

# HIGHLANDS SOUTH OWNERS ASSOCIATION, INC. Covenants, Conditions and Restrictions

## Summary of Article V – General Restrictions

This is a summary only—all owners are responsible for obtaining a copy of the Covenants, Conditions and Restrictions of Highlands South Owners Association, Inc. and complying with Rules and Regulations.

**Section 1 – Residential Use.** Lots will be used for single family residential purposes only.

Section 1A No loud or obnoxious activities.

Section 1B No breeding of animals. No more than three dogs and/or cats.

**Section 2 - Limitation of Size and Location of Structures**—all structures, including out buildings will be built according to the Building Guidelines of Highlands South and The Village at Highlands South which are provided by the Developer.

**Section 3 - Exterior lighting** is subject to Architectural Review.

**Section 4 – Utilities.** Utility lines are located underground. All utility boxes, meters, etc. must be screened from view. Utility providers have the easement to boxes.

**Section 5 – Maintenance.** All lots, even vacant lots, must be continuously maintained and landscaping must be completed within one month of construction completion.

**Section 6 – Accumulation of Refuse.** Builders must provide dumpsters on construction sites. No outside burning unless during construction.

**Section 7 – Landscaping.** No weeds, underbrush or unsightly growth shall be permitted, to include natural areas.

**Section 8 – Tree Removal.** No trees shall be removed without the consent of the A.C.C. except dead or diseased trees or trees or in the immediate location of home to be built.

**Section 9 – Outbuildings.** Outbuilding will be built with same materials and same style as main structure and approved by A.C.C. in advance. No portable buildings are allowed.

**Section 10 – Fencing.** No chain link fencing. No fencing on the front of any lot. All other fencing must be approved in advance by A.C.C. All pools and pool equipment must be contained within approved fencing.

**Section 11 – Signs.** Signs are not allowed unless approved in advance by the A.C.C.

**Section 12 – Garages.** Garage openings will not front home unless approved in advance by the A.C.C.

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**Section 13 – HVAC Equipment.** HVAC equipment must be in either side or back yards and screened or hidden from view with shrubbery or approved fencing. No wall or window units are allowed.

**Section 14 – Satellite Dishes.** Satellite dishes must be placed at rear of building.

**Section 15 – Solar Collectors.** Solar collectors must have A.C.C. approval.

**Section 16 – Animals and Pets.** Pets will be controlled and leashed by owner when outside the home and will not be allowed to become a nuisance by loud and obnoxious acts. Owners of pets must retrieve pets solid waste.

**Section 17 – Recreational Vehicles.** No boat, boat trailer, house trailer, horse trailer, motorcycle trailer, golf cart, personal watercraft, ATV, lawnmower, camper, motor or any similar items will be stored on any lot in excess of 24 hours.

**Section 18 – Commercial Vehicles.** No commercial vehicles, including limousines, are allowed unless making deliveries or pick ups.

**Section 19 – Remedies.** Remedies for Vehicle and Recreational Vehicle Violations apply to all.

**Section 20 – Vehicles.** Vehicles will be parked in garage or driveway only. Unlicensed vehicles must be garaged. No tarps allowed.

**Section 21 – Vehicle Maintenance.** Vehicle maintenance or repair should be performed in garage.

**Section 22 – Leasing.** Leasing of homes is allowed and tenant must acknowledge receipt of the Covenants, Conditions and Restrictions and be held to compliance.

**Section 23 – Rules and Regulations.** Rules and regulations of the Association may be changed or added to.

**Section 24 – Guns, Fireworks.** Discharging of guns, pellet guns, bb guns, and fireworks are prohibited.

**Section 25 – Drainage.** Drainage areas must be maintained by owner. All owners must comply with local municipal, state and federal guidelines.

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**Section 26 – Common Area Use.** Owners, their families, guests and pets will refrain from any activities which deter from the enjoyment of other Members in the Common Areas. Owners rights to use Common Areas may be rescinded by the Association for noncompliance.

**Section 27 – Play Equipment, Treehouses.** Play equipment and treehouses, etc. must be approved in advance by A.C.C.

**Section 28 – Street Trees.** Street trees are the responsibility of owner to maintain and replace as needed.

**Section 29 – Clothes Lines.** Clothes lines only allowed if not visible from any adjoining property.

**Section 30 – Mailboxes.** Mailboxes are the responsibility of owner to purchase and maintain.

**Section 31 Trash and Garbage Receptacles.** Garbage cans must be screened and placed at curb and removed from curb on day of pick up.

