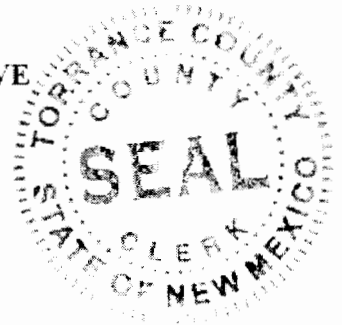
My commission expires: 4/26/2010



OFFICIAL SEAL
TRICIA L. TENERY
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires: Apr. 26, 2010

**AMENDED AND RESTATED DECLARATION OF PROTECTIVE
COVENANTS AND GRANT OF EASEMENTS**

**FOR
DEER CANYON PRESERVE
TORRANCE COUNTY, NEW MEXICO
NOVEMBER 27, 2006**



WHEREAS, Deer Canyon Preserve, as owner as the affected property filed a certain Declaration of Protective Covenants and Grant of Easements ("Declaration") dated October 30, 2002 and filed in the records of the Clerk of Torrance County, New Mexico on November 1, 2002 in Book 296 at Pages 213-230 as Instrument Number 2025380, and;

WHEREAS, Verde Heritage Ranch, as successor in interest to Deer Canyon Preserve and owner of the affected property filed a certain Declaration of Annexation of Deer Canyon Preserve Phase 2 to the Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve dated May 2, 2006 and filed in the records of the Clerk of Torrance County, New Mexico on May 2, 2006 in Book 309 at Pages 282-283 as Instrument Number 2062012, and;

WHEREAS, Verde Heritage Ranch, as successor in interest to Deer Canyon Preserve LLC amended the Declaration according to the provisions of Paragraph 9C(2) through an certain First Amendment to the Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve dated November 27, 2006 and filed in the records of the Clerk of Torrance County, New Mexico on November 28, 2006 in Book 311 at Pages 74 - 78 as Instrument Number 2065301 (the "First Amendment"), and;

WHEREAS, this Amended and Restated Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve is intended to incorporate all of the amendments from the First Amendment and restate the Declaration in its entirety, as amended.

NOW, THEREFORE Verde Heritage Ranch hereby confirms that the following is a true representation of the covenants, conditions, restrictions, easements and provisions of the Amended Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve.

1. **PURPOSE.** The purpose of these covenants is to preserve the Deer Canyon Preserve property as a scenic, residential area of the highest quality and desirability with a natural beauty and view and to improve and preserve the ecological health of the property and natural ecosystem as near as may be and to protect the seclusion of each home site and to define and describe certain provisions, covenants, conditions and restrictions which shall be applicable to such property and to further the common interests of the owners.

State of New Mexico County of Torrance
I, hereby certify that this instrument was filed for record on **11/28/2006** at
10:50 AM and duly recorded as instrument # **2065305** in book **311** at page
00079 in the records of Torrance County. **14 18** pages. Witness my hand and
Seal of Office, Linda Kasper, County Clerk, Torrance County, NM.
Deputy Clerk *M.Y.O.*

2. PROPERTY COVERED BY DECLARATION. The provisions, covenants, conditions and restrictions contained in this Declaration shall affect those portions of Deer Canyon Preserve, according to the plat filed in the Office of the County Clerk of Torrance County, New Mexico, recorded on October 1, 2002 in Plat Record E1, at Page 136, Reception Number 2024754 as amended in a plat filed in the Office of the County Clerk of Torrance County, New Mexico, recorded on December 2, 2002 in Plat Record E1 at Page 144, Reception Number 2025848, as also amended in a plat filed in the Office of the County Clerk of Torrance County, New Mexico, recorded on October 5, 2005 in Plat Record E1 at Pages 304-306, , and Deer Canyon Preserve Phase II Lots according to the plat filed in the Office of the County Clerk of Torrance County, New Mexico, recorded on December 5, 2006 in Plat Record E1 at Page 211, as amended in a plat filed in the Office of the County Clerk of Torrance County, New Mexico, recorded on May 15, 2006 in Plat Record E1, at Page, Reception Number 2062243 and other properties included in that plat, which lots and properties are owned by Heritage and any other lands made subject to these covenants by reference hereto in a separate deed or plat hereafter recorded in the Office of the County Clerk of Torrance County, New Mexico.

3. DEFINITIONS.

A. "Association" shall mean the Deer Canyon Preserve Homeowners' Association, a New Mexico non-profit corporation, which has been incorporated to function as the association referred to in this Declaration in order to further the common interests of the owners of property subject to this Declaration.

B. "Common Area" shall mean any parcel of property covered by this Declaration which is identified in a plat described in Paragraph 2 as "common area". Such areas shall be owned by the Association for recreational purposes to the benefit of all Homestead owners.

C. "Heritage" shall mean Verde Heritage Ranch, LLC, a Delaware limited liability company or its successors in interest in the role of the creator and manager of the Deer Canyon Preserve project.

D. "Design Committee" shall mean the committee appointed under section 7 of this Declaration.

E. "Designated building envelope" shall mean an area approximately one (1) to three (3) acres in size within a Homestead which is designated by Heritage as the appropriate location for all residential improvements on that Homestead. The exact size, dimensions and location or any relocation of Designated Building Envelope must be determined and approved by the Design Committee prior to any construction and documented with a Building Envelope Lockdown Agreement.

F. "Homestead" shall mean any lot or parcel of property upon which a single family dwelling may be constructed and which is described in the recorded plat for The Deer Canyon Preserve project described in Paragraph 2 above, or, in the event any other

lands are later made subject this Declaration by reference thereto in a separate deed or plat hereafter recorded in the Office of the County Clerk of Torrance County, New Mexico, all such residential lots or parcels identified in those separate deeds or plats.

G. "The Preserve" means the entire Deer Canyon Preserve project as it is constituted from time to time.

H. "Transition Period" means that period of time commencing on the effective date of this Declaration and ending on the date that the last Homestead in The Preserve is sold. There are, at present, four hundred forty six (446) Homesteads planned for The Preserve.

I. "Wildlife Preserve" shall mean any area of land designated, from time to time, by Heritage for the protection and enhancement of native species and their habitat.

