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Luke Cooley
Judge of Probate
Houston County, Alabama

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

GROVE PARK

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DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS

FOR

GROVE PARK

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of the date set forth on the signature page hereof by 84 West, Inc., an Alabama corporation (the "Declarant").

Declarant is the owner of the real property located in Houston County, which is described on the attached Exhibit A and incorporated by reference. This Declaration imposes upon the Properties (as defined in Article 1 below) mutually beneficial restrictions under a general plan of improvement for the benefit of the owners of each portion of the Properties and establishes a flexible and reasonable procedure for the overall development, administration, maintenance and preservation of the Properties. In furtherance of such plan, Declarant has caused or intends to cause the Grove Park Community Association, Inc., to be formed as a non-profit corporation to own, operate and maintain the Common Area (as defined below) and to administer and enforce the provisions of this Declaration, the By-Laws, and the Design Guidelines (as these terms are defined below).

Declarant hereby declares that all of the property described on Exhibit A and any additional property subjected to this Declaration shall be held, sold, used and conveyed subject to the following easements, restrictions, covenants, and conditions, which shall run with the title to the real property subjected to this Declaration. This Declaration shall be binding upon all parties having any right, title, or interest in any portion of the Properties, their heirs, successors, successors-in-title, and assigns, and shall inure to the benefit of each owner of any portion of the Properties.

Article 1. DEFINITIONS

The terms in this Declaration and the attached exhibits shall generally be given their natural, commonly accepted definitions except as otherwise specified. Capitalized terms shall be defined as set forth below.

- 1.1. "ARB": The Architectural Review Board, as described in Article 9.
- 1.2. "Area of Common Responsibility": The Common Area, together with those areas including without limitation any rights-of-way, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenant, contract or agreement.
- 1.3. "Articles of Incorporation" or "Articles": The Articles of Incorporation of Grove Park Community Association, Inc., as filed with the Probate Office of Houston County, Alabama.
- 1.4. "Association": Grove Park Community Association, Inc., an Alabama non-profit corporation, its successors or assigns.

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1.5. "Board of Directors" or "Board": The body responsible for administration of the Association, selected as provided in the By-Laws and serving as the board of directors under Alabama corporate law.

1.6. "Builder": Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers or who purchases one or more parcels of land within the Properties for further subdivision, development and/or resale in the ordinary course of such Person's business.

Any Person occupying or leasing a Unit for residential purposes shall cease to be considered a Builder immediately upon occupation of the Unit for residential purposes, notwithstanding that such Person originally purchased the Unit for the purpose of constructing improvements for later sale to consumers.

1.7. "By-Laws": The By-Laws of Grove Park Community Association, Inc. as they may be amended from time to time.

1.8. "City": The City of Dothan, Alabama.

1.9. "Common Area": All real and personal property, including easements, which the Association owns, leases or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners.

1.10. "Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to this Declaration, the By-Laws, and the Articles.

1.11. "Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing throughout the Properties. Such standard shall initially be established by the Declarant and may be more specifically determined by the Board of Directors and the Architectural Review Board.

1.12. "Covenant to Share Costs": Any agreement or contract between the Association and an owner or operator of property adjacent to the Properties for the allocation of expenses that benefit both the Association and the owner or operator of the adjacent property.

1.13. "Declarant": 84 West, Inc., an Alabama corporation, or any successor, successor-in-title, or assign who takes title to any portion of the property described on Exhibit A or Exhibit B for the purpose of development and/or sale and who is designated as the Declarant in a recorded instrument executed by the immediately preceding Declarant; provided, however, that there shall be only one Person entitled to exercise the rights and powers of the "Declarant" hereunder at any one time.

1.14. "Design Guidelines": The design and construction guidelines and application and review procedures applicable to the Properties promulgated and administered pursuant to Article 9.

1.15. "Exclusive Common Area": A portion of the Common Area intended for exclusive use or primary benefit of one or more, but less than all Units, as more particularly described in Article 2.

1.16. "General Assessment": Assessments levied on all Units subject to assessment under Article 8 to fund Common Expenses for the general benefit of all Units, as more particularly described in Sections 8.1 and 8.3.

1.17. "Majority": Those votes, Owners, Members, or other group, as the context may indicate, totaling more than fifty percent (50%) of the total eligible number.

1.18. "Master Plan": The land use plan or development plan for "Grove Park" as such plan may be amended from time to time, which includes the property described on Exhibit A and all or a portion of the property described on Exhibit B that Declarant may from time to time anticipate subjecting to this Declaration. Inclusion of property on the Master Plan shall not, under any circumstances, obligate Declarant to subject such property to this Declaration, nor shall the exclusion of property described on Exhibit B from the Master Plan bar its later annexation in accordance with Article 7.

1.19. "Member": A Person subject to membership in the Association pursuant to Article 3.

1.20. "Mortgage": A mortgage, a deed of trust, a deed to secure debt, or any other form of security instrument affecting title to any Unit.

1.21. "Mortgagee": A beneficiary or holder of a Mortgage.

1.22. "Owner": One or more Persons who hold the recorded title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation. If a Unit is sold under a recorded contract of sale, and the contract specifically so provides, the purchaser (rather than the fee owner) will be considered the Owner.

1.23. "Person": A natural person, a corporation, a partnership, a limited liability company, a fiduciary acting on behalf of another Person, or any other legal entity.

1.24. "Properties": The real property described on Exhibit A, together with such additional property as is subjected to this Declaration in accordance with Article 7.

1.25. "Public Records": The Official Records of the Probate Court of Houston County, Alabama, or such other place which is designated as the official location for recording of deeds and similar documents affecting title to real estate.

1.26. "Special Assessment": Assessments levied in accordance with Section 8.5.

1.27. "Specific Assessment": Assessments levied in accordance with Section 8.6.

1.28. "Supplemental Declaration": An instrument filed in the Public Records pursuant to Article 7 which subjects additional property to this Declaration and/or imposes, expressly or by reference, additional restrictions and obligations on the land described in such instrument.

1.29. "Unit": A portion of the Properties, whether improved or unimproved, which may be independently owned and conveyed and which is intended for development, use, and occupancy as a residence for a single family. The term shall refer to the land, if any, which is part of the Unit as well as any improvements thereon. The term shall include vacant land intended for development, but shall not include Common Area, or property dedicated to the public. In the case of an unplatted parcel of land, such parcel shall be deemed to be a single Unit until such time as a subdivision plat is filed of record on all or a portion of the parcel. Thereafter, the portion encompassed by such plat shall contain the number of Units

determined as set forth in the preceding paragraph and any portion not encompassed by such part shall continue to be treated in accordance with this paragraph.

Article 2. PROPERTY RIGHTS

2.1. Common Area. Every Owner shall have a right and nonexclusive easement of use, access, and enjoyment in and to the Common Area which is appurtenant to and passes with title to each Unit, subject to:

- (a) this Declaration and any other applicable covenants;
- (b) any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) the right of the Board to adopt, amend, and repeal rules regulating the use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
- (d) the right of the Board to allow persons other than Owners, their families, lessees and guests to use any recreational or social facilities situated upon the Common Area upon payment of use fees established by the Board;
- (e) the right of the Board to impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated on the Common Area;
- (f) the right of the Board to suspend the right of an Owner to use recreational and social facilities within the Common Area pursuant to Section 4.4;
- (g) the right of the Association, acting through the Board, to dedicate or transfer all or any part of the Common Area subject to such approval requirements as may be set forth in this Declaration, including without limitation the approval requirements set forth in Section 12.7;
- (h) the right of the Association, acting through the Board, to mortgage, pledge, or hypothecate any or all of its real or personal property as security for money borrowed or debts incurred, subject to the approval requirements set forth in Sections 2.6 and 12.7;
- (i) the right of the Declarant to conduct activities within the Common Area, such as charitable events, and promotional events and to restrict Members from using the Common Area during such activities, provided such activities shall be conducted in a manner to minimize (to the extent reasonably possible) any substantial interference with the Members' use and enjoyment of the Common Area and shall not exceed seven (7) consecutive days; and
- (j) the rights of certain Owners to the exclusive use of portions of the Common Area designated Exclusive Common Area pursuant to Section 2.2.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit.

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2.2. Exclusive Common Area. Certain portions of the Common Area may be designated as Exclusive Common Area and reserved for the exclusive use or primary benefit of Owners and occupants of specified Units. By way of illustration and not limitation, Exclusive Common Areas may include entry features, private streets, recreational facilities, landscaped medians and cut-de-sacs, and other portions of the Common Area within a particular neighborhood. All costs associated with maintenance, repair, replacement, and insurance of an Exclusive Common Area shall be assessed as a Specific Assessment against the Owners of Units to which the Exclusive Common Areas are assigned.

Exclusive Common Area shall be designated as such, and the exclusive use thereof shall be assigned, in the deed by which the Common Area is conveyed to the Association, this Declaration, a Supplemental Declaration and/or on the subdivision plat relating to such Common Area; provided however, any such assignment shall not preclude the Declarant from later assigning use of the same Exclusive Common Area to additional Units so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration. Thereafter, a portion of the Common Area may be assigned as Exclusive Common Area of particular Units and Exclusive Common Area may be reassigned upon approval of the Board and the Majority vote of the total Class "A" Members in the Association, including, if applicable, a Majority vote of the Class "A" Members to which the Exclusive Common Area is assigned, if previously assigned, and to which the Exclusive Common Area is to be assigned or reassigned.