**Section 32 – Transmission Equipment.** No ham radios or transmission equipment, or antennas are allowed.

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OF

HIGHLANDS SOUTH OWNERS ASSOCIATION, INC.

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

OF

HIGHLANDS SOUTH OWNERS ASSOCIATION, INC.

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS, is made this 16th day of May, 2006, by Wheelless Development, Ltd., hereinafter referred to as the "Declarant";

WHEREAS, Declarant is the owner of certain real property in the City of Dothan, Houston County, Alabama which is more particularly described in Exhibit "A" (hereinafter referred to as the "total property") attached hereto and incorporated herein by reference to develop same as Highlands South and The Village;

WHEREAS, Declarant intends to develop the "total property" as a residential community and by virtue of this Declaration is on this date committing the "total property" to this Declaration;

WHEREAS, Declarant has caused the Highlands South Owners Association, Inc. to be formed as a master association for the purpose of providing a nonprofit corporation to serve as a representative of Declarant and owners of Highlands South and The Village which is hereinafter made the subject of this Declaration, to enforce these covenants;

WHEREAS, the Declarant desires to establish and enforce uniform standards of development quality and to provide for the effective preservation of the appearance, value and amenities of the "total property", which establishment, enforcement and preservation shall benefit all owners of the property located thereon and, to that end, desires to subject said real property to the protective covenants, conditions and restrictions herein contained, all of which are for the benefit of said real property and the owners thereof; and

NOW, THEREFORE, Declarant hereby declares that all of the property, described in Exhibit "A" (hereinafter referred to as "properties") attached hereto and incorporated herein by reference shall be held, sold and conveyed or encumbered, used, occupied and improved, subject to the following easements, restrictions, covenants and conditions, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any rights, title or interest in the described property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. The restrictions contained herein shall not apply to or effect any real property described in Exhibit "A" or otherwise, which is not subjected specifically by written instrument to this Declaration.

ARTICLE I

DEFINITIONS

Section 1. "Access Easement" shall mean the easement for vehicles and pedestrian ingress and egress depicted on the subdivision map and further referred to in Article II hereof.

Section 2. "Architectural Committee" shall mean the committee created pursuant to Article IV hereof and sometimes referred to herein as the "Architectural Control Committee" or the "A.C.C."

Section 3. "Area of Common Responsibility" shall mean the common area, together with those areas, if any, which by the terms of this Declaration, any supplemental Declaration or other applicable covenants, contract, or agreement become the responsibility of the Association.

Section 4. "Architectural Committee Rules" shall mean rules, guidelines or regulations, if any, which may be adopted by the Architectural Committee.

Section 5. "Articles" shall mean the Articles of Incorporation of the Association, as said Articles may be amended from time to time.

Section 6. "Association" shall mean and refer to Highlands South Owners Association, Inc., an Alabama Nonprofit Corporation, and its successors and assigns.

Section 7. "Annual Base Assessments" shall mean assessments established by the Board of Directors to fund common expenses for the general benefit of all lots.

Section 8. "Base Assessment" shall mean assessments of the Association to fund the common expenses for the general benefit of all lots.

Section 9. "Benefitted Assessments" shall mean assessments specifically assessed against lots receiving benefits, items, or services not provided to all lots within a neighborhood or within the properties that are incurred upon request of the owner of a lot for specific items or services relating to the lot or a consequence of the conduct of less than all owners, their licensees, invitees, or guests.

Section 10. "Board" or "Board of Directors" shall mean the Board of Directors of the Association.

Section 11. "Bylaws" shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

Section 12. "Common Area" shall mean all real property (including improvements thereto) now owned, hereinafter owned or held by the Association for the common use and enjoyment of the owners. The Common Area owned by the Association at the time of this Declaration is described as follows: (See Exhibit "C" attached hereto).

Section 13. "Association Expenses" shall mean and include the actual and estimated expenses of operating the Association, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Articles of Incorporation and Bylaws of the Association.

Section 14. "Declaration" shall mean this entire document, as same may from time to time be amended or supplemented.

Section 15. "Declarant" shall mean Wheelless Development, Ltd., its successors, or assigns.

Section 16. "Exclusive Common Areas" shall mean a portion of the common area intended for the exclusive use or primary benefit of the Neighborhood, as more particularly described in the Declaration.

Section 17. "Guidelines" shall mean the building guidelines as adopted by the Declarant or the Architectural Committee to date and as hereinafter amended; a true and correct copy of the Guidelines in existence at this date are attached hereto as Exhibit "A".