4. RESTRICTIONS.

A. **HOMESTEAD IMPROVEMENT RESTRICTIONS.** Each Homestead shall be used for single-family residential purposes and purposes customarily incident thereto only. No Homestead shall be improved except with a residential structure designed to accommodate no more than a single family and its staff and occasional guests plus one separate building for staff quarters, one guest house, one attached or detached garage, one out-building or barn, one corral and such other improvements and structures as are customarily incident to a single-family residence. All structures must be site built and those structures which are constructed outside of the Preserve including manufactured and mobile homes are prohibited, however small non-site built structures, such as storage or garden sheds, may be allowed with the approval of the Design Committee. Structures or above ground improvements shall be located within a reasonably compact area adjacent to the principal residential structure and designed as a single visual element. The principle residence structure shall have a minimum living floor area of one thousand six hundred (1600) square feet, exclusive of garages, porches, decks, patios and accessory structures. No structure may be taller than 25 feet as measured from any point at ground level. All structures shall be constructed with non-flammable roofing material and all chimneys shall have spark arrestors, including outdoor fireplaces or similar structures. All improvements shall be contained within the Designated Building Envelope area designated by the Heritage and the specific location of the improvements within the Designated Building Envelope must be reviewed and approved by the Design Committee prior to any construction. No building or structures shall be placed outside of the Designated Building Envelope or within the road or utility easements.

B. **SWIMMING POOLS.** Swimming pools are discouraged and if built are required to be covered when not in use to prevent water loss from evaporation. Only one (1) swimming pool may be constructed on a Homestead, and that swimming pool may not exceed ten thousand (10,000) gallons in capacity if the swimming pool is serviced by a well which is used by other Homesteads. Swimming pools of a large capacity may be

permitted in the sole and absolute discretion of the Association so long as conditions and restrictions relating to its construction and operation, as deemed appropriate by the Association, are strictly complied with by the Homestead owner, including without limitations, a requirement that any swimming pool which has a capacity in excess of ten thousand (10,000) gallons must be serviced by a separate well drilled and installed by the Homestead owner, and proof satisfactory to the Association must be provided that the new, separate well will not in any way interfere with others wells within The Preserve. All swimming pools, regardless of size, shall be filled in a manner which will not interfere with the normal use and availability of water to other Homestead owners which might be serviced by the same well as the swimming pool.

C. HOMESTEAD OPEN AREA RESTRICTIONS. Areas of each Homestead outside of the Designated Building Envelope shall be kept in their natural scenic and open state, and no improvement or other changes to the natural condition of vegetation shall be allowed, except that access driveways, bridges or paths reasonably necessary to the proper use and enjoyment of the principal and accessory structures, clearing of brush or other material deemed a fire hazard, and landscaping using a native flora and appearance are allowed with approval of the Design Committee

D. COMMON AREA. Common areas may be developed for non-profit recreation and leisure-time activities for the benefit of owners, their guests and invitees subject to this Declaration and the terms of any covenants or other use restrictions affecting the Common Area. The type of development allowed shall include, but not be limited to facilities used in connection with the development and sales of Homesteads, Association offices, meeting rooms, maintenance and storage facilities, clubhouses, equestrian facilities, barns, living quarters for ranch employees, other buildings and structures necessary or desirable for the operation of a working ranch, ecological and archaeological research and education facilities, and parks and picnic facilities.

E. COMBINING PARCELS. Two or more adjoining Homesteads which are under the same ownership may be combined and developed as one parcel following the execution of a Lot Combination Agreement by the Owner and approval by the Design Committee. Setback lines along the common boundary line of the combined parcels may be removed or modified upon approval of the Design Committee contingent upon a finding that any improvements to be constructed within these setback lines will not cause unreasonable diminution of the view from other properties or otherwise unreasonably disrupt the overall development plan for The Preserve. Easements created or establishing along the common boundary line of the combined parcels may be changed without the consent of any person entitled to use thereof if the written consent of the Design Committee is obtained and if alternate easements are granted or created satisfactory to the Design Committee by the owner of the combined parcels, and all additional costs of relocation of all existing or planned utilities or other improvements are paid or provided for by the person desiring such relocation. If setback lines are removed or easements changed along the common boundary line of combined parcels the combined parcels shall thereafter be deemed one parcel and may not thereafter be split and developed as

two parcels. Notwithstanding the foregoing, charges and assessments shall continue to be paid as if the parcels were separate parcels

F. NO BUSINESS ACTIVITY. No Homestead shall be used at any time for business or commercial activity, except home occupations. A home occupation shall consist of any occupation or profession carried on by a member of a family residing on the Homestead, in connection with which (i) there is used no sign other than one (1) non-illuminated name plate attached to the building entrance which is not more than one (1) square foot in area; (ii) no more than 2 people are employed at the Homestead who are not members of the immediate family of the Homestead owner residing at the Homestead; (iii) no mechanical equipment is installed or used in a manner which generates noise which is audible off the Homestead on which the equipment is located, or otherwise is in violation of this Declaration, or which otherwise constitutes a nuisance; (iv) the business activity is clearly incidental and secondary to the use of the home as a residence and is consistent with the residential character of the Homestead; (v) generates ten (10) or fewer vehicle round trips per day to and from the Homestead, which total shall include the round trips made by employees who do not live at the Homestead, but shall not include round-trips made by residence of that Homestead and (vi) shall not involve receiving compensation for people staying overnight or recreating on the Homestead or the Preserve.

G. OCCUPANCY LIMIT. No residence structure on any Homestead shall be used for living purposes by more persons than it was designed to accommodate comfortably. No portion of any Homestead shall be used for living purposes other than the principal residence structure, staff quarters, and the guest house. The guest house shall not be utilized as a residence by any persons other than the Homestead owner or the Homestead owner's immediate family.

H. MAINTENANCE. All property and all improvements on any Homestead shall be kept by the owner in a clean, safe, attractive condition and in good repair.

I. NO HAZARDOUS ACTIVITY. No activities shall be conducted and no improvements constructed on any Homestead which might be unsafe or hazardous to any person or property. No firearm shall be discharged within the Deer Canyon Preserve property. No open fires shall be permitted except in a contained outdoor fireplace unit with an approved spark arrestor or barbecue, while attended, or within a safe interior fireplace or wood stove on such Homestead, or except such campfires or picnic fires in portions of Common Areas designated for such use by the Association, or except such controlled and attended fires required for clearing or maintenance of land.

J. NO UNSIGHTLINESS. No unsightliness shall be permitted on any Homestead. All unsightly equipment, objects or conditions shall be enclosed within a structure or screened from view, including vehicles other than automobiles; campers not on a truck, boats; garden and maintenance equipment; antenna and other

facilities for the transmission or reception of audio or visual signals; and utility facilities such as gas, oil, water or other storage tanks. Refuse, garbage and trash shall be kept in a container with a cover and within a closed structure or screened from view. No metals, broken material, lumber, scrap or trash shall be stored or allowed to accumulate on any Homestead.

K. NO ANNOYING LIGHTS, SOUNDS OR ODORS. No light shall be emitted from any Homestead which is unreasonably bright or causes unreasonable glare. No sounds shall be emitted from any Homestead which are unreasonably loud or annoying. No odor shall be emitted on any Homestead which is noxious or offensive to others, provided, however, that a properly contained compost pile shall be allowed.