The Association may, upon approval of a Majority vote of the Class "A" Members to which any Exclusive Common Area is assigned, permit Owners of other Units to use all or a portion of such Exclusive Common Area upon payment of reasonable user fees, which fees shall be used to offset the Specific Assessments attributable to such Exclusive Common Area.

2.3. Erosion Control and Buffer Zones. Portions of the Properties may be subject to erosion control ordinances, easements, deed restrictions and/or plat restrictions which may require drainage areas and/or non-disturbance buffers between the Properties and adjoining subdivisions. Use of the Properties by the Owners shall be governed by applicable erosion control ordinances and any easements governing erosion control recorded in the Public Records.

2.4. No Partition. Except as permitted in this Declaration, there shall be no judicial partition of the Common Area. No Person shall seek any judicial partition unless the portion of the Common Area which is the subject of such partition action has been removed from the provisions of this Declaration. This Article shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

2.5. Condemnation. If any part of the Common Area shall be taken by any authority having the power of condemnation or eminent domain (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least sixty-seven percent (67%) of the vote of the Class "A" Members in the Association and the written consent of the Declarant so long as the Declarant owns any property which is subject to this Declaration, or which the Declarant may unilaterally subject to the Declaration) each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of the condemnation award or proceeds of conveyance. Any resulting award or proceeds shall be payable to the Association to be disbursed according to this Section. If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within sixty (60) days after such taking the Declarant, so long as the Declarant

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owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, and Members representing at least sixty-seven percent (67%) of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board and the ARB. The provisions of Section 6.1(c) regarding funds for the repair of damage or destruction shall apply. If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

2.6. Actions Requiring Owner Approval. The conveyance or mortgaging of Common Area, except in accordance with Section 4.3, shall require the prior approval of Members representing at least sixty-seven percent (67%) of the total Class "A" votes in the Association, including sixty-seven percent (67%) of the Class "A" votes held by Members other than Declarant, if the U.S. Department of Housing and Urban Development is insuring the Mortgage on any Unit or the U.S. Department of Veterans Affairs is guaranteeing the Mortgage on any Unit. Notwithstanding anything to the contrary in this Article, the Association, acting through the Board, may grant easements over the Common Area for installation and maintenance of utilities, and drainage and for other purposes not inconsistent with the intended use of the Common Area, without the approval of the membership.

Article 3. MEMBERSHIP AND VOTING RIGHTS

3.1. Membership. Every Owner shall be a Member of the Association. There shall be only one (1) membership per Unit. If a Unit is owned by more than one (1) Person, all co-Owners shall share the privileges of membership, subject to reasonable Board regulation and the restrictions on voting set forth in Section 3.2(c) and in the By-Laws, and all co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner, member, authorized manager or fiduciary acting on behalf of the Owner, or by any individual designated from time to time by the Owner in a written instrument delivered to the secretary of the Association.

3.2. Voting. The Association shall have two (2) classes of membership described in this Section as Class "A" and Class "B."

(a) Class "A." Class "A" Members shall be all Owners except the Class "B" Member, if any.

Class "A" Members shall have one (1) equal vote for each Unit in which they hold the interest required for membership under Section 3.1; provided however, there shall be only one (1) vote per Unit and no vote shall be exercised for any property which is exempt from assessment under Section 8.10.

Class "A" Members shall be entitled to vote on all matters as specifically set forth in this Declaration and the By-Laws, provided that, except for the matters specifically set forth in the Declaration and By-Laws, the rights and powers of the Association shall be exercised by the Board pursuant to Section 4.5.

(b) Class "B." The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the

By-Laws and the Articles. The Class "B" Member may appoint a Majority of the members of the Board of Directors until the Class "B" membership terminates. In conformance with Section 3.3 of the By-Laws, the Class "B" membership shall continue until the first to occur of the following:

- (i) when seventy-five percent (75%) of the total number of Units permitted by the Master Plan for the property described on Exhibit A and Exhibit B have had completed residences constructed thereon, which residences shall have obtained all inspections required by the local governing authority necessary prior to occupancy and have been conveyed to Persons other than Builders;
- (ii) December 31, 2010; or
- (iii) when, in its discretion, the Class "B" Member so determines.

Upon termination of the Class "B" membership, the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Unit which it owns:

(c) Exercise of Voting Rights. In any situation where a Member is entitled to exercise a vote for a Unit and there is more than one (1) Owner of the Unit, the vote for such Unit shall be exercised as the co-Owners determine among themselves and notify the secretary of the Association in writing prior to the vote being taken. Absent notice to the secretary, the Unit's vote shall be suspended if more than one (1) Person seeks to exercise it.

Article 4. RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

4.1. Function of Association. The Association shall be the entity responsible for management, maintenance, operation and control of the Area of Common Responsibility and all improvements thereon. The Association shall be the primary entity responsible for enforcement of this Declaration and such reasonable rules regulating use of the Properties as the Board may adopt pursuant to Article 10. The Association shall also be responsible for administering and enforcing the architectural standards and controls set forth in this Declaration and in the Design Guidelines. The Association shall perform its functions in accordance with the Declaration, By-Laws, Articles of Incorporation, all Supplemental Declarations, the Design Guidelines, and the rules of the Association, as amended from time to time, and the laws of the State of Alabama.

4.2. Common Area. The Association, subject to the rights of the Owners set forth in this Declaration, shall manage and control the Common Area and all improvements thereon (including, without limitation, landscaping, recreational facilities, if any, furnishings, equipment, and other personal property of the Association), and shall keep it in attractive condition and good repair, consistent with the Community-Wide Standard. The Board is specifically authorized, but not obligated, to retain or employ professional management to assist in carrying out the Association's responsibilities under this Declaration, the cost of which shall be a Common Expense.

4.3. Personal Property and Real Property for Common Use. The Association through the action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property, subject to the provisions of Sections 2.6 and 12.7. The Declarant and its designees may convey to the Association improved or unimproved real estate, or interests in real estate, located within the properties described in Exhibit A or Exhibit B, personal property and leasehold and other property interests. Such property shall be accepted by the Association and thereafter shall be maintained by the Association at its

expense for the benefit of its Members. Upon written request of Declarant, the Association shall reimburse Declarant any unimproved portions of the Properties originally conveyed by Declarant to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make adjustments in property lines.

4.4. **Enforcement.** The Board, or the covenants committee if established, may impose sanctions for violation of this Declaration, the By-Laws, any Supplemental Declaration, or any rule or regulation, after compliance with the notice and hearing procedures set forth in Section 3.25 of the By-Laws. Such sanctions may include, without limitation:

(a) imposing reasonable monetary fines which shall constitute a lien upon the Unit of the violator (In the event that any occupant, guest or invitee of a Unit violates the Declaration, the By-Laws, the Supplemental Declaration, or any rule or regulation and a fine is imposed, the fine shall first be assessed against the occupant; provided however, if the fine is not paid by the occupant within the time period set by the Board, the Owner shall pay the fine upon notice from the Board.);

(b) filing liens in the Public Records for nonpayment of assessments or fees;

(c) suspending an Owner's right to vote;

(d) suspending any Person's right to use any recreational facilities within the Common Area; provided however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(e) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than thirty (30) days delinquent in paying any assessment or other charge owed to the Association; and

(f) levying Specific Assessments to cover costs incurred in bringing a Unit into compliance in accordance with Section 8.6(b) and 9.9.

In addition, the Board, or the covenants committee if established, may elect to enforce any provision of this Declaration, the By-Laws, any Supplemental Declaration, or the rules and regulations of the Association by self-help as more particularly described in Sections 9.9 and 11.8 (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and the removal of pets that are in violation of pet rules) or by suit at law or in equity to enjoin any violation and/or to recover monetary damages.

All remedies set forth in this Declaration and the By-Laws shall be cumulative of any remedies available at law or in equity. In any action to enforce the provisions of this Declaration, the By-Laws, any Supplemental Declaration, or any rule or regulation, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys fees and court costs, reasonably incurred in such action.

The Association shall not be obligated to take action to enforce any covenant, restriction, or rule which the Board in the exercise of its business judgment determines is, or is likely to be construed as, inconsistent with applicable law, or in any case in which the Board reasonably determines that the Association's position is not strong enough to justify taking enforcement action. Any such determination

shall not be construed a waiver of the right of the Association to enforce such provision under any circumstances or prevent the Association from enforcing any other covenant, restriction or rule

4.5. Implied Rights; Board Authority. The Association may exercise any right or privilege given to it expressly by this Declaration or the By-Laws, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in this Declaration, the By-Laws, the Articles, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the membership.