Section 18. "Improvement" shall mean the buildings, garages, road, driveways, walls, hedges, plantings, planted trees and shrubs, and all other structures or landscaping improvements of every type and kind.

Section 19. "Lot" shall mean and refer to the individual lots as reflected in the subdivision map, as the same may be amended from time to time. A lot shall be deemed "developed" when the offsite streets and utilities have been completely installed. A lot shall be deemed "improved" when a residence has been completely constructed thereon. All other lots shall be deemed "undeveloped lots".

Section 20. "Member" shall mean any person who is a member of the Association. Every owner shall be a member. Unless otherwise specified, any required vote of the members shall be computed by allowing each member the number of votes equal to the number of lots owned by such member.

Section 21. "Neighborhood" shall mean and refer to a geographical area or areas, comprised of one or more types of housing areas designated initially or made subject to this Declaration by amendment. In the absence of a specific designation of separate neighborhood status, all property made subject to the Declaration shall be considered a part of the same neighborhood.

Section 22. "Owner" shall mean and refer to the record owner, whether one or more persons or entities of fee simple title to any lot or residence. "Owner" shall include the Declarant. The foregoing does not include persons or entities who hold an interest in any lot merely as security for the performance of an obligation. Unless otherwise specified, any required vote of the owners shall be computed by allowing each owner the number of votes equal to the number of lots owned by such owner.

Section 23. "Properties" shall mean and refer to the real property described in Exhibit "A" attached hereto and incorporated by reference and shall further refer to such additional property as may hereinafter be annexed by subsequent amendment to this Declaration or which is owned or acquired by the association.

Section 24. "Protective Covenants" shall mean all of the Covenants, Conditions and Restrictions contained in this entire Declaration, together with any amendments thereto.

Section 25. "Residence" shall mean a portion of the development designated on an approved layout plan or subdivision plat, as more particularly described below, for any type of independent use and occupancy as a residence by a single family unit. For example, each single family detached home shall constitute a residence. Residence shall include all portions of the land owned as well as any structure

thereon, as described above.

Section 26. "Single Family Unit" shall mean a group of one or more persons each related to the other by blood, marriage or legal adoption or a group of not more than three persons not all so related, who maintain a common household in a dwelling.

Section 27. "Special Assessments" shall mean assessments by the Association which may be levied from time to time to cover unbudgeted expenses or expenses in excess of those budgeted and as more fully described in the Declaration.

Section 28. "Subdivision Map" shall mean a recorded map or plat covering any or all of the property referred to in this Declaration, and any amendments or supplements thereof, which may be recorded in the Office of the Judge of Probate of Houston County, Alabama.

Section 29. "Supplementary Declaration" shall mean an amendment to the Declaration subjecting additional property to the Declaration.

## ARTICLE II

### EASEMENTS

Section 1. Easements and Use Agreements. Easements, Restrictions, Covenants, and Conditions which shall run with the real property and be binding on all parties having any right, title or interest in the above described property, or in any part thereof, their heirs, successors and assigns are hereby created as follows:

(a) Easements to be Dedicated by Plat or Survey. Easements across the common area for access, parking, water, gas, telephone, electricity, sewer or other utilities, and drainage will be dedicated to the utility companies, municipality, county or other supervisory jurisdiction as from time to time may be necessary, all as set out in said plat or survey.

(b) Additional Agreements. This Declaration is further made subject to any other easements or agreements that may be required by any other governmental agency having supervisory authority over subject property.

(c) Additional Covenants and Easements. The Declarant may unilaterally subject any portion of the property submitted to this Declaration initially or by supplementary Declaration 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 Neighborhood Assessments. Such additional covenants and easements shall be set forth in a supplementary Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the owner(s) of such property, if other than the Declarant.

(d) Owner's Easements of Enjoyment. Every owner of a lot shall have a right of use and enjoyment in and to the common areas which said right of use and enjoyment shall be appurtenant to and shall pass

with the title for every lot subject to the following provisions:

1. The right of the Association from time to time to make and amend reasonable regulations concerning the use of the common areas of the property in accordance with the provisions therefore in the Articles of Incorporation and Bylaws. Copies of all such regulations and amendments shall be furnished by the Association to all owners and residents upon request;

2. The right of the Association to charge reasonable admission and other fees for the use and enjoyment of any recreational facility situated upon the common area;

3. The right of the Association to suspend the voting rights and right to use and enjoyment of the recreational facilities on any common area by any owner for any period during which any assessment against his lot remains unpaid; and for a period not to exceed sixty (60) days for infraction of any published rules and regulations the Association may formulate;

4. The right of the Association to dedicate or transfer all or any part of the common areas to any public agency, authority, utility for such purposes and subject to such conditions as may be agreed to by the members of the Association. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each class of members agreeing to such dedication or transfer has been recorded.