L. TEMPORARY STRUCTURES. No tent, shack, occupied travel trailer, motor home, mobile home, or other temporary building, structure or improvement shall be placed on the Homestead, except that tents, recreational vehicles or travel trailers for temporary recreational camping for a maximum of ten (10) days within any thirty (30) day period shall be allowed, and except that under the duration of a construction plan filed with and approved by the Design Committee, temporary housing occupied by the owner or the construction crew, construction office, shed or loose storage of construction materials shall be permitted, but such housing, office, shed or loose materials shall in no event remain on any lot for more than two (2) months after completion of construction.

M. RESTRICTION ON SIGNS. Except as expressly allowed pursuant to Section 4F, no signs or advertising devices of any nature shall be erected or maintained on the Homestead except as necessary to identify the ownership of the property and its address or to give directions, warn of danger or advise of rules or regulations, or to denote any approved home occupation. Any such signs allowed shall be compatible with the scenic nature of the area and be as small in size as reasonably possible and shall have the prior written approval of the Design Committee.

N. FENCING. No more than the area of the Designated Building Site may be enclosed by fencing, and any such fenced area shall include the improved area but may not include any of the common easements. The remainder of each Homestead shall be open and unobstructed. No fence shall be placed within any of the road or utility easements. The location of fencing, the type of fencing, and the design and color of all fencing shall be submitted to and must be approved by the Design Committee prior to installation.

O. NO MINING OR DRILLING. No Homestead shall be used for the purpose of mining, quarrying, drilling, boring or exploring for or removing oil, gas, minerals, rocks or stones. Gravel or earth may be removed for an owner's personal use (not resale) with approval by the Design Committee and with adequate provisions for re-vegetation.

P. **VEHICLE RESTRICTIONS.** No vehicles, including, without limitation, motorcycles, jeeps, four-wheel drive vehicle or all-terrain vehicle use shall be allowed on the Common Area, on that portion of each Homestead outside the Designated Building Envelope, or on the equestrian easements or trails without the specific designation and approval of the Association, except as necessary for maintenance and ranch operations including activities conducted by Heritage in accordance with paragraph 5(B). Nothing herein shall prohibit the operation of vehicles licensed for highway travel on improved roads or private driveways, subject to regulation by the Association.

Q. **CONSTRUCTION.** The dumping or deposit of fill dirt, construction refuse, trash, excess material, waste or cement anywhere within the Homestead during and after the initial construction process or during the repair or remodeling of any structure is strictly forbidden.

R. **LANDSCAPING AND PLANTING.** Any landscaping or planting must be of plants native to the general area and must be watered and maintained until fully established on their own. Cool season grasses such as Kentucky blue grass and tall fescue are prohibited. Total irrigated area may not exceed 900 square feet. The use of drip irrigation and gray water systems is encouraged. Landscaping will be of such plants, material and design as to provide a fire break of at least 100 feet between any structures and the intact native vegetation. Landscaping shall be maintained in order to preserve the function of the fire break at all times.

S. **RESTRICTION ON ANIMALS.** A maximum of three (3) horses or other large animals may be kept within a Homestead owner's Designated Building Envelope. All animals must be restrained so as not to be allowed to roam outside the Designated Building Envelope, or any neighboring lots, or the Common Areas. All animals outside the Designated Building Envelope must at all times be under the direct control of their owner, and not constitute a threat to persons, property, livestock, wildlife, or other animals. No animals shall be kept or maintained on any Homestead in any manner or number which is a nuisance or is unreasonable offensive to occupants of neighboring Homesteads, whether by reason of noise, habits, odor, flies or otherwise, anything to the contrary hereinabove notwithstanding. The Association may order the removal of any offending animals. Notwithstanding the foregoing, Deer Canyon Preserve LLC, may, but shall not be required to, designate a common pasture for the use of all owners for the pasturing of horses thereon, in accordance with the fee structure, rules and regulations governing such pasturing set forth from time to time by Deer Canyon Preserve, LLC.

T. **NO SUBDIVISION OF HOMESTEADS.** No part of any Homestead may be divided, subdivided, or a fractional portion thereof sold or conveyed or subjected to apportionment by exclusive use agreement so as to be held in divided use or ownership.

U. **WATER CONSERVATION.** Water-saving fixtures shall be installed in all new residential and non-residential buildings, including, but not limited to, low-flush

toilets, low-flow shower heads, low-flow faucets, and insulation of hot water pipes. At the discretion of the Design Committee, grey water or rainwater catchment systems may be required. Evaporative cooler air conditioners are prohibited.

V. WELL RESTRICTIONS. In the event that a Homestead owner participates in a shared well association, that the Homestead owner's use of the water from the shared well shall be on an equitable basis with other users of the shared well. In the event that a Homestead owner drills a well separate and apart from a shared well, then the proposed well, as well as all plans for the proposed well, must be submitted and approved by the Design Committee as provided elsewhere in this Declaration. All wells shall be used for household purposes only, and for the purposes of livestock watering and the irrigation of landscaping, to the extent that both of said uses are permitted in this Declaration. Any separate well shall not pump more than ten (10) gallons per minute at any time, nor shall it in any way interfere with the operation of any shared wells within The Preserve. Water produced by a separate well may not be utilized off of the Homestead on which it is produced, nor may it be used for any commercial or agricultural purpose, except as expressly permitted by this paragraph.

5. EASEMENTS DEDICATED AND RESERVATIONS.

A. UTILITY EASEMENTS DEDICATED. The Heritage hereby grants to the Association for the benefit of all owners perpetual primary utility easements twenty (20) feet in width along the inside of all Homestead lines which abut road easements or Common Area, and ten (10) feet in width on each side of the Homestead lines which abut another Homestead, following the entire perimeter of each Homestead and along either side of the dedicated county or private road, for the purpose of accessing, constructing, maintaining, operating, replacing, enlarging and repairing underground electric, telephone, water, and other communication facilities and related equipment. In the event, and in the sole opinion of Verde Heritage Ranch LLC, that it shall be impractical or infeasible to locate any utility facilities within the primary utility easements described above, such facilities may be located within a twenty (20) foot wide secondary utility easement hereby dedicated which may be located anywhere necessary upon the Homestead, provided such secondary utility easements shall not be located within the Designated Building Envelope on any of Homestead. Heritage reserves the perpetual right to utilize said easements for construction, maintenance, operation, replacement, enlargement or repair of roads and utilities systems, including but not limited to electric, telephone, and water conducted by Heritage or its agents, contractors, utility providers, or assigns.