4.6. Governmental Interests. For so long as the Declarant owns any property which is subject to this Declaration, or which the Declarant may unilaterally subject to this Declaration, the Declarant may designate sites within the Properties for public or quasi-public facilities. The sites may include Common Area, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

4.7. Indemnification. The Association shall indemnify every officer, director, and ARB or committee member, against all damages and expenses, including attorneys' fees, reasonably incurred in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Directors) to which he or she may be a party by reason of being or having been an officer, director, or committee or ARB member, except that such obligation to indemnify shall be limited to those actions for which liability is limited under this Section, the Articles of Incorporation and Alabama law. The officers, directors, and ARB or committee members shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers, directors and ARB or committee members shall have no personal liability with respect to any contract or other commitment made or action taken in good faith on behalf of the Association (except to the extent that such officers, directors, ARB or committee members may also be Members of the Association). The Association shall indemnify and forever hold each such officer, director and ARB or committee member harmless from any and all liability to others on account of any such contract, commitment, or action. This right to indemnification shall not be exclusive of any other rights to which any present or former officer, director, or ARB or committee member may be entitled. The Association shall, as a Common Expense, maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

4.8. Dedication of or Grant of Easement on Common Area. The Association may dedicate or grant easements across portions of the Common Area to the City, County, or to any other local, state, or federal governmental or quasi-governmental entity subject to any approval as required by Sections 2.6 and 12.7.

Article 5. MAINTENANCE

5.1. Association's Responsibility.

(a) The Association shall maintain and keep in good condition, order and repair the Area of Common Responsibility, which may include, but need not be limited to:

(i) Common Area and the facilities located therein ;

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(ii) all landscaping and other flora, parks, ponds, structures, and improvements, including any entry features whether located upon Common Area or any Unit;

(iii) all furnishings, equipment and other personal property of the Association;

(iv) any landscaping and other flora, sidewalks, greenbelts, within public rights-of-way within or abutting the Properties or upon such other public land adjacent to the Properties as deemed necessary in the discretion of the Board;

(v) such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, any Covenant to Share Costs, any declaration of easements by Declarant, or any contract or agreement for maintenance thereof entered into by the Association; and

(vi) all ponds, streams, wetlands and drainage channels located within the Properties which serve as part of the drainage and storm water retention system for the Properties, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith, except as pre-empted by any recorded declaration of easements.

The Association may, as a Common Expense, maintain property which it does not own, including, without limitation, property dedicated to the public such as greenbelts or buffer zones or provide maintenance or services related to such property over and above the level being provided by the property owner, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard.

(b) The Association shall maintain the facilities and equipment within the Area of Common Responsibility in continuous operation, except for any periods necessary, as determined by the Board, in its sole discretion, to perform required maintenance or repairs, unless Members holding sixty-seven percent (67%) of the Class "A" votes in the Association and the Class "B" Member, if any, agree in writing to discontinue such operation. Except as provided herein, the Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the written consent of the Declarant, so long as the Declarant owns any property which is subject to this Declaration, or which the Declarant may unilaterally subject to this Declaration.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Units as part of the General Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other Persons responsible for, certain portions of the Area of Common Responsibility pursuant to this Declaration, any Covenant to Share Costs, any declaration of easements, other recorded covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Area shall be a Specific Assessment against the Units to which the Exclusive Common Areas are assigned, notwithstanding that the Association is responsible for maintenance thereof.

5.2. Owner's Responsibility. Each Owner shall maintain his or her Unit and all structures, parking areas, landscaping and other improvements comprising the Unit in a manner consistent with the Community-Wide Standard and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association, the City or Houston County. In addition to any other

enforcement rights. If an Owner fails to properly perform maintenance responsibilities, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner in accordance with Section 8.6. The Association shall afford the Owner reasonable notice and an opportunity to cure the problem prior to entry, except when entry is required due to an emergency situation.

5.3. Standard of Performance. All maintenance shall be performed in a manner consistent with the Community-Wide Standard and all applicable covenants. Maintenance shall include the responsibility for repair and replacement as necessary. The Association and/or an Owner shall not be liable for any damage or injury occurring on, or arising out of the condition of, property which it does not own except to the extent that it has been negligent in the performance of its maintenance responsibilities.

5.4. Covenant to Share Costs. Adjacent to or in the vicinity of the Properties, there may be certain residential or nonresidential areas, including without limitation single family residential developments and retail, commercial, or business areas, which are not subject to this Declaration and which are neither Units nor Common Area as defined in this Declaration ("Adjacent Properties"). The owners of the Adjacent Properties shall not be Members of the Association and shall not be entitled to vote, nor shall they be subject to assessment under Article 8 of this Declaration. The Association may enter into a Covenant to Share Costs with the owners of portions of the adjacent properties which obligate the owners of the Adjacent Properties to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of the Area of Common Responsibility, which are used by or benefit jointly the owners of Adjacent Properties and the Owners within the Properties or which obligate the Association to share in certain costs associated with the maintenance, repair, replacement and insuring of portions of the Adjacent Properties, if any, which are used by or benefit jointly the owners of the Adjacent Properties and the Owners within the Properties. The owners of the Adjacent Properties shall be subject to assessment by the Association in accordance with the provisions of the Covenant to Share Costs. The owners of the Adjacent Properties shall not be subject to the restrictions contained in this Declaration except as otherwise specifically provided in the Covenant to Share Costs.

Article 6. INSURANCE AND CASUALTY LOSSES

6.1. Association Insurance.

(a) Required Coverages and Payment of Premiums. The Association, acting through its Board or its duly authorized agent, shall obtain and continue in effect the following types of insurance, if reasonably available, or if not reasonably available, the most nearly equivalent coverages as are reasonably available:

(i) Blanket property insurance covering "risks of direct physical loss" on a "special form" basis (or comparable coverage by whatever name denominated) for all insurable improvements on the Common Area, if any, and on other portions of the Area of Common Responsibility to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If such coverage is not generally available at reasonable cost, then "broad form" coverage may be substituted. The Association shall have the authority to and interest in insuring any property for which it has maintenance or repair responsibility, regardless of ownership. All property insurance policies obtained by the Association shall have policy limits sufficient to cover the full replacement cost of the insured improvements;

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(ii) Commercial general liability insurance on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association or any of its Members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least one million dollars (\$1,000,000) per occurrence with respect to bodily injury, personal injury, and property damage, provided should additional coverage and higher limits be available at reasonable cost which a reasonably prudent person would obtain, the Association shall obtain such additional coverages or limits;

(iii) Workers compensation insurance and employers liability insurance, if and to the extent required by law;

(iv) Directors and officers liability coverage;

(v) Fidelity insurance covering all Persons responsible for handling Association funds in an amount determined in the Board's best business judgment but not less than an amount equal to one-sixth (1/6) of the annual General Assessments on all Units plus reserves on hand. Fidelity insurance policies shall contain a waiver of all defenses based upon the exclusion of Persons serving without compensation; and

(vi) Such additional insurance as the Board, in its best business judgment, determines advisable, which may include, without limitation, flood insurance, fidelity insurance covering Persons responsible for the Association funds, and property insurance on insurable improvements.

Premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the General Assessment, except that premiums for insurance on Exclusive Common Areas may be included in Specific Assessments against the Units benefitted, unless the Board reasonably determines that other treatment of premiums is appropriate. In the event of an insured loss, the deductible shall be treated as part of a General Assessment or Specific Assessment in the same manner as the premiums for the applicable insurance coverage. However, if the Board reasonably determines, after notice and an opportunity to be heard in accordance with the By-Laws, that the loss is the result of the negligence or willful misconduct of one or more Owners, their guests, invitees, or lessees, then the Board may specifically assess the full amount of such deductible against such Owner(s) and their Units pursuant to Section 8.6.

(b) Policy Requirements. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified Persons, at least one of whom must be familiar with insurable replacement costs. All Association policies shall provide for a certificate of insurance to be furnished to the Association and to each Member insured upon such Member's written request. The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the policy limits satisfy the requirements of Section 6.1(a).

All insurance coverage obtained by the Board shall:

(i) be written with a company authorized to do business in the State of Alabama which satisfies the requirements of the Federal National Mortgage Association, or such other secondary mortgage market agencies or federal agencies as the Board deems appropriate;

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(ii) be written in the name of the Association as trustee for the benefited parties. Policies on the Common Areas shall be for the benefit of the Association and its Members;

(iii) not be brought into contribution with insurance purchased by Owners, occupants, or their Mortgagees individually;

(iv) contain an inflation guard endorsement; and

(v) include an agreed amount endorsement, if the policy contains a co-insurance clause.

In addition, the Board shall use reasonable efforts to secure insurance policies which list the Owners as additional insureds and provide:

(i) a waiver of subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

(ii) a waiver of the insurer's rights to repair and reconstruct instead of paying cash;

(iii) an endorsement precluding cancellation, invalidation, suspension, or non-renewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;

(iv) an endorsement excluding Owners' individual policies from consideration under any "other insurance" clause;

(v) an endorsement requiring at least thirty (30) days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal;

(vi) a cross-liability provision; and

(vii) a provision vesting in the Board exclusive authority to adjust losses; provided however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(c) Damage and Destruction. Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes. Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members representing at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within sixty (60) days after the loss not to repair or reconstruct. If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such sixty (60) day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed sixty (60) additional days. No

Mortgagee shall have the right to participate in the determination of whether the damage or destruction to the Common Area shall be repaired or reconstructed. If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association in a neat and attractive, landscaped condition consistent with the Community-Wide Standard.

Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate, shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Unit. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may levy a Special Assessment without a vote of the Members to cover the shortfall against those Owners responsible for the deductible for the applicable insurance coverage under Section 6.1(a).