(e) Delegation of Use. Any owner may delegate, in accordance with the Bylaws, his right of use and enjoyment to the common areas and facilities to the members of his family, his family guests, lessees, or contract purchasers who reside on the property.

(f) Indemnity for Damages. Each and every owner and future owner, in accepting a deed or contract for any lot subject to this declaration, agrees to indemnify the Association and Declarant, its successors and assigns for any damage caused by such owner, or the contractor, agent or employees or such owner, to roads, street, gutters, walkways or other aspects of common areas including all surfacing thereon or to water, a drainage or a storm sewer lines or sanitary sewer lines.

(g) Indemnification of Declarant. The Association agrees to indemnify and hold harmless Declarant, his heirs, assigns and successors from any and all liability arising out of accidental death or injury on the common area, including all costs and attorneys' fees resulting from or arising out of such death or injury.

Section 2. Easement for Emergency. Authorized agents of 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 lot, for emergency, security, and safety reasons. Except in emergencies, entry onto a lot shall be only during reasonable hours and after notice to and permission from the owner thereof. This easement includes the right to enter any lot to cure any condition which increases the risk of fire or other hazard if an owner fails or refuses to cure the condition within a reasonable time after request by the Board, but does not authorize entry into any dwelling without permission of the owner.

Section 3. Easements for Maintenance and Enforcement. Authorized agents of 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 lot to (a) perform its maintenance responsibilities under Article VIII, and (b) make inspections to ensure compliance with this Declaration, any Supplementary Declaration, Bylaws, and any rules or regulations. Except in emergencies, entry onto a lot shall be only during reasonable hours and after notice to and permission from the owner. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense. This easement does not authorize entry into any dwelling without permission of the Owner.

The Association also may enter a lot to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates the Declaration, the Bylaws, or the rules. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Specific Assessment.

Section 4. Easements to Serve Total 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 "A", 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 on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for a permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the costs of maintenance of the access roadway serving such property.

### ARTICLE III

#### ADDITIONAL DOCUMENTS

All owners shall be and are required to execute such other documents as are necessary or convenient to effectuate the intent of the Declaration with respect to all easements which may be created pursuant to this Declaration.

### ARTICLE IV

#### ARCHITECTURAL CONTROL

Section 1. The general architectural objective of the Declarant is to create parcels of residences constructed of traditional styles, and within architectural guidelines to be formulated by an architectural

committee. The guidelines of the architectural committee will be designed to enhance the appearance of the entire development and maintain the value and integrity of the property within the development. The guidelines shall be those of the association and the architectural committee shall have full authority to prepare and amend the same. The guidelines shall be made available to owners who seek to engage in development of or construction upon any portion of the property subject to this Declaration.

Section 2. Method of Architectural Control. So as to establish and maintain the above architectural criteria, no improvement or structure of any kind, including, without limitation, any building, fence, wall, sign, lighting system, site paving, grading, parking lot, screen enclosure, sewer drain, disposal system, decorative building, landscaping, landscape device or object, shall be commenced, erected, placed or maintained upon a lot, nor shall any addition, change or alteration therein, thereof or thereto be made, unless and until the plans and specifications, showing the color, nature, kind, shape, materials and location of the same shall have been submitted to and approved in writing by the Architectural Committee. All plans and specifications must meet the written guidelines formulated by the Architectural Committee and shall be evaluated as to, among other things, the harmony of external design and location in relation to the surrounding structures and topography.

Section 3. Architectural Committee Membership. The Architectural Committee shall consist of three (3) members, none of which shall be required to be an owner, or to meet any other particular requirements. The term of the members of the architectural committee shall be at the discretion of Declarant.

Section 4. Release. Neither the Architectural Committee nor any member thereof shall be liable to any owner or to any other party for any damage, loss or prejudice suffered on account of the approval or disapproval of any plans, drawings or specifications, whether or not defective, or the execution or filing of any action, motion, certificate, petition or protest in the courts of the United States or the State of Alabama, or with any other governmental board or body, whether or not the facts stated therein are true and correct.