B. WILDLIFE MANAGEMENT, RESEARCH AND GRAZING RESERVATIONS. Heritage reserves the right to manage all organisms, either plant or animal, living above, upon or below the soil surface, make wildlife habitat improvements, re-introduce native species, conduct ecological and archaeological research and to graze livestock upon all Homesteads, parcels, Wildlife Preserves and Common Area, excluding the Designated Building Envelopes. The open space, ranching and wildlife features of The Preserve contribute greatly to its unique and special character. Disturbances

typically associated with the presence of ranching operations and wildlife are an unavoidable consequence of this type of operation, and necessary to the creation and preservation of the substantial open space areas associated with The Preserve. Heritage, and its members, officers, managers, employees, agents, successors and assigns shall not be liable for damage from wildlife, livestock or other disturbances commonly found on ranches, ecological or archaeological research facilities, on wildlife refuges, and the owners of any Homesteads within The Preserve, and by the act of accepting title to a Homestead, hereby waive and release Heritage, and its affiliated companies, employees, agents, successors, and assigns, from any such liability or damages.

C. HIKING AND EQUESTRIAN EASEMENTS. The Heritage hereby grants to the Association for the benefit of all owners and their guests a general easement to cross the undeveloped open areas of all Homesteads for the purposes of establishing, maintaining and using equestrian and pedestrian trails, and for other recreational purposes specifically approved by the Association. This easement shall include the right to cross private driveways and walkways. The extent of such easement of each Homestead shall be the area outside the Designated Building Envelope on each Homestead and shall be further limited to the area outside of a line located 250 feet from any residence, guest house or out-building constructed on such Homestead. No persons using such easements shall leave trash on such easement or use the easement in any manner that is a nuisance or hazardous or which unreasonably violates the privacy of any other person, nor shall they in any way disrupt or interfere with the normal use and enjoyment of the Homesteads by their owners. Areas may be declared off-limits to hiking, equestrian activities and other uses by Heritage or the Association from time to time if those areas are deemed critical for ecological and archaeological research and restoration. The Association shall develop and shall be entitled to enforce appropriate rules, regulations and sanctions to ensure the adherence to these provisions.

D. ESTABLISHMENT OF WILDLIFE PRESERVE. Heritage may from time to time designate portions of the Common Area to be managed by the Association as a Wildlife Preserve, subject to such rules and regulations governing use which the Association may adopt from time to time.

6. REQUIRED APPROVAL OF ALL CHANGES TO PROPERTY.

A. APPROVAL OF CHANGE IN EXISTING STATE REQUIRED. A change in the existing state of the Homestead shall mean construction of any building, residence, fence, structure or other improvements or the excavation, filling or other disturbance of the surface of land, including change of grade, stream bed, ground level or drainage pattern, clearing, marring or defacing trees, the landscaping of trees, shrubs or plants or the change of color, texture or exterior appearance of any previously approved change in the existing state of the Homestead or improvements thereon. No such change shall be permitted except with the prior written approval of the Design Committee, except for activities conducted by Heritage in furtherance of the development, construction and operation of The Preserve.

B. CRITERIA FOR APPROVAL. The Design Committee reviewing any application for a change to the existing state of the Homestead must act reasonably to carry out the general purposes expressed in this Declaration, to minimize obstruction or diminution of the view of other owners, to preserve the visual continuity of the areas, and prevent a marked transition, including imposition of requirement of earth-tone natural colors on all buildings, structures, residences, fences and improvements, in order to assure that any change will be of attractive design and in harmony with the natural setting of the area. The Design Committee shall also assure the material and workmanship for the improvements are of high quality and comparable with the existing installed improvements. Any change deemed unsafe or hazardous by the Design Committee may be prohibited.

C. CONDITIONS PRECEDENT TO APPROVAL.

(1) Prior to expenditures of any substantial time or funds in the planning of any proposed change in the existing state of Homestead, the owner of a Homestead shall advise the Design Committee in writing of the general nature of the proposed change, shall, if requested by the Design Committee, meet with a member or members of the Design Committee to discuss the proposed change, shall read or become familiar with any guides or guidelines which may have been prepared or formulated by the Design Committee and shall, if requested by the Design Committee, furnish the Design Committee with preliminary plans and specifications for comment and review.

(2) Thereafter, the Design Committee shall be furnished in duplicate, by the owner of the Homestead with a complete description of the proposed change in writing, including building and landscaping plans and with a plot plan covering the particular Homestead drawn to such scale as may be reasonably required by the Design Committee. Said plans shall show all relevant boundaries, existing and proposed contour lines and elevations at reasonably detailed intervals, all existing and proposed improvements, the existing and proposed drainage pattern, the existing and proposed utility and sanitation facilities, the existing and proposed substantial trees or shrubs, and all further information with respect to the existing state of the Homestead which the Design Committee may reasonably require to permit it to make an informed decision. If the drainage pattern of any Homestead or other property will be substantially affected by any change, the Design Committee may require submission of a report on the effect by a qualified engineer or geologist. With respect to all buildings and other structures, the Design Committee may require submission, in duplicate, at a reasonable scale, of floor plans, elevation drawings and final working drawings and descriptions or exterior materials and colors and samples of the same. The Design Committee may require that the plans, engineering studies and other materials shall be provided at the sole cost of the owner making the application.

(3) Prior to giving approval to a proposed change in the existing state of a Homestead, at least one member of the Design Committee shall physically inspect the Homestead. Approvals shall be in writing provided that approval shall be deemed given

if the Design Committee fails to approve or disapprove a proposed change or to make additional requirements or request additional information within forty-five (45) days after all required plans, descriptions, applications and other supporting documentation for the proposed change have been furnished in writing to the Design Committee with a written specific request for approval.

(4) The Homestead owner shall file a construction plan with the Design Committee indicating the primary contractor, general construction schedule, and anticipated completion date of the project. If construction cannot be completed by the anticipated date, the owner shall be required to petition the Design Committee for an extension of the completion date. The granting of this extension shall not be unduly denied by the Design Committee.

D. PROSECUTION OF WORK AFTER APPROVAL. After approval by the Design Committee of any proposed change in the existing state of the Homestead, the change shall be accomplished promptly and diligently, with no period of time in excess of thirty (30) consecutive days during which no substantial construction activity is occurring. Any approved change shall be made in strict conformity with the description of the change and plans and specifications approved by the Design Committee. Failure to accomplish the change within one (1) year after approval, or any substantial deviation from the plans or other aspects of the approval, shall operate to automatically revoke the approval. Upon such revocation and on demand of the Design Committee, the Homestead shall be restored as nearly as possible to the state existing prior to the beginning of any work in connection with the proposed change. In the event that a Homestead is not restored as required by the Design Committee within the time period designated by the Design Committee, but in no event less than thirty (30) days, the Design Committee may, acting through the Association, undertake to restore the Homestead as required, and the owner of the Homestead shall be obligated to reimburse the Association for the costs thereof. The Design Committee and its duly appointed agents may enter upon any Homestead at any reasonable time or times to inspect the progress or status of any change in the existing state of Homestead being made or which may have been made. The Design Committee shall have the authority to record a notice to show that any particular change in the existing state of the Homestead has not been approved or that any approval given has been revoked.