6.2. Owners' Insurance. By virtue of taking title to a Unit, each Owner covenants and agrees with all other Owners and with the Association to carry property insurance for the full replacement cost of all insurable improvements on his or her Unit, less a reasonable deductible. Each Owner further covenants and agrees that in the event of damage to or destruction of structures on his or her Unit, the Owner shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article 9. Alternatively, the Owner shall clear the Unit of all debris and ruins and maintain the Unit in a neat and attractive, landscaped condition consistent with the Community-Wide Standard. The Owner shall pay any costs which are not covered by insurance proceeds.

Article 7. ANNEXATION AND WITHDRAWAL OF PROPERTY

7.1. Annexation Without Approval of Membership. Until twenty (20) years after the recording of this Declaration in the Public Records, Declarant may from time to time unilaterally subject to the provisions of this Declaration all or any portion of the real property described in Exhibit B. The Declarant may transfer or assign this right to annex property, provided that the transferee or assignee is the developer of at least a portion of the real property described in Exhibit A or Exhibit B and that such transfer is memorialized in a written, recorded instrument executed by Declarant. Annexation shall be accomplished by filing a Supplemental Declaration in the Public Records describing the property being annexed. The Supplemental Declaration shall not require the consent of Members, but shall require the consent of the owner of the property being annexed, if other than Declarant. Annexation shall be effective upon the filing for record of the Supplemental Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the property set forth in Exhibit B in any manner whatsoever.

7.2. Annexation With Approval of Membership. Subject to the provisions of Section 12.7, the Association may annex any other real property to the provisions of this Declaration with the consent of the owner of the property, the affirmative vote of Members representing a Majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the written consent of the Declarant so long as Declarant owns property subject to this Declaration or which the Declarant may unilaterally subject to this Declaration. Annexation shall be accomplished by filing a Supplemental Declaration describing the property being annexed in the Public Records. Any Supplemental Declaration under this paragraph shall be signed by the President and the Secretary of the Association, and by the

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owner of the annexed property, and by the Declarant, if the Declarant's consent is required. The annexation shall be effective upon filing the Supplemental Declaration unless otherwise provided therein.

7.3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex additional property pursuant to Section 7.1, for the purpose of removing any portion of the Properties from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Properties. Such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if not the Declarant.

7.4. Amendment. This Article shall not be amended without the prior written consent of Declarant so long as the Declarant owns any property which is subject to this Declaration or which Declarant may unilaterally subject to this Declaration.

Article 8. ASSESSMENTS

8.1. Creation of and Obligation for Assessments.

(a) Purposes and Types. There are hereby created assessments for the Common Expenses of the Association as the Board may authorize from time to time. There shall be three types of assessments: (a) General Assessments as described in Section 8.3; (b) Special Assessments as described in Section 8.5; and (c) Specific Assessments as described in Section 8.6. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to have notice of liability for these assessments and to covenant and agree to pay these assessments.

(b) Personal Obligation and Lien. All assessments, together with interest not to exceed the maximum rate allowable by law, late charges, costs of collection, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Unit against which the assessment is made until paid, as more particularly provided in Section 8.7. Each assessment, together with interest not to exceed the maximum rate allowable by law, late charges, costs of collection, and reasonable attorneys' fees, also shall be the personal obligation of the Person who was the Owner of the Unit at the time the assessment arose. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Unit by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to acquisition of title. The Association shall, upon request, furnish to any Owner liable for any type of assessment a written statement signed by an Association officer setting forth whether the assessment has been paid. This statement shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of a statement. Assessments shall be paid in the manner and on the dates as the Board may establish, which may include discounts for early payment or similar time and price differentials. Unless the Board otherwise provides, the General Assessment shall be due and payable in advance on the first (1st) day of each fiscal year. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two (2) or more installments. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require any unpaid installments or all outstanding assessments to be paid in full immediately. Any assessment or installment shall be considered delinquent on the fifteenth (15th) day following the due date unless otherwise specified by Board Resolution. No Owner is exempt from liability for assessments by non-use of Common Area, including Exclusive Common Area reserved for such Owner's use, abandonment of his Unit, or any other means. The obligation to pay assessments is a

separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

8.2. Computation of General Assessments: At least thirty (30) days before the beginning of each fiscal year, the Board shall prepare a budget covering the estimated Common Expenses during the coming year including any capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided in Section 8.4. General Assessments shall be levied equally on all Units subject to assessment. The assessment rate shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the total funds to be generated through the levy of General Assessments, the Board, in its discretion, may consider other sources of funds available to the Association, including any surplus from prior years and any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year. The Board shall send a copy of the budget and notice of the amount of the General Assessment for the upcoming year to each Owner at least thirty (30) days prior to the effective date of the budget. The budget and assessment shall become effective unless disapproved at a meeting by Members representing at least sixty-seven percent (67%) of the total Class "A" votes in the Association and by the Class "B" Member, if any. If a budget is not adopted for any year, or if the Association fails to deliver an assessment notice, then until such time as a budget is adopted, the budget in effect for the immediately preceding year shall continue for the current year and each Owner shall continue to pay General Assessments on the same basis as during the last year. Once a new budget is adopted and assessments levied, the Association may retroactively assess any shortfalls in collections.

Notwithstanding the above, during the Class "B" control period set forth in Section 3.2, there shall be a maximum General Assessment for each year. The maximum General Assessment for the fiscal year 1998 shall be \$240.00. The maximum General Assessment shall automatically increase for each subsequent fiscal year by ten percent (10%) over the maximum General Assessment of the immediately preceding fiscal year. The Association may, but shall not be required to, levy General Assessments in the amount of the maximum General Assessment each fiscal year. The maximum General Assessment for any year may be increased by an amount greater than that set forth above with the consent of Owners representing at least sixty-seven percent (67%) of the Class "A" votes represented at a duly called meeting of the membership at which a quorum is present. The ten percent (10%) increase from year to year shall be cumulative so that an increase not used during a previous year may be used in a subsequent year.

If the budget proves inadequate for any reason, the Board may prepare a revised budget for the remainder of the fiscal year. The revised budget shall become effective unless disapproved at a meeting by Members in the same manner as prescribed for the initial budget. There shall be no obligation to call a meeting for the purpose of considering the budget or any revised budget except on petition of the Members as required for special meetings in the By-Laws. The petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Section 7.1, the Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy and/or contributions of services and materials, which may be treated as either a contribution or an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any anticipated payment or contribution by the Declarant shall be conspicuously disclosed as a line item in the Common Expense budget and the treatment of the subsidy shall be made

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known to the membership. Payments or contributions by the Declarant in any year shall under no circumstances obligate the Declarant to continue payments and contributions in future years, unless otherwise provided in a written agreement between the Association and the Declarant. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

8.3. Reserve Budget and Capital Contribution. The Board, if deemed necessary in its discretion, may prepare reserve budgets which take into account the number and nature of replaceable assets within the Area of Common Responsibility, the expected life of each asset, and the expected repair or replacement cost. If reserve budgets are established, the Board shall set the required capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget over the budget period.

8.4. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or expenses in excess of those budgeted. So long as the total amount of Special Assessments allocable to a Unit does not exceed fifty percent (50%) of the General Assessment levied against a Unit for that fiscal year, the Board may impose the Special Assessment. Except as provided in Section 6.1(c) hereof, any Special Assessment which would cause the amount of Special Assessments allocable to any Unit to exceed this limitation shall require the affirmative vote or written consent of Members representing at least sixty-seven percent (67%) of the total Class "A" votes in the Association, and the written consent of the Declarant so long as the Declarant owns any property which is subject to this declaration or which Declarant may unilaterally subject to this Declaration. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved. Special Assessments shall be levied equally on all Units.

8.5. Specific Assessments.

(a) The Association shall have the power to levy Specific Assessments against a particular Unit or Units to cover the costs, including overhead and administrative costs, of providing benefits, items, or services to the Unit(s) or occupants thereof upon request of the Owner pursuant to a menu of special services which the Board may from time to time authorize (which may include without limitation garbage collection, landscape maintenance, janitorial service, pest control, etc.) This type of Specific Assessment may be levied in advance of the provision of the requested benefit, item or service as a deposit against charges to be incurred by the Owner.

(b) The Association shall have the power to levy Specific Assessments against a particular Unit or Units to cover costs incurred in bringing the Unit(s) into compliance with the terms of this Declaration, any applicable Supplemental Declaration, the By-Laws or rules, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests. The Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws before levying a Specific Assessment under this paragraph.

8.6. Lien for Assessments. The Association shall have a lien against each Unit to secure payment of delinquent assessments, interest on delinquencies at a rate set by the Board (subject to the maximum interest rate limitations under Alabama law), late charges and costs of collection (including attorneys' fees). This lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any recorded

Mortgage with first priority over other Mortgages made in good faith and for value. The lien, when delinquent, may be enforced by suit, judgment, and nonjudicial or judicial foreclosure as permitted under Alabama law. The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) the other Units shall be charged, in addition to the usual assessments, a pro rata share of the assessment allocated to the Unit owned by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same. The sale or transfer of any Unit shall not affect the assessment lien or relieve a Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first priority Mortgage shall extinguish the lien as to any installments of assessments due prior to foreclosure. A Mortgagee or other purchaser of a Unit who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on the Unit due prior to foreclosure. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment, including such acquirer, its successors and assigns.