Section 5. Powers and Duties. The Architectural Committee shall have the following powers and duties:

- (a) To formulate guidelines consistent with the architectural objective as hereinabove stated.
- (b) To form committees, to regulate and be responsible for the control of new construction and modification.
- (c) To require submission to the Architectural Committee of plans and specifications for any improvement or structure of any kind, and any change, modification or alteration thereof, including, without limitation, any such improvement or change to any home, fence, wall, sign, lighting system, site paving, grading, screen enclosure, sewer, drain, disposal system, landscaping or landscape device or object, the construction or placement of which is or is proposed upon any lot. Such plans and specifications shall be in

such form and contain such information as may be reasonably required by the Architectural Committee and shall include but not necessarily be limited to:

1. An accurately drawn and dimensional plot plan showing all set backs, easements, drives and walks.
2. Floor plan and exterior elevations of the single family residence.
3. All plans must include a specifications list of proposed materials and samples of exterior materials which cannot be adequately described on the plans, and of materials with which the Architectural Committee is unfamiliar.
4. The name and address of the lot owner's general contractor who will construct the residence or any other improvements to the lot.
5. The Architectural Committee may also require such additional information as reasonably may be necessary for the Architectural Committee to evaluate completely the proposed structure or improvement or general contractor in accordance with this Declaration. All information submitted to the Architectural Committee.

(d) The Architectural Committee shall approve or disapprove the submitted plans and specifications for any improvement, residence or structure as hereinabove described prior to commencement of construction of such improvement, home or structure within thirty (30) days of submission of the documentation required herein. Partial submissions shall not be permitted. In the event the Architectural Committee shall fail, for a period of thirty (30) days from the date of receipt of such submission to approve or disapprove any plans or specifications submitted to it for approval or the general contractor, the same shall be deemed to have been approved. The approval by the Architectural Committee of plans and specifications submitted for its approval, as herein specified, shall not be deemed to be a waiver by the Architectural Committee of the right to object to any other features or elements embodied in such plans or specifications if and when the same features and elements are embodied in any subsequently plans and specifications submitted for approval for use on other lots. If any improvement or structure as aforesaid shall be completed, changed, modified or altered without the prior approval of the Architectural Committee or shall not be completed, changed, modified or altered in accordance with the approvals granted by the Architectural Committee or the lot owner engages a general contractor other than the approved general contractor, then the owner shall, upon and in accordance with a demand by the Architectural Committee, cause the property, improvement or structure either to be restored to its original condition or to comply with the plans and specifications as adopted by the Architectural Committee or engage another approved general contractor, and shall bear all costs and reasonable attorneys' fees of the Architectural Committee. Notwithstanding the aforesaid, after the expiration of one (1) year from the date of final completion of any such improvement or structure, such improvement or structure shall be deemed to comply with all of the

provisions hereto unless prior to the expiration of said one (1) year either notice to the contrary shall have been recorded in the Office of the Judge of Probate of Houston County, Alabama or written notification shall have been forwarded to the owner by the Association. Any agent or member of the Architectural Committee may at any reasonable time enter any building or property subject to the jurisdiction of the Architectural Committee which is under construction or owned or in which the agent or member may believe that a violation of these protective covenants is occurring or has occurred. Prior to the use or occupancy of any improvement or structure constructed or erected on any lot, the owner thereof shall apply for a certificate from the Architectural Committee that the construction thereof has been completed in accordance with the plans and specifications approved by the Architectural Committee. In the event that the Architectural Committee shall fail, for a period of ten (10) days from the date of receipt of such application, to give or deny such certification, the same shall be deemed to have been given. The Architectural Committee may from time to time, designate to a person or persons the right to approve or disapprove plans or specifications and to issue such certification.

(e) To adopt fees which shall be designed to reimburse the Architectural Committee for the necessary and reasonable costs incurred by it in processing requests for Architectural Committee approval of any matters under its jurisdiction. Such fees, if any, should be payable to the Architectural Committee, in cash, at the time that any application for approval is sought from the Architectural Committee.

(f) The Architectural Committee may enforce the provisions of this Declaration regarding Architectural Control, any guidelines formulated by the Architectural Committee or other regulations pertaining to Architectural Control by initiation of an action for damages and/or injunctive relief and/or specific performance, by way of example but not limitation, and in the event an action at law or in equity is brought or initiated by the Architectural Committee, the Architectural Committee shall be entitled to recover a reasonable attorneys' fee in addition to any other relief which may be awarded as a result of such action.