7. DESIGN COMMITTEE.

A. COMMITTEE STRUCTURE/APPOINTMENT. During the Transition Period, the Design Committee shall consist of three (3) individuals, two (2) of whom shall be appointed by Heritage. The third Design Committee member shall be appointed by the Board of Directors of the Association. After the Transition Period, the Board of Directors of the Association shall set the number of the Design Committee member and shall thereafter appoint all Design Committee members for a term not to exceed three (3) years. Persons eligible for appointment to the Design Committee shall include directors of the Association, officers of the Association, other employees of the Association,

Homestead owners, and other individuals who may have unique abilities and talents in the areas of architectural or environmental design, construction, real estate development, or engineering. Said Design Committee members shall serve at the pleasure of the Board of Directors of the Association. At the sole discretion of Heritage during the Transition Period and the Board of Directors of the Association after the Transition Period, the duties of one or more members of the Design Committee may be assigned to a third party company or organization who will be compensated by the Association.

B. DUTIES. The Design Committee shall exercise its best judgment to see that all improvements, construction, landscaping and alterations on lands within the Homestead conform to the provisions of this Declaration, and endeavor to aid Homestead owners in the design, construction and habitation of their homes in order to minimize expense and personal stress. A Homestead owner shall pay the reasonable expenses to the Design Committee for the examination, and approval or disapproval of plans and specifications submitted for structures or improvements to be erected or changed or alterations in existing structures or improvements. The Design Committee may employ consultants in a particular field of construction or an architect to advise it on plans and specification submitted by a Homestead owner. The Homestead owner shall be required to pay the charge of any such consultant, not to exceed the Three Hundred Dollars (\$300.00) per submission, which amount may be adjusted by the Association from time to time.

C. MAJORITY VOTE. A majority vote of the Design Committee is required for all matters acted upon by the Design Committee. The Design Committee shall maintain written records of all applications submitted to it and on all action taken by the Design Committee. Absolutely no verbal actions of the Design Committee or any individual committee member shall be valid or effective or constitute a waiver or estoppel against the Design Committee or the Association.

D. VARIANCES BY DESIGN COMMITTEE. The Design Committee may, in its sole and absolute discretion, authorize variances from compliance with any of the provisions, covenants, conditions and restrictions contained in this Declaration, or from any adopted rules, standards and regulations, when circumstances such as topography, natural obstructions or hardship may require. Such variances must be evidenced in writing. The granting of such a variance shall not waive any provisions of this Declaration except as to the particular Homestead and provisions covered by the variance. The Design Committee shall not approve any requested variance if the variance would (i) unreasonably interfere with drainage patterns; (ii) violate setback requirements; (iii) result in excessive cutting and filling; (iv) require excessive removal of native vegetation; (v) adversely impact another Homestead within The Preserve; or (vi) adversely impact views for adjacent Homestead owners. In the event a variance is requested, all Homestead owners must be advised of the same in writing by the person requesting the variance by certified mail, return receipt requested, and proof of such notice must be given to the Design Committee. Any Homestead owner may object to a requested variance by so notifying the Design Committee. The Design Committee shall give all Homestead owners at least two (2) weeks written notice of the date, time and

place of the Design Committee's meeting for final action upon a requested variance, at which meeting any Homestead owner shall be allowed express his or her views on the requested variance.

E. RULES AND REGULATIONS. The Design Committee may from time to time adopt rules and regulations governing the procedures to be utilized with regard to applications, meetings, hearings, and the granting of approvals by the Design Committee, as well as the implementation of any Design Committee functions. This shall include, without limitation, the creation of and setting fees for various Design Committee functions. The Design Committee shall also, from time to time, be entitled to adopt design and building standards. All such rules and regulations, fees, and standards adopted by the Design Committee must be approved by the Board of Directors of the Association in order to become effective.

F. NO LIABILITY. None of the Design Committee, its members, the Association, Heritage, or their officers, directors, members, managers, agents, employees, or successors in interest shall be responsible or have any liability for any defects in plans or specifications, or in any building or structure, or for any non-compliance of any building or other structure with the requirements imposed by the Design Committee, nor shall any of them be liable to any Homestead owner by reason of mistake in judgment, or negligence, or non-feasance arising out of or in connection with the giving of advice on Design Committee issues, or the approval or disapproval or failure to act on any submittals. Notwithstanding the fact that the Design Committee may review engineering proposals for improvements to a Homestead, the Homestead owner retains sole responsibility for ensuring that all such engineering is adequate to prevent any damage or injury to property and persons.

G. HERITAGE EXEMPT. Heritage shall not be required to obtain the Design Committee's approval for any construction or improvements proposed or undertaken by it, but shall comply with all design and building standards as to all residences constructed by Heritage for sale to others.

8. HOMEOWNER'S ASSOCIATION.

A. FORMATION AND POWERS. Heritage shall form a non-profit corporation which shall serve as the "Deer Canyon Preserve Homeowner's Association," which shall carry out all duties and responsibilities with which the Association is charged under the terms of this Declaration, and which shall maintain and manage those common roadways, easements, common use areas, and equipment and facilities associated with The Preserve, to the extent required by this Declaration, the governmental approvals affecting The Preserve, and as required by law. Heritage shall be entitled to appoint a majority of the directors of the Board of Directors of the Association during the Transition Period. The remaining directors shall be elected by vote of the Association membership as provided in the By-Laws of the Association in effect from time to time.

Upon the expiration of the Transition Period, Heritage shall no longer be entitled to appoint members to the Board of Directors of the Association, and the Association shall hold an election to appoint such directors in accordance with its By-Laws. The powers of the Association shall be prescribed in the Articles of Incorporation and By-Laws of the Association, and rules and regulations adopted from time to time, including, but not limited to, the power to assess each Homestead owner for the purpose of : (i) purchasing liability and casualty insurance; (ii) purchasing errors and omissions insurance for all directors, officers, and employees; (iii) the maintenance and repair of facilities, roads, runways, entry ways, signs, barns, corrals, perimeter fences, gates and other improvements within The Preserve which the Association has or may acquire for the benefit of all Homestead owners from time to time; (iv) employee expenses including salaries and benefits for Association employees, including maintenance staff; (v) fees paid to third party contractors performing work for the Association; (vi) the acquisition and maintenance of fire tanks and other emergency facilities; and (vii) maintaining appropriate capital reserves. The Association may provide for the enforcement of any By-laws, and rules or regulations or standards through reasonable and uniformity applied penalties, through exclusion of violators from property and facilities controlled by the Association or otherwise. The Association may establish reasonable and uniformly applied charges for use of property and facilities under the direction and control of the Association to assist the Association in offsetting the costs and expenses attributable thereto. At the sole discretion of Heritage during the Transition Period and the Board of Directors of the Association after the Transition Period, the operational management of the Association may be assigned to a third party company or organization who will be compensated by the Association.