8.7. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each Unit on the date which the Unit is conveyed to or occupied for residential purposes by a Person other than a Builder or Declarant. The first annual General Assessment levied on each Unit shall be paid, as applicable (a) at the closing of the sale to a Person other than a Builder or Declarant or (b) immediately upon demand by the Association based on the date of occupancy of the Unit for residential purposes. The first annual General Assessment shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

8.8. Failure to Assess. Failure of the Board to establish assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay General Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collection.

8.9. Exempt Property. The following property shall be exempt from payment of assessments:

(a) All Common Area and such portions of the property owned by the Declarant as are included in the Area of Common Responsibility pursuant to Section 5.1; and

(b) Any property dedicated to and accepted by any governmental or quasi-governmental authority or public utility.

8.10. Capitalization of Association. Upon acquisition of record title to a Unit by the first Owner thereof other than the Declarant or a Builder, or upon occupation of a Unit by a Person other than a Builder or Declarant, a contribution shall be made by or on behalf of the purchaser or Person occupying the Unit to the working capital of the Association in an amount equal to one-sixth (1/6) of the annual General Assessment per Unit for that year. This amount shall be in addition to, not in lieu of, the annual General Assessment and shall not be considered an advance payment of such assessment. This amount shall be collected and disbursed to the Association as applicable (a) at closing of the purchase and sale of the Unit, or, (b) immediately upon demand by the Association based on occupancy of the Unit for residential purposes. The capital contributions shall be used in covering operating expenses and other expenses incurred by the Association pursuant to this Declaration and the By-Laws.

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Article 9. ARCHITECTURAL STANDARDS

9.1. General. No exterior structure shall be placed, erected, or installed upon any Unit, and no improvements (including, but not limited to, staking, clearing, excavation, grading and other site work, exterior alteration of existing improvements, and planting or removal of landscaping materials) shall take place except in compliance with this Article, and approval of the ARB under this Article unless exempted from the application and approval requirements pursuant to Section 9.3. Any Owner may remodel, paint or redecorate the interior of structures on his Unit without approval; however, modifications to the interior of screened porches, patios, and similar portions of a Unit visible from outside the structures on the Unit shall be subject to approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications. This Article shall not apply to the activities of the Declarant. This Article may not be amended without the Declarant's written consent so long as the Declarant owns any property subject to this Declaration or which Declarant may unilaterally subject to this Declaration.

9.2. Architectural Review. Responsibility for administration of the Design Guidelines and review of all applications for construction and modifications under this Article shall be handled by the ARB, the members of which need not be Members of the Association or representatives of Members, and may, but need not, include architects, landscape architects, engineers or similar professionals, whose compensation, if any, shall be established from time to time by the ARB. The ARB may establish and charge reasonable fees for review of applications hereunder and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred by the ARB in having any application reviewed by architects, engineers or other professionals. The ARB shall have exclusive jurisdiction over all construction on any portion of the Properties. The Declarant shall have the right to appoint all members of the ARB who shall serve at the Declarant's discretion. There shall be no surrender of this right except in a written instrument in recordable form executed by Declarant. Upon the surrender of such right as set forth herein, the Board shall appoint the members of the ARB, who shall thereafter serve and may be removed in the Board's discretion.

9.3. General Guidelines and Procedures.

(a) Design Guidelines. The Declarant shall prepare the initial Design Guidelines for the Properties. The Design Guidelines may contain general provisions applicable to all of the Properties, as well as specific provisions which vary according to land use from one portion of the Properties to another depending upon the location, unique characteristics and intended use. The Design Guidelines are intended to provide guidance to Owners and Builders regarding matters of particular concern to the ARB in considering applications hereunder. The Design Guidelines are not the exclusive basis for decisions of the ARB, and compliance with the Design Guidelines does not guarantee approval of any application. The ARB shall adopt the Design Guidelines at its initial organizational meeting and thereafter shall have sole and full authority to amend them. Any amendments to the Design Guidelines shall be prospective only and shall not require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines; the ARB is expressly authorized to amend the Design Guidelines to remove requirements previously imposed or otherwise to make the Design Guidelines less restrictive.

(b) Procedures. Plans and specifications showing the nature, kind, shape, color, size, materials, and location of all proposed structures and improvements shall be submitted to the ARB for

review and a decision on approval. In reviewing each submission, the ARB may consider the quality of workmanship and design, harmony of external design with existing structures, and location in relation to surrounding structures, topography, and finish grade elevation, among other considerations. Decisions of the ARB may be based on purely aesthetic considerations. Each Owner acknowledges that opinions on aesthetic matters are subjective and may vary as ARB members change over time. In the event that the ARB fails to approve or to disapprove any application within thirty (30) business days after submission of all information and materials reasonably requested, the application shall be deemed approved. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Design Guidelines unless a variance has been granted in writing by the ARB pursuant to this Article. Notwithstanding the above, the ARB by resolution may exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

9.4. Specific Guidelines and Restrictions. The following items are strictly regulated by the ARB, and the ARB shall have the right, in its sole discretion, to prohibit or restrict these items within the Properties. Each Owner must strictly comply with the terms of this Section unless approval or waiver in writing is obtained from the ARB. The ARB may, but is not required to, adopt specific guidelines as part of the Design Guidelines, or rules and regulations which address these items.

(a) Tree Removal. Removal of trees and other natural resources without the prior written consent of the ARB is prohibited except as permitted by the Design Guidelines.

(b) Lighting. Exterior lighting visible from the street shall not be permitted except for: (i) approved lighting as originally installed on a Unit; (ii) pathway lighting; (iii) seasonal decorative lights during the usual and common season and only pursuant to rules and regulations established by the Board from time to time; or (iv) lighting permitted by the Design Guidelines.

(c) Exterior Structures. No exterior structure of any kind nor any artificial vegetation or sculpture shall be constructed, erected or placed on the outside portion of the Unit, whether such portion is improved or unimproved, except in strict compliance with the ARB. This shall include without limitation, mailboxes; basketball hoops; swing sets and similar sports and play equipment; clotheslines; garbage cans; wood piles; swimming pools; docks; hot tubs; gazebos; playhouses; window air conditioning units or fans; solar panels; antennas; satellite dishes or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind; and hedges, walls, dog runs, animal pens or fences of any kind. Notwithstanding the foregoing, the Association shall regulate antennas, satellite dishes, or any other apparatus for the transmission or reception of television, radio, satellite or other signals of any kind only in strict compliance with all federal laws and regulations.

(d) Temporary or Detached Structures. Except as may be permitted by the Declarant during initial construction, or the ARB thereafter, no temporary or detached house, dwelling, or out building shall be placed or erected on any Unit. No mobile home, trailer home, travel trailer, camper or vehicle commonly known as a "recreational vehicle" shall be stored, parked or otherwise allowed to be placed on a Unit as a temporary or permanent dwelling.

(e) Utility Lines. Overhead utility lines are not permitted, including lines for cable television, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

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(f) Signs. No sign of any kind shall be erected by an Owner or occupant without the prior written consent of the ARB except as provided in the Design Guidelines. Unless in compliance with this Article, no signs shall be posted or erected by any Owner or occupant within any portion of the Properties, including the Common Area, any Unit, or any structure or dwelling located on the Common Area or any Unit if visible from the exterior of the structure or dwelling as determined in the ARB's sole discretion. All signs must be professionally prepared. The ARB reserves the right to restrict the color, lettering and placement of all signs. This provision shall not apply to entry, directional, or other signs installed by the Declarant or its duly authorized agents as may be necessary or convenient for the marketing and development of the Properties.

(g) Window Treatments. Unless otherwise approved in writing by the ARB, all window treatments visible from outside such structure or dwelling shall be white or neutral in color.

(h) Minimum Dwelling Size. Each residential dwelling located on any Unit shall have established a minimum square footage of enclosed, heated and cooled living space in the Design Guidelines. Upon written request of an Owner, the ARB may waive the footage requirement if, in the ARB's sole discretion, the resulting appearance of such residential dwelling will preserve the overall appearance, scheme, and design within the Properties.

(i) Erosion Control. The plans for each Unit shall comply with easements, this Declaration and any City or County erosion control ordinances, if applicable.

9.5. Construction Period. The initial construction of all structures must be completed within one (1) year after issuance of a building permit, unless extended by the ARB in its sole discretion. All other construction shall be completed within the time limits established by the ARB.

9.6. No Waiver of Future Approvals. Approval of proposals, plans and specifications, or drawings for any work done or proposed, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar proposals, plans and specifications, drawings, or other matters subsequently or additionally submitted for approval.

9.7. Variance. The ARB may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the ARB from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

9.8. Limitation of Liability. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only and the ARB shall bear no responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements. Neither the Declarant, the Association, the Board, the ARB, nor member of any of the foregoing shall be held liable for any injury, damages, or loss arising out of the manner or quality of approved construction or modifications to any Unit. In all matters, the ARB, and its members shall be defended and indemnified by the Association as provided in Section 4.7.