(g) Neither the Architectural Committee nor any architect or agent thereof nor the Declarant or the Highlands South Owners Association, Inc. shall be responsible to check for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications. The scope of review by the Architectural Control Committee is limited to appearance only and does not include any responsibility or authority to review for structural soundness, compliance with building or zoning codes or standards or any other similar or dissimilar factors.

(h) The initial three members of the Architectural Committee appointed by the Declaration are as follows: Hugh W. Wheelless, Jr., Charles Waid and Brett Parrish.

(i) Amendment. This Article may not be amended without Declarant's written consent so long as the Declarant owns any land described in Exhibit "A" hereof.

**ARTICLE V**  
**GENERAL RESTRICTIONS**

The Board of Directors is hereby empowered to promulgate and enforce a general standard of behavior and use of properties within Highlands South and The Village. Therefore the Board of Directors is hereinafter empowered to enforce the following general restrictions as set forth in the policy for enforcement herein.

Section 1. Residential Use. All lots shall be used for single family residential purposes exclusively. No business or business activity shall be carried on in or upon any residence at any time except with the written approval of the board. Leasing of a residence shall not be considered a business or business activity. However, the board may require a prior board approval of any residential leases. Furthermore, the board may permit residences to be used for business purposes so long as such business, in the sole discretion of the board, does not otherwise violate the provisions of the Declaration or Bylaws, and does not create a disturbance. The board may issue rulings regarding permitted business activities. Prohibited uses include, but are not limited to:

- (a) Dangerous, noxious, offensive or excessively noisome activities which may be or become an annoyance or nuisance to Owners; and
- (b) Raising, breeding, or keeping of any animals, bird or fowl; provided that an Owner shall be permitted to keep not more than three dogs and/or cats as domestic pets on a single Lot and provided further that the Architectural Committee or Association may approve more animals to be kept as domestic pets on a lot if such animals are to be kept in an enclosed area approved by the Architectural Committee; and
- (c) Exploring, mining, boring, quarrying, drilling, or otherwise removing oil or other hydrocarbons, minerals, gravel or natural gas;
- (d) Use of a dwelling house by more than a single family unit.

Any owner may request from the Architectural Committee at any time a determination of whether a prospective use of a lot is permitted. A certificate to that effect signed by a majority of the Architectural Committee shall be deemed to be dispositive of the issue.

Section 2. Limitation on Size and Location of Structures. In addition to the general restrictions contained in this Declaration, the following specific limitations shall apply to the following Neighborhood:

I. Highlands South and The Village at Highlands South.

- (a) No structure shall be erected, altered, placed or permitted to remain on any lot other than a main single family dwelling not to exceed two and one-half stories (or 35 feet in height) and a private garage for not more than four cars unless otherwise approved in writing by the Architectural Committee. No detached building other than the main single family dwelling shall be constructed or permitted on any lot unless

previously approved by the Architectural Committee.

(b) No building shall be located on any lot nearer to the front lot line of said lot as shown by the minimum building set back line shown on the subdivision plat or map. For the purpose of this covenant, eaves, steps and open decks, pools, or terraces shall not be considered part of the building.

(c) Each main structure residential building, including outbuildings shall be built according to the Building Guidelines of Highlands South and The Village at Highlands South which is determined and provided by the Declarant.

(d) No device may be constructed or installed upon any lot which shall in any way alter the course or natural boundaries of the waterway or which shall involve or result in the removal of water from any waterway without the prior written approval of the architectural committee.

(e) The owner of each lot abutting the water's edge shall release and discharge the Declarant, and the Association from any and all claims for debt or damage sustained by owner or existing owner's favor, to owner, owner's property or property rights hereafter to be sustained or to accrue by reason or account of the use of said water's edge.

(f) No building shall be located nearer to the front or rear of said lot than the minimum building set back line as shown on the subdivision map or plat.

Section 3. Exterior Lighting. All exterior lighting shall be subject to the review of the Architectural Committee.

Section 4. Utilities. To the extent of interest of the owner of a lot, the owner of a lot will not erect or grant to any person, firm or corporation the right, license, or privilege to erect or use or permit the use of overhead wires, poles, or overhead facilities of any kind for electrical or telephone service on said real estate without the prior written consent of the Architectural Committee. All electrical and telecommunication lines located upon any lot and property subject to this declaration shall be installed and maintained underground. All transformer boxes, meters or other such fixtures shall be adequately screened with plants or other materials approved by the Architectural Control Committee; provided that no planting or screening devices shall be placed as to obstruct the normal servicing of either transformers, telephone pedestals or other utility hardware. Utility providers have the rights and easements in connection with any construction, operation and maintenance and removal of underground service on each lot and may enter said lot for these purposes.