B. ASSESSMENTS. The Association shall commence collection of an annual assessment six (6) months after the closing of the sale of the first Homestead. This initial assessment shall not exceed One Thousand Dollars (\$1,000.00). From and after January 1, 2003 the maximum annual assessment may be increased or decreased by the vote of the Board of Directors. The Board of Directors shall fix the annual assessment and may raise or lower the annual assessment, as it deems necessary at its discretion. No annual assessment may exceed the amount of the previous annual assessment by more than fifteen percent (15%). The amount assessed shall be paid not later than sixty (60) days following the delivery of written notice thereof to the owner of each Homestead. The Association, in its discretion, may bill the Homestead owners for said assessments on a semi-annual basis.

C. SPECIAL ASSESSMENTS. Special assessments, over and above the annual assessment, may be collected by the Association from time to time to fund major maintenance, common facility building projects, or to address other major obligations of the Association only with the consent of the majority of the Homestead owners.

D. TRANSFER FEES. In addition to assessments, there shall be a fee payable to the Association by each Homestead purchaser upon the initial purchase or resale of a Homestead equal to one and one half percent (1.5%) of the total purchase price including land, buildings and improvements. Two Thirds (2/3) of this fee shall be

deposited in a capital account of the Association, One Sixth (1/6) of this fee shall be payable to the Heritage Land Conservancy or any other non-profit environmental management organization designated by Heritage and One Sixth (1/6) of the fee shall be paid to the land trust which holds the conservation easement(s) on lands designated as Open Space on plats described in Paragraph 2.

E. NOTICE/COLLECTION OF ASSESSMENTS. Each Homestead owner shall, on an annual basis, provide the Association with that owner's principle mailing address. All notices given by the Association, or other communications from the Association, shall be sent to the most recent mailing address indicated by the owner and shall be deemed delivered on earlier of the date actually received by the owner or three (3) business days after mailing. In the event that communications sent by first class mail, postage pre-paid, to the address indicated by the owner are returned to the Association, the Association shall post said communications on the most public portion of said Homestead and upon said posting, all such notices or other communications shall be deemed delivered. Any amount assessed and not paid within said sixty (60) days shall thereafter bear a delinquent of late charge in such amount or percentage as from time to time set by the Board of Directors of the Association. The Association is hereby granted a lien against the Homestead of any owner to secure the payment of said assessment. Said lien shall have a priority and be enforceable by the same procedure as provided for enforcement of a materialman's lien. Upon the sale of any Homestead, the Association is hereby granted the right to make a written demand in any sale escrow or through any other agent for the closing of the sale for payment directly to the Association of all such transfer fees, assessments, penalties, interest and fines, out of the sale proceeds. The remedies set forth in this Paragraph 8 (C) are not exclusive and the Association may exercise any and all legal rights that the Association may have in order to collect said amounts owing to the Association. A purchaser of any Homestead subject to this Declaration shall be jointly and severally liable with the seller for all unpaid assessments, charges, fines or penalties with respect to the owner of the Homestead which had accrued and were payable at the time of the grant or conveyance of the Homestead to such purchaser without prejudice to such purchaser's right to recover any of the amounts paid by the purchaser from the seller.

F. MEMBERSHIP. The ownership of each Homestead, notwithstanding multiple ownership interests therein, shall give rise to one Homeowner's membership and one vote, subject to the special voting and other rights of Heritage during the Transition Period. Each owner of any interest in a Homestead is liable for assessments as provided as a member of the Association and for such reasonable and uniformly applied charges for use of facilities under the direction or control of the Association, and for such reasonable and uniformly applied penalties imposed for violation of this Declaration, the By-Laws or rules and regulations of the Association.

G. PROTECTION OF MORTGAGEES AND PURCHASERS. Any prospective mortgagee or purchaser of a Homestead shall, after the payment of Fifty Dollars (\$50.00), be entitled to a statement from the Association regarding the amount of unpaid assessments and fines and penalties relative to the affected Homestead. Inquiry

to the Association shall be by certified mail, return receipt requested, at the Association's then current registered address. If the Association does not respond within twenty (20) days of receipt of the inquiry, and notwithstanding any other provisions of this Declaration, said mortgagee or purchaser shall have no liability for any such unpaid assessment, fine or penalty.

H. **UNSOLD HOMESTEADS.** The unsold Homesteads and Homesteads which have been sold but have later been re-acquired by Heritage shall not be liable for the payment of any assessments, fees or other charges to the Association.

I. **MANAGEMENT OF CLUB FACILITIES.** Heritage may establish and make property and facilities within the Preserve available for use by private clubs comprised of Homestead owners and other permitted users of the Common Area on such terms and conditions as Heritage deems appropriate from time to time. Said clubs may include, without limitation, clubs engaging in horseback riding activities, archeological activities, and nature study activities. All such clubs shall be self-supporting and shall not receive any monetary support from the Association, except the Association may contribute funds, property or labor for the construction, maintenance, and repair of improvements and facilities utilized by such club members which are also generally available to all Homestead owners.

J. **ENFORCEMENT OF OTHER RESTRICTIONS.** The Association shall also have the power and authority to enforce any restrictions contained in individual Grant Deeds for Homesteads, as well as to enforce the terms of any easements which may affect The Preserve.

9. GENERAL PROVISIONS.

A. **COVENANT ENFORCEMENT PROCEDURE BY HOMESTEAD OWNER.** In the event a Homestead owner desires to enforce these Declaration against a party whom it believes is violating these Covenants, the complaining party shall first submit in writing to the Board of Directors of the Association a description of the provision at issue and the reason for a contention that it is being violated. A copy of this letter, at the complaining party's expense, shall simultaneously be mailed to every Homestead owner. The alleged offending party, at the same time, shall be provided a copy of the complaining party's letter, and at his or her expense shall have thirty (30) days within which to submit to the Board of Directors and every Homestead owner a written response thereto. Within ten (10) days of receipt of said response, any Homestead owner may advise the Board of Directors of his or her views, but should he or she elect to do so, all Homestead owners must be provided written notice thereof at the time said views are made known to the Board of Directors of the Association. Within twenty (20) days after receipt of the written complaint, a meeting will be arranged between the complaining party, the alleged offending party, and the Board of Directors of the Association for the purpose of finding a mutually agreeable solution to the dispute. In the event that a mutually agreeable solution is found, it shall be legally binding on the

complaining party and alleged offending party. However, should a mutually agreeable solution not be achieved, the Board of Directors of the Association shall send to the complaining parties a written final resolution of the matter within twenty (20) days after the initial meeting. Each Homestead owner shall similarly receive a copy of the final resolution.