9.9. Enforcement. Any member of the ARB or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any Unit to inspect for the purpose of ascertaining whether or not any structure or improvement is in violation of this Article. Any structure, improvement or landscaping placed or made in violation of this Article shall be deemed to be nonconforming, except to the extent that a variance has been granted pursuant to Section 9.7. Upon written request from the ARB, Owners shall, at their own cost and expense, remove such structure or improvement and restore the property to substantially the same condition as existed prior to the nonconforming work. Should an Owner fail to remove and restore as required, the Board may enforce the decisions of the ARB by any means of enforcement described in Section 4.4. In addition, the ARB shall have the right to enter the property pursuant to Section 11.8, remove the violation, and restore the property to substantially the same condition as previously existed. Entry by the ARB or its representatives onto a Unit for the purpose of inspecting or enforcing compliance with this Article shall not constitute a trespass. All costs, together with the interest at the maximum rate then allowed by law, may be assessed against the benefitted Unit and collected as a Specific Assessment which shall be subject to enforcement as set forth in Article 8.

Unless otherwise specified in writing by the ARB, all approvals granted hereunder shall be deemed conditioned upon completion of all elements of the approved work and all work previously approved with respect to the same Unit in the manner approved, unless approval to modify any application has been obtained. In the event that any Person fails to commence and diligently pursue to completion all approved work, the Association shall be authorized, after notice to the Owner of the Unit and an opportunity to be heard in accordance with the By-Laws, to enter upon the Unit and remove or complete any incomplete work and to assess all costs incurred against the Unit and the Owner thereof as a Specific Assessment, which shall be subject to enforcement pursuant to Section 8.7.

Neither the ARB, the Association, the Declarant, nor their officers, directors or members shall be held liable to any Person for exercising the rights granted by this Article. Any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of this Article or the Design Guidelines may be excluded by the ARB from the Properties, subject to the notice and hearing procedures contained in the By-Laws.

In addition to the foregoing, the Association shall have the authority and standing to pursue all legal and equitable remedies available to enforce the provisions of this Article and the decisions of the ARB.

Article 10. USE RESTRICTIONS

10.1. General Use Restrictions. This Article sets out certain use restrictions which must be complied with by all Owners and occupants of any Unit. The Properties shall be used only for residential, recreational, and related purposes (which may include, without limitation, model homes and sales offices for Builders, an information center and/or a sales office for any real estate broker approved by the Declarant to assist in the sale of property described on Exhibit A or Exhibit B, offices for any property manager retained by the Association, or business offices for the Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.

10.2. Residential Use. All Units shall be used exclusively for residential purposes and shall not be used to conduct business or trade. An Owner or occupant residing in a Unit may conduct business activities within the Unit so long as: (a) the existence or operation of the business activity is not apparent

or detectable by sight, sound, or smell from outside the Unit; (b) the business activity conforms to all zoning requirements for the Properties; (c) the business activity does not involve regular visitation of the Unit by clients, customers, suppliers, or other business invitees or door-to-door solicitation of residents of the Properties; and (d) the business activity is consistent with the residential character of the Properties and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Properties, as may be determined in the sole discretion of the Board. The terms "business" and "trade," as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part-time, (ii) such activity is intended to or does generate a profit, or a license is required. The leasing of a Unit shall not be considered a business or trade within the meaning of this Section. This Section shall not apply to any activity conducted by the Declarant or a Builder approved by the Declarant with respect to its development and sale of the Properties or its use of any Units which it owns within the Properties.

10.3. Leasing. Units may be leased for residential purposes only. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and rules and regulations of the Association. The lease shall also obligate the tenant to comply with the foregoing. The Board may require notice of any lease together with such additional information deemed necessary by the Board.

10.4. Rules and Regulations. In addition to the rules and regulations stated in this Article, the Board may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Properties. Such rules and regulations shall be distributed to all Owners and occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the Members, and the written consent of the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant.

10.5. Vehicles. All vehicles shall be subject to such reasonable rules and regulations as the Board of Directors may adopt. In addition, the following shall apply:

(a) Automobiles and non-commercial trucks and vans shall be parked only in the garages or in the driveways, if any, serving the Units unless otherwise approved by the ARB; provided however, the Declarant and/or the Association may designate certain on-street parking areas for visitors or guests subject to reasonable rules. No automobile or non-commercial truck or van may be left upon any portion of the Properties, except in a garage, if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. Such vehicle shall be considered a nuisance and may be removed from the Properties.

(b) Recreational vehicles owned by Owners or occupants of Units shall be parked only in the garages, if any, serving the Units. Any recreational vehicle parked or stored in violation of this provision in excess of two (2) days shall be considered a nuisance and may be removed from the Properties. Recreational vehicles owned by guests of Owners or occupants shall be subject to reasonable parking and storage rules and regulations as the Board of Directors may adopt. The term "recreational vehicles," as used herein, shall include, without limitation, motor homes, mobile homes, boats, trailers, other towed vehicles, motorcycles, minibikes, scooters, golf carts, go-carts, campers, buses, commercial

trucks and commercial vans. Trucks with mounted campers which are an Owner's or occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view.

10.6. Nuisance. It shall be the responsibility of each Owner and occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. The Properties shall not be used, in whole or in part, for the storage of any property or thing that will cause such Unit to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Properties, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person within the Properties. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Properties. Without limiting the generality of the foregoing, no speaker, horn, whistle, siren, bell, amplifier or other sound device, except such devices as may be used exclusively for security purposes or as approved by the ARB, shall be located, installed or maintained upon the exterior of any Unit unless required by law.

10.7. Storage of Materials, Trash, Garbage, Dumping, Etc.

(a) No lumber, metals, bulk materials, refuse, trash or other similar materials shall be kept, stored, or allowed to accumulate outside the buildings on any Unit, except during the initial construction period of the improvements to the Unit, not to exceed one (1) year in duration, and then only during periods of actual construction. In addition, during construction the building materials on any Unit shall be placed and kept in an orderly fashion. Any Unit on which construction is in progress shall be policed prior to each weekend and during the weekend all materials shall be neatly stacked or placed and any trash or waste materials shall be removed.

(b) Firewood may be stacked on a Unit only in accordance with the Design Guidelines or any rules or regulations adopted by the Board.

(c) All garbage cans shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Owners and occupants may burn or bury biodegradable trash, leaves, debris or other materials only in accordance with rules established by the Board and applicable governmental laws and regulations.

10.8. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Unit, with the exception of, dogs, cats, and other usual and common household pets in reasonable number, as determined by the Board. No animals shall be kept, bred or maintained for commercial purposes within the Units. All pets shall be reasonably controlled by the owner whenever outside a Unit and shall be kept in such a manner as to not become a nuisance by barking or other acts. The owners of the pet shall be responsible for all of the pet's actions. If, in the sole opinion of the Board, any animal becomes dangerous or an annoyance or nuisance in the Properties or to nearby property or destructive of wildlife, they shall be removed from the Properties. By way of explanation and not limitation, this Section may be enforced by exercising self-help rights provided in Section 4.4.

10.9. General Prohibitions. The following are strictly prohibited:

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(a) Guns. The discharge of firearms on the Properties. The term firearms includes without limitation "B-B" guns, pellet guns, and firearms of all types. The Board shall have no obligation to take action to prevent or stop such discharge.

(b) Combustible Liquid. Storage of gasoline, heating or other fuels, except for a reasonable amount of fuel that may be stored on each Unit for emergency purposes and operation of lawn mowers and similar tools or equipment; provided that the Association shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

10.10. Drainage and Grading.

(a) Catch basins and drainage areas are for the purpose of natural flow of water only. No improvements, obstructions or debris shall be placed in these areas. No Owner or occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains.

(b) Each Owner is responsible for maintaining all drainage areas located on its Unit. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas, and removing any accumulated debris from catch basins and drainage areas.

(c) Each Owner shall be responsible for controlling the natural and man-made water flow from its Unit. No Owner shall be entitled to overburden the drainage areas, drainage system, Properties, and/or Private Amenities with excessive water flow from its Unit. If remedial action is necessary to correct an overburdening situation, an Owner shall be required to take whatever reasonable steps are necessary to remedy any overburdening situation.

(d) Use of the areas designated as "drainage easement areas" on any recorded subdivision plat of the Properties, shall be subject to strict prohibitions against encroachment of structures into, over or across the drainage easement areas, and the right of the City and/or Declarant to go upon and maintain the drainage easement areas. Such maintenance activities may include disturbance of landscaping pursuant to the terms contained in any declaration of easements, notwithstanding approval of the landscaping as set forth in Article 9.

(e) Each Owner is responsible for maintaining all drainage areas located on its Unit. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas, and removing any accumulated debris from catch basins and drainage areas.

(f) Each Owner shall be responsible for controlling the natural and man-made water flow from its Unit. No Owner shall be entitled to overburden the drainage areas, drainage system, Properties, and/or Private Amenities with excessive water flow from its Unit. If remedial action is necessary to correct an overburdening situation, an Owner shall be required to take whatever reasonable steps are necessary to remedy any overburdening situation. Each Owner shall be responsible for controlling the natural and man-made water flow from its Unit. No Owner shall be entitled to overburden the drainage areas, drainage system, Properties, and/or Private Amenities with excessive water flow from its Unit. If remedial action is necessary to correct an overburdening situation, an Owner shall be required to take whatever reasonable steps are necessary to remedy any overburdening situation.