Section 5. Maintenance. All structures, landscaping and other improvements upon individual lots shall be continuously maintained by the owner thereof so as to preserve a well kept appearance, especially along the perimeters of any lot, including a vacant lot. Lots must be kept neat, clean, orderly, free of debris and litter, mowed, and/or trimmed including natural areas. Landscaping, including grassing, planting of shrubs, trees, flowers and other aesthetic features as described in the architectural guidelines of the

Association shall be completed within one (1) month from the completion of the main structure of any residence.

Section 6. Accumulation of Refuse. No lumber, metals, bulk materials (except lumber, metals, bulk materials as is usual in the maintenance of a private residence and which must be stored in such a manner so that it cannot be seen from adjacent and surrounding property) refuse or trash shall be kept, stored, or allowed to accumulate on any part of the properties except building materials during the course of construction of any approved structure. Builders must provide dumpsters on the property during the construction period. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open, on any day that a pickup is to be made, at such place on the lot to provide access to persons making such pickup. Garbage containers shall be kept in a clean and sanitary condition and shall be so placed or screened by shrubbery or other appropriate material approved in writing by the Architectural Committee as not to be visible from any road or from adjacent and surrounding property. The Architectural Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on any lot. See Section 31. No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted, except during the construction period, or except as specifically approved by the Architectural Committee.

Section 7. Landscaping. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any part of a lot including natural areas and no refuse pile or unsightly object shall be allowed to be placed or suffered to remain upon any part of a lot, including undeveloped lot. Owners will be required to keep undeveloped lots safe, neat, clean, orderly, free of debris and litter, mowed and/or trimmed within thirty (30) feet of the front line of said lot or parcel and thirty (30) feet of the side line of any corner lot or parcel. This provision shall not apply to the Declarant.

Section 8. Tree Removal. No trees shall be removed without the expressed consent of the Architectural Committee, except for (a) diseased or dead trees; (b) trees needing to be removed to promote the growth of other trees; (c) trees needing to be removed for safety reasons; or (d) trees in the immediate location of a building approved by the Architectural Committee.

Section 9. Outbuildings, Exterior and Temporary Structures. No structure of a temporary character, trailer, tent, lean-to or shack shall be used at any time as a residence either temporarily or permanently. No storage building of any type shall be permitted unless such building is designed as part of the main residential structure and approved by the Architectural Committee. Walls, hedges, ornamental garden structures and/or statues shall be approved in advance by the A.C.C. Screen pool enclosures must be approved in advance by the Architectural Control Committee.

Section 10. Fences and Hedges. No chain link fences shall be used. No fence of any type will be

erected on the front of any lot. A wooden, wrought iron or vinyl fence or privacy screening may be used at the rear of a lot, provided that material for such fence and the location thereof is approved in advance by the Architectural Committee as provided in this Declaration. All pools and pool equipment must be enclosed within an A.C.C. approved fence.

Section 11. Signs. No sign of any kind shall be displayed to the public view on any lot except the sign which is approved by the Architectural Committee as the uniform sign for use within the properties. This provision shall not apply to the Declarant.

Section 12. Garages. Garage openings will not be permitted on the front of any building without the prior written approval of the Architectural Committee.

Section 13. HVAC Equipment.

(a) Outside air conditioning units may not be located in the front yard. All outside air conditioning units shall be hidden from view by shrubbery, or other foliage or fence that otherwise satisfies the requirements hereof.

(b) No wall or window air conditioning unit shall be permitted except with the prior written consent of the Architectural Committee.

(c) No plumbing or heating vent shall be placed on the front side of the roof. All vents protruding from roofs shall be painted the same color as the roof covering.

Section 14. Satellite Dishes. No satellite dish will be allowed on the front or side of any lot without the prior written approval of the Architectural Committee.

Section 15. Solar Collectors. No solar collectors shall be permitted without the prior written consent of the Architectural Committee and if approved, shall be installed so as not to be visible from any street.

Section 16. Animals and Pets. All pets shall be reasonably controlled by the owner whenever outside of home or anywhere on the properties and shall be kept in such a manner as to not become a nuisance by loud and obnoxious noises or other acts. The owners of the pet/s shall be responsible for all of the pet's actions. Pets must be restrained on a leash according to the local municipal Leash Laws. Owners must retrieve and dispose of pets solid waste. If, in the sole opinion of the Association, any animal becomes dangerous or an annoyance or nuisance to the nearby properties, said animal shall be removed from the neighborhood by the local municipal Animal Control department.