All disputes, claims and controversies arising from this process shall be subject to binding arbitration pursuant to the commercial arbitration rules of the American Arbitration Association; provided, however, that unless a written demand for arbitration be made by one of the parties to a dispute within twenty (20) days after the issuance of the Board of Directors' final resolution of the dispute, the resolution shall be deemed final, and any right to seek arbitration, judicial relief, or an appeal of any kind shall be deemed waived. The arbitration provided hereunder shall be deemed binding arbitration in that the determination of the arbiters shall be final and not subject to appeal to any court of law or other forum. The final resolution of the Board of Directors shall be entitled to great weight in any arbitration proceeding as an interpretive ruling of what the provision at issue means and what is required thereunder.

The Board of Directors, in the form of a final resolution to a dispute may direct the offending party to cease and desist or to rectify any violative act or conduct at his or her expense, and any Homestead owner or the Association may seek to judicially enforce the final resolution and covenant at issue in the courts of the State of New Mexico. In such judicial proceeding, should a judgment be entered adopting an interpretation of this Declaration consistent with and in reference to the final resolution of the Board of Directors, the party against whom said final resolution was addressed and who failed to voluntarily abide by the final resolution, shall and must pay all the prevailing party's costs and attorney's fees.

B. COVENANT ENFORCEMENT BY ASSOCIATION OR HERITAGE.

Heritage and the Association shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, rules, regulations, standards, liens, or charges now or hereafter imposed under the provisions of this Declaration. Such actions shall include the right to damages and an injunction, without the posting of bond or other security. Failure of the Association or Heritage to enforce any violations shall in no event be deemed a waiver of the right to do so thereafter, except as expressly provided herein, and in no event shall such failure create a cause of action against the Association or Heritage. In the event the Association or Heritage successfully enforces any provision of this Declaration, any rules, regulations, and standards of the Association or the Design Committee, or By-Law provisions of the Association, by way of legal action or otherwise, the Association or Heritage shall be entitled to an award of costs, expenses and reasonable attorney's fees incurred relative to such enforcement action. No party may compel the Association or Heritage to bring action against an owner of any Homestead.

C. LIMITATION OF ACTIONS. No party shall have the right to bring any action related to any claimed non-compliance of any structure with any

restrictions, conditions, covenants, reservations contained in this Declaration or the rules, standards or regulations of the Association or the Design Committee, or By-Law provisions of the Association more than one (1) year after the completion of the structure; provided however, that this one (1) year period shall not commence to run until the completion of any repairs or modifications which have been agreed to be undertaken by a Homestead owner in order to remedy any such violation. This period of limitations shall not apply to the location of any structure in any easement area granted or reserved for the use of the Homestead owners and/or the Association. Further, nothing in this section shall be read or construed to limit the right of an aggrieved party to bring an action or other proceeding in order to remedy other continuing conduct or conditions which are in violation of this Declaration or the rules, regulations or By-Laws of the Association or the Design Committee.

D. DURATION AND AMENDMENT.

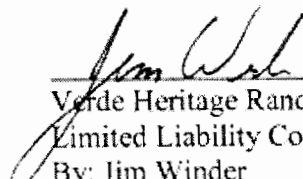
(1) DURATION OF RESTRICTIONS. The covenants, conditions, and restrictions contained in this Declaration are to run with the land and shall inure to the benefit of and be binding upon all persons claiming under them for a period of ninety-nine (99) years from the date of recording of the Declaration; provided, however, that upon the twenty-fifth (25th) year anniversary, the fifty (50) year anniversary and seventy-fifth (75th) year anniversary of the recording of this Declaration, the Association shall establish a procedure for seeking the input of the Homestead owners as to any suggested changes or modifications to this Declaration, and shall submit all changes or modifications which the Association deems appropriate to a vote of the full membership. Any changes or modifications submitted to the vote of the full membership at these intervals as set forth in this Paragraph 9 (D) (1) shall require the consent of at least fifty-five percent (55%) of the then Homestead owners.

(2) AMENDMENT OR MODIFICATION. During the Transition Period, this Declaration may be changed by Heritage upon prior written notification to all Homestead owners. Thereafter, except as provided in Paragraph 9 (D) (1) above, this Declaration may be amended or modified only with the consent of seventy-five percent (75%) of the then Homestead owners.

E. PARTIAL INVALIDATION. In the event any one or more of the provisions of this Declaration are declared for any reason, by a court of competent jurisdiction, to be null and void, the judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate, or nullify any of the provisions not declared to be void or unenforceable, but all of the remaining provisions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect.

F. TITLES. The titles to the articles, sections and paragraphs of this Declaration are for convenience only and shall not be deemed to control or assist interpretation or enforcement of this Declaration.

WITNESS MY HAND this 27th day of November, 2006.


Verde Heritage Ranch, LLC, a Delaware
Limited Liability Company
By: Jim Winder
Vice President

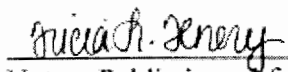
ACKNOWLEDGMENT FOR NATURAL PERSONS

THE STATE OF NEW MEXICO)

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COUNTY OF DONA ANA)

This instrument was acknowledged before me on this 27th day of November, 2006 by Jim Winder, Vice President of Verde Heritage Ranch, LLC, a Delaware limited liability company, for and on behalf of said limited liability company.


Notary Public in and for the
State of New Mexico

My commission expires: 4/26/2010



OFFICIAL SEAL
TRICIA L. TENERY
NOTARY PUBLIC - STATE OF NEW MEXICO
My Commission Expires: Apr. 26, 2010

TORRANCE COUNTY
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Book 322 Page 3000
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Record and return to:

Laura Hamilton
Verde Heritage Ranch, LLC
201 E. Main Street, 4th Floor
El Paso, TX 79901

Cross-Reference to:

Amended and Restated Declaration at:

Book 311, Page 79, Instr. No. 2065305

and

Declaration of Annexation at:

Book 314, Page 1962, Instr. No. 2073854

**THIRD AMENDMENT TO
AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS
AND GRANT OF EASEMENTS FOR DEER CANYON PRESERVE
TORRANCE COUNTY, NEW MEXICO**

This Third Amendment to Amended and Restated Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County, New Mexico ("**Amendment**") is made this 30th day of April, 2010, by Verde Heritage Ranch, LLC, a Delaware limited liability company ("**Heritage**").