No Person shall alter the grading of any Unit without prior approval pursuant to Article 9 of this Declaration. The Declarant hereby reserves for itself and the Association a perpetual easement across the Properties for the purpose of altering drainage and water flow. The exercise of such an easement shall not materially diminish the value of or unreasonably interfere with the use of any Unit without the Owner's consent.

(h) All Persons shall comply with the City or County erosion control ordinances, if applicable, in construction of improvements on any Unit and in conducting any activity within non-disturbance buffer zones.

10.11. Greenbelts, Buffer Zones, and Nondisturbance Areas. The Properties may be located adjacent to other subdivisions which may be separated from the Properties by a greenbelt, buffer zone or nondisturbance area. All areas designated as "greenbelts" "buffer zones" or "nondisturbance areas" shall be generally left in a natural state, and any proposed alteration or landscaping of these areas must be in accordance with any restrictions or covenants recorded against such property and be approved by all appropriate regulatory bodies and the ARB in accordance with Article 9.

10.12. Open Spaces, Green Spaces, Parks and Recreation Areas. Owners of Units, as well as their families, tenants, guests, invitees, and pets shall refrain from any actions which deter from the enjoyment by other Owners of areas within the Properties designated as "Open Spaces", "Green Spaces", "Parks" and/or "Recreation Areas". Prohibited activities shall include without limitation, maintenance of dogs or other pets under conditions which interfere with the use of the specified areas by other Owners, playing of loud radios or musical instruments, holding of large gatherings without advance approval of the Board, and use of outdoor grills, cooking facilities, tents or other temporary structures, stages, vending machines or facilities, except for events approved in advance by the Board. The Board may promulgate other rules and restrictions for the use of these areas. This provision shall not apply to the Declarant.

10.13. Sight Distance at Intersections. All property located at street intersections or driveways shall be landscaped so as to permit safe sight across such areas.

10.14. Subdivision of Unit. No Unit shall be subdivided or its boundary lines changed after a subdivision plat depicting the Unit has been approved and filed in the Public Records. Declarant, however, hereby expressly reserves the right to replat any Unit or Units which it or any Builder owns, with the written prior consent of the owner of the Unit or Units affected. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations, if any.

10.15. Occupancy of Unfinished Units. No dwelling erected upon any Unit shall be occupied in any manner before commencement of construction or while in the course of construction, nor at any time prior to the dwelling being fully completed. For the purposes of this Section, commencement of construction shall mean that (a) all plans for such construction have been approved by the ARB; (b) a building permit has been issued for the Unit by the appropriate jurisdiction; and (c) construction of a residential dwelling on the Unit has physically commenced beyond site preparation. Completion of a dwelling shall mean substantially completion for the purposes for which it is intended or that a final inspection report has been issued by the ARB for the dwelling.

10.16. Occupants Bound. All provisions of the Declaration, By-Laws, and of any rules and regulations, use restrictions or Design Guidelines governing the conduct of Owners and establishing sanctions against Owners shall also apply to all occupants even though occupants are not specifically

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mentioned. Fines may be levied against Owners or occupants. If a fine is first levied against an occupant and is not paid timely, the fine may then be levied against the Owner.

Article 11. EASEMENTS

11.1. Easements of Encroachment. There shall be reciprocal appurtenant easements of encroachment, for maintenance and use of any permitted encroachment, between adjacent Units and between each Unit and any adjacent ~~Common Area~~ ~~due to the unintentional placement or settling or shifting~~ of the improvements constructed, reconstructed or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than one foot (with respect to encroachment) and three (3) feet (with respect to maintenance) as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.2. Easements for Utilities, Etc.

(a) There are hereby reserved to the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which the Declarant may unilaterally subject to this Declaration, the Association, and the designees of each (which may include, without limitation, any governmental or quasi-governmental entity and any utility company, whether public or private) perpetual non-exclusive easements upon, across, over, and under all of the Properties (but not through a structure) to the extent reasonably necessary for the purpose of installing, constructing, monitoring, replacing, repairing, maintaining, operating and removing cable television or master antenna systems and other devices for sending or receiving data and/or other electronic signals; security and similar systems; roads and walkways; pathways and trails; wetlands and drainage systems; irrigation systems, street lights; signage; and all utilities including but not limited to water, sewers, telephone, gas, and electricity and utility meters; and an easement for access of vehicular and pedestrian traffic over, across and through the Properties, as necessary, to exercise the above-described easements. Declarant specifically grants to the local water supplier, electric company, telephone company, cable television company and natural gas supplier easements across the Properties for ingress, egress, installation, reading, replacing, repairing, and maintaining utility lines, meters and boxes, as applicable.

(b) There is hereby reserved to the Declarant, so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibit A or Exhibit B.

(c) Any damage to a Unit resulting from the exercise of the easements described in paragraphs (a) and (b) of this Section shall promptly be repaired by, and at the expense of, the Person exercising the easement. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

(d) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time,

(ii) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (iii) to define the limits of any such easements.

11.3. Easement for Slope Control and Drainage Maintenance. The Declarant, for itself and the Association, and their respective representatives, successors and assigns, contractors and agents, hereby establishes and reserves a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon each Unit for the purposes of:

- (a) controlling soil erosion, including grading and planting with vegetation any areas of any Unit which are or may be subject to soil erosion and complying with local erosion control ordinances, if any;
- (b) drainage of natural or man-made water flow and water areas from any portion of the Properties;
- (c) changing, modifying or altering the natural flow of water, water courses or waterways on or adjacent to any Unit;
- (d) dredging, enlarging, reducing or maintaining any water areas or waterways within the Properties; and
- (e) installing such pipes, lines, conduits, or other equipment or facilities as may be necessary for slope control, drainage and waterway maintenance of any portion of the Properties.

The easement rights reserved are perpetual and run with and are appurtenant to title to the Properties and constitute a perpetual burden upon the drainage easement areas. The rights reserved include without limitation the right of the Declarant to go upon the drainage easement areas to effect maintenance, repair and replacement, and to disturb existing landscaping within the drainage easement areas and to temporarily pile dirt and plant material upon the drainage easement areas, provided the area is restored to a neat and attractive condition to the extent practical, as soon as reasonably possible after completion of the activities authorized hereunder. Landscaping and structures in the drainage easement areas are subject to removal in the reasonable discretion of Declarant in the ordinary course of maintenance of the drainage facilities. Such landscaping and structures shall be installed in conformance with Article 9 herein.

11.4. Easement for Greenbelt, Open Space, Nondisturbance, Park and Recreation Area Maintenance.

(a) The Declarant reserves for itself and its successors, assigns, and designees the nonexclusive right and easement, but not the obligation, to enter upon greenbelts, buffer zones, nondisturbance, open spaces, park and recreation areas located within the Area of Common Responsibility to remove trash and other debris therefrom and fulfill maintenance responsibilities as provided in this Declaration. The Declarant's rights and easements provided in this Section shall be transferred to the Association at such time as the Declarant shall cease to own any property subject to the Declaration, or such earlier time as Declarant may elect, in its sole discretion, to transfer such rights by a written instrument. The Declarant, the Association, and their designees shall have an access easement over and across any of the Properties or Units abutting or containing any portion of greenbelt, buffer zone, nondisturbance, open space, or park or recreation area to the extent reasonably necessary to exercise their rights under this Section.

(b) Encroachment of structures into, over, or across greenbelts, buffer zones and nondisturbance, open spaces, park and recreation areas shown on any recorded subdivision plat of the Properties is strictly prohibited. Landscaping in these areas is subject to removal in the reasonable discretion of Declarant in the ordinary course of maintenance of these areas. Any landscaping permitted shall be installed in conformance with Article 9 herein. All persons entitled to exercise these easements shall use reasonable care in, and repair any damage resulting from the intentional exercise of such easements.

(c) Declarant reserves unto itself the right, in the exercise of its sole discretion, upon the request of any Person holding, or intending to hold, an interest in the Properties, or at any other time, (i) to release all or any portion of the Properties from the burden, effect, and encumbrance of any of the easements granted or reserved under this Section, or (ii) to define the limits of any such easements.

11.5. Easements to Serve Additional Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of the property described in Exhibit B, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities and improvements on such property. In addition, Declarant reserves the non-exclusive right and power to grant such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any property described on Exhibit A or Exhibit B.

11.6. Easement for Right of Entry. The Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Unit, for emergency, security, and safety reasons. Such right may be exercised by the authorized agents, employees, officers and managers of the Association, any member of its Board, or committees of the Association and shall not constitute a trespass. All police officers, fire fighters, ambulance personnel, and similar emergency personnel in the performance of their duties are hereby granted a perpetual easement for entry. Except in emergencies, entry onto a Unit shall be only during reasonable hours and after notice to and permission from the Owner. The easements granted in this Section include the right to enter any Unit to cure any condition which may increase the risk of fire, immediate danger of personal injury or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Board, but shall not authorize entry into any dwelling without permission of the Owner, except by emergency personnel acting in their official capacities.