Section 17. Recreational vehicles. No boat, boat trailer, house trailer, horse trailer, motorcycle trailer, motorcycle, golf cart, personal watercraft, ATV, lawnmower, camper, motor home or any similar items shall be stored on or at any lot for a period of time in excess of twenty-four (24) hours unless housed in a carport or garage, or otherwise screened so that it cannot be seen from the street or from adjacent and surrounding property.

Section 18. Commercial Trucks. No commercial truck, vehicle, any type limousine or commercial equipment shall be permitted to be parked or to be stored in open view on any place of any lot. This prohibition on parking shall not apply to temporary parking of trucks and commercial vehicles used for pickup and delivery. This applies to any commercial type vehicle or equipment even if for Owners personal use.

Section 19. Remedies for Vehicle and Recreational Equipment Violations. Any such vehicle or recreational vehicle parked in violation of these or other regulations contained herein or in the rules and regulations now or hereinafter adopted by the Association may be towed by the Association at the sole expense of the owner of such vehicle or recreational equipment if it remains in violation for a period of twenty-four (24) hours. The Association shall not be liable to the owner of such vehicle or recreational equipment or trespass, conversion or otherwise, nor guilty of a criminal act by reason of such towing and neither its removal nor failure of the owner to receive any notice of said violation shall be grounds for relief of any kind.

Section 20. Vehicles. All vehicles shall be parked only in the garage or driveway serving the lot, unless otherwise approved by the Association. Guest parking will be allowed in the street only for a reasonable length of time to be determined by the Association. All unlicensed vehicles or any vehicle in such condition that it is incapable of being operated on a public highway must be garaged. No tarps covering vehicles will be allowed unless garaged.

Section 21. Vehicle Maintenance and Repair. No maintenance or repairs shall be performed on any vehicle upon any portion of the property, unless performed in a garage, except in an emergency situation. Notwithstanding the foregoing, all repairs to disassembled vehicles within the property must be completed within four (4) hours from its immobilization or the vehicle must be removed. Should the Association own any maintenance vehicles, it shall be allowed to maintain and store its maintenance vehicles on specific areas of the property designated by the Association.

Section 22. Leasing. Leasing is allowed for residential purposes only provided that the tenant acknowledges receipt of a copy of the Covenants, Conditions and Restrictions of the Association and the lease shall obligate the tenant to comply with the foregoing.

Section 23. Rules and Regulations. In addition to the rules and regulations in this Declaration, the Association may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Association. Such changes will be distributed to the Association Members prior to the date such rules and regulations will become effective and will be binding on all Members.

Section 24. Guns, firearms, fireworks. The discharge of guns, pellet guns, bb guns, firearms of all types, and fireworks are prohibited, however, the Association has no obligation to take action to prevent or stop such discharge.

Section 25. Drainage. Each Member is responsible for maintaining all drainage areas located on its lot. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas, and removing any accumulated debris from drainage areas. Each Member shall be responsible for controlling the natural and man-made water flow from its lot. No Member shall be entitled to overburden the drainage areas from its property. No member shall change the flow of drainage from its lot to another lot or other properties. All Members shall comply with the local municipal, state and federal erosion control rules, regulations, and ordinances.

Section 26. Common Areas. All Members as well as their families, guests and pets shall refrain from any actions which deter from the enjoyment by other Members of the areas designated as Common Areas. Certain Common Areas can be designated Green Spaces and may be kept in a natural state, to be determined by Declarant. Members rights to use such Common Areas or green spaces may be prohibited or rescinded by the Association for noncompliance of these Declarations.

Section 27. Play Equipment, Treehouses, etc. Swing sets, play equipment, sports equipment, basketball hoops, playhouses, treehouses, etc. must be approved by the Architectural Control Committee in advance of placement of such structures.

Section 28. Street Trees. All Street Trees planted by Declarant shall be the responsibility of the Member to maintain and replace as necessary. The Association reserves the right to inspect trees and notify Member as to type of tree to use in replacement of dead or diseased trees.

Section 29. Clothes lines. No clothing or other household fabrics shall be hung in the open on any lot or property unless the same is not visible from any adjoining property or public view.

Section 30. Mailboxes. The Architectural Committee will be responsible for the design and location of a mailbox to be placed and used within each residential neighborhood and will provide the information necessary to purchase mailbox. Owners are responsible