WHEREAS, that certain Declaration of Protective Covenants and Grant of Easements was recorded in the records of the Clerk of Torrance County, New Mexico on November 1, 2002 in Book 296, Page 213, *et seq.*, as Instrument Number 2025380 ("**Original Declaration**"), which document has been amended and supplemented by that certain Amended and Restated Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County, New Mexico recorded in the aforesaid records on November 28, 2006 in Book 311, Page 79, *et seq.*, as Instrument Number 2065305 ("**A&R Declaration**"); by that certain Declaration of Annexation of Deer Canyon Preserve Phase 3 to the Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County, New Mexico recorded in the aforesaid records on August 22, 2007 in Book 314, Page 1962, *et seq.*, as Instrument Number 2073854 ("**Phase III Declaration of Annexation**"); by that First Amendment to Amended and Restated Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County, New Mexico recorded in the aforesaid records on August 27, 2008 in Book 317, Page 3026 as Instrument Number 2083096 ("**First Amendment**"); and by that Second Amendment to Amended and Restated Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County, New Mexico recorded in the aforesaid records on December 22, 2009 in Book 321, Page 159 as Instrument Number 002094089 ("**Second Amendment**") (the Original Declaration, as amended

and supplemented by the A&R Declaration, the Phase III Declaration of Annexation, the First Amendment and the Second Amendment, is referred to herein as the "**Declaration**"; and

WHEREAS, pursuant to Paragraph 9(D)(2) of the Declaration, the Declaration may be amended by Heritage during the Transition Period (as defined in the Declaration) upon prior written notification to all Homestead owners ("Owners"); and

WHEREAS, the Transition Period has not expired; and

WHEREAS, Heritage has notified all Owners in writing prior to adoption of this Amendment;

NOW, THEREFORE, Paragraph 2 of the Declaration, as previously amended by the Second Amendment, is hereby further amended to DELETE the last subparagraph thereof, which begins with the clause, "Notwithstanding the above [...]".

IN WITNESS WHEREOF, Verde Heritage Ranch, LLC, by and through its authorized representative, has executed this Amendment as of the date first above written.

VERDE HERITAGE RANCH, LLC, a
Delaware limited liability company

By: _____

Name: Justin Ruby

Its: Vice President

STATE OF Texas

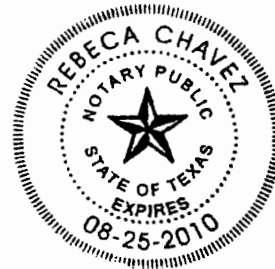
COUNTY OF El Paso

This instrument was acknowledged before me this 30th day of April, 2010, by Justin Ruby, VP of Verde Heritage Ranch, LLC, a Delaware limited liability company, for and on behalf of said limited liability company for the purposes therein contained.

Notary Public

[Notary Seal]

My Commission Expires: 8-25-2010





Record and return to:

Laura Hamilton
Verde Heritage Ranch, LLC
201 E. Main Street, 4th Floor
El Paso, TX 79901

Cross-Reference to:

Amended and Restated Declaration at:
Book 311, Page 79, Instr. No. 2065305
and Declaration of Annexation at:
Book 314, Page 1962, Instr. No. 2073854

**FOURTH AMENDMENT TO
AMENDED AND RESTATED DECLARATION OF PROTECTIVE COVENANTS
AND GRANT OF EASEMENTS FOR DEER CANYON PRESERVE
TORRANCE COUNTY, NEW MEXICO**

This Fourth Amendment to Amended and Restated Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County, New Mexico ("**Amendment**") is made this 19th day of October, 2010, by Verde Heritage Ranch, LLC, a Delaware limited liability company ("**Heritage**").

WHEREAS, that certain Declaration of Protective Covenants and Grant of Easements was recorded in the records of the Clerk of Torrance County, New Mexico on November 1, 2002 in Book 296, Page 213, *et seq.*, as Instrument Number 2025380 ("**Original Declaration**"), which document has been amended and supplemented by that certain Amended and Restated Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County, New Mexico recorded in the aforesaid records on November 28, 2006 in Book 311, Page 79, *et seq.*, as Instrument Number 2065305 ("**A&R Declaration**"); by that certain Declaration of Annexation of Deer Canyon Preserve Phase 3 to the Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County, New Mexico recorded in the aforesaid records on August 22, 2007 in Book 314, Page 1962, *et seq.*, as Instrument Number 2073854 ("**Phase III Declaration of Annexation**"); by that First Amendment to Amended and Restated Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County, New Mexico recorded in the aforesaid records on August 27, 2008 in Book 317, Page 3026 as Instrument Number 2083096 ("**First Amendment**"); by that Second Amendment to Amended and Restated Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County, New Mexico recorded in the aforesaid records on

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December 22, 2009 in Book 321, Page 159 as Instrument Number 002094089 ("**Second Amendment**"); by that Third Amendment to Amended and Restated Declaration of Protective Covenants and Grant of Easements for Deer Canyon Preserve, Torrance County, New Mexico recorded in the aforesaid records on May 3, 2010 in Book 322, Page 3000 as Instrument Number 002101398 ("**Third Amendment**") (the Original Declaration, as amended and supplemented by the A&R Declaration, the Phase III Declaration of Annexation, the First Amendment, the Second Amendment and the Third Amendment, is referred to herein as the "**Declaration**"); and

WHEREAS, pursuant to Paragraph 9(D)(2) of the Declaration, the Declaration may be amended by Heritage during the Transition Period (as defined in the Declaration) upon prior written notification to all Homestead owners ("Owners"); and

WHEREAS, the Transition Period has not expired; and

WHEREAS, Heritage has notified all Owners in writing prior to adoption of this Amendment; and

WHEREAS, a majority of the Homestead owners have approved this Amendment.

NOW, THEREFORE, Paragraph 8.B. of the Declaration, as previously amended by the Second Amendment, is hereby further amended to DELETE the last subparagraph thereof, which begins with the clause, "Commencing January 1, 2008, the Board [...]". The last subparagraph of Paragraph 8.B. is hereby amended to state "Commencing January 1, 2011, the Board shall set the annual assessment at an equal rate for all Homesteads which are subject to assessment hereunder (such rate being referred to as the "full rate"). Grandfathered Homesteads (as defined in the Second Amendment) shall be subject to the equal rate for all Homesteads.

IN WITNESS WHEREOF, Verde Heritage Ranch, LLC, by and through its authorized representative, has executed this Amendment as of the date first above written.

VERDE HERITAGE RANCH, LLC, a
Delaware limited liability company

By: 

Name: Justin Ruby

Its: Vice President

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BY SYLVIA

State of Texas

County of El Paso

This instrument was acknowledged before me on this 14th day of October 2010,
by Justin Ruby, VP of Verde Heritage Ranch, LLC, a Delaware limited liability company,
for and on behalf of said limited liability company for the purposes therein contained.

Marie A. Aguirre
Notary Public

My Commission Expires: March 17, 2013

[Notary Seal]



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BY SYLVIA