11.7. Easement for Maintenance and Enforcement. Authorized agents of the Association shall have the right, and a perpetual easement is hereby granted to the Association, to enter all portions of the Properties, including each Unit to (a) perform its maintenance responsibilities under Article 5, (b) make inspections to ensure compliance with this Declaration, any Supplemental Declaration, By-Laws, Design Guidelines and rules, and (c) abate or remove, using such measures as may be reasonably necessary, any structure, thing or condition which violates the Declaration, any Supplemental Declaration, the By-Laws, the Design Guidelines, or rules passed thereunder. Except in emergencies, entry onto a Unit shall be only during reasonable hours. Entry hereunder shall not constitute a trespass. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage beyond the scope of the maintenance or enforcement shall be repaired by the Association at its expense.

11.8. Easement for Lateral Support. Every portion of the Common Area, every Unit, and any improvement which contributes to the lateral support of another portion of the Common Area or of another

Unit shall be burdened with an easement for lateral support, and each shall also have the right to lateral support which shall be appurtenant to and pass with title to such property.

11.9. Liability for Use of Easements. No Owner shall have a claim or cause of action against the Declarant, its successors or assigns, arising out of the exercise or non-exercise of any easement reserved hereunder or shown on any subdivision plat for the Properties, except in cases of willful or wanton misconduct.

11.10. Non-Merger. Notwithstanding the fact that Declarant is the current owner of the Properties, it is the express intention of Declarant that the easements in Articles 2 and 11 herein established for the benefit of the Properties and Owners shall not merge into the fee simple estate of individual lots conveyed by Declarant or its successor, but that the estates of the Declarant and individual lot owners shall remain as separate and distinct estates. Any conveyance of all or a portion of the Properties shall be subject to the terms and provisions of this Declaration, regardless of whether the instrument of conveyance refers to this Declaration.

11.11. Grants. The parties hereby declare that this Declaration, and the easements created hereunder in Articles 2 and 11 shall be and constitute covenants running with the fee simple estate of the Properties. The grants of easements in this Declaration are independent of any covenants and contractual agreements undertaken by the parties in this Declaration and a breach by either party of any such covenants or contractual agreements shall not cause or result in a forfeiture or reversion of the easements granted in this Declaration.

Article 12. MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Properties. The provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

12.1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Properties or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of sixty (60) days, or any other violation of the Declaration or By-Laws relating to such Unit or the Owner or Occupant which is not cured within sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of Eligible Holders.

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12.2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least sixty-seven (67%) of the first Mortgagees or Members representing at least sixty-seven (67%) of the total Association vote consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Area which the Association owns, directly or indirectly (neither the conveyance of property in accordance with Section 4.3 nor the granting of easements for utilities or other similar purposes consistent with the intended use of the Common Area shall be deemed a transfer within the meaning of this paragraph);

(b) Change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Unit (a decision by the Board, entry into a covenant to share costs, or provisions of a declaration subsequently recorded regarding Specific Assessments for Exclusive Common Area shall not be subject to this provision);

(c) By act or omission change, waive, or abandon any scheme of regulations or enforcement pertaining to architectural design, exterior appearance or maintenance of Units and the Common Area (the issuance and amendment of Design Guidelines, architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

12.3. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Unit in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

12.4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Unit.

12.5. Construction of Article 12. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Alabama law for any of the acts set out in this Article.

12.6. Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of

the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

12.7. HUD/VA Approval. Notwithstanding anything contained in this Declaration to the contrary, as long as there is a Class "B" membership, the following actions shall require the prior approval of the U.S. Department of Housing and Urban Development, so long as it is insuring the Mortgage on any Unit, or the U.S. Department of Veterans Affairs, so long as it is guaranteeing the Mortgage on any Unit: merger, consolidation or dissolution of the Association; annexation of additional property other than that property described on Exhibit B; dedication, conveyance or mortgaging of Common Area except in accordance with Section 4.3; or material amendment of this Declaration, the By-Laws or the Articles.

Article 13. DECLARANT'S RIGHTS

13.1. Transfer to Association. Any or all of the special rights and obligations of the Declarant set forth in this Declaration or the By-Laws may be transferred or assigned in whole or in part to other Persons. No such transfer or assignment shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the Public Records.

13.2. Development. The Declarant and Builders authorized by Declarant may maintain and carry on upon portions of the Properties such facilities and activities as, in the sole opinion of the Declarant, may be reasonably required, convenient, or incidental to the development of the Properties, and/or construction or sale of Units, including, but not limited to, business offices, signs, model homes, and sales offices. The Declarant and authorized Builders shall have easements for access to and use of such facilities.

13.3. Improvements to Common Area. The Declarant and its employees, agents and designees shall also have a right and easement over and upon all the Common Area as it deems appropriate in its sole discretion.

13.4. Additional Declarations. No Person shall record any declaration of covenants, conditions and restrictions, declaration of easements or similar instrument affecting any portion of the Properties without Declarant's review and written consent. Any attempted recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed by the Declarant and recorded in the Public Records.

13.5. Amendments. Notwithstanding any contrary provision of this Declaration, no amendment to or modification of any use restrictions, rules or Design Guidelines made after termination of the Class "B" membership shall be effective without prior notice to and the written consent of Declarant so long as the Declarant owns any property which is subject to this Declaration or which Declarant may unilaterally subject to the Declaration. This Article may not be amended without the written consent of the Declarant. The rights contained in this Article shall terminate upon the earlier of (a) twenty (20) years from the date this Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

13.6. Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the Properties to additional covenants and easements, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through General or Specific Assessments. Such additional covenants and easements shall be set forth in a Supplemental Declaration filed either concurrently with or after the

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alienation of the subject property, and shall require the written consent of the owners of such property if other than the Declarant. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

Article 14. GENERAL PROVISIONS

14.1. Duration.

(a) Unless terminated as provided in this Section or unless otherwise limited by Alabama law, this Declaration shall have perpetual duration. If Alabama law hereafter limits the period during which covenants may run with the land, then, unless terminated as provided herein or, if such termination method is not consistent with Alabama law, in such other manner as required by Alabama law, this Declaration shall automatically be extended at the expiration of such period for successive periods of twenty (20) years each. Notwithstanding the above, if any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(b) Unless otherwise provided by Alabama law, this Declaration may be terminated within the first twenty (20) years after the date of recording by an instrument signed by Owners of at least ninety percent (90%) of the total Units within the Properties, which instrument is recorded in the Public Records; provided, however, regardless of the provisions of Alabama law, this Declaration may not be terminated without the prior written consent of the Declarant so long as the Declarant owns any property which is subject to this Declaration or which the Declarant may unilaterally subject to this Declaration. After twenty (20) years from the date of recording, this Declaration may be terminated only by an instrument signed by Owners owning at least fifty-one percent (51%) of the Units and constituting at least fifty-one percent (51%) of the total number of Owners; and by the Declarant, if the Declarant owns any portion of the Properties, which instrument complies and is recorded in the Public Records. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

14.2. Amendment.

(a) By Declarant. Subject to the provisions of Section 12.7, Declarant may unilaterally amend this Declaration for any purpose until termination of the Class "B" membership. Thereafter, the Declarant may unilaterally amend this Declaration at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of Mortgage loans, including for example, the Department of Veterans Affairs, the Federal Housing Administration, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation, to make, purchase, insure or guarantee Mortgage loans on the Units; or (iv) to satisfy the requirements of any local, state or federal governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. In addition, so long as the Declarant owns property which is subject to this Declaration or which Declarant may unilaterally subject to this Declaration, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Members. Except as otherwise specifically provided above and elsewhere in this Declaration including without limitation Section 12.7, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members holding at least sixty-seven percent (67%) of the total Class "A" votes in the Association, including sixty-seven percent (67%) of the Class "A" votes held by Members other than the Declarant, and the consent of the Declarant, so long as the Declarant owns any property which is subject to this Declaration, or which Declarant may unilaterally subject to this Declaration. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) Validity and Effective Date. Any amendment to the Declaration shall become effective upon recording in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration. No amendment may remove, revoke, or modify any right or privilege of the Declarant or the Class "B" Member without the written consent of the Declarant, the Class "B" Member, or the assignee of such right or privilege. If an Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment.

14.3. Severability. Invalidation of any provision of this Declaration, in whole or in part, or any application of a provision of this Declaration by judgment or court order shall in no way affect other provisions or applications.

14.4. Alternative Dispute Resolution. It is the intent of the Association and the Declarant to encourage the amicable resolution of disputes involving the Properties and to avoid the emotional and financial costs of litigation if at all possible. Accordingly, the Association, the Declarant and each Owner covenants and agrees that it shall attempt to resolve all claims, grievances or disputes involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of this Declaration, the By-Laws, the Association rules, or the Articles through alternative dispute resolution methods, such as mediation and arbitration. To foster the amicable resolution of disputes, the Board may adopt alternative dispute resolution procedures. Participation in alternative dispute resolution procedures shall be voluntary and confidential. Should either party conclude that such discussions have become unproductive or unwarranted, then the parties may proceed with litigation.

14.5. Litigation. Except as provided below, no judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of Members holding seventy-five percent (75%) of the total Class "A" votes in the Association and the consent of Class "B" Member. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens); (b) the imposition and collection of assessments as provided in Article 8; (c) proceedings involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) actions brought by the Association against any contractor, vendor, or supplier of goods and services arising out of a contract for services or supplies. This Section shall not be amended unless such amendment is approved by the percentage of votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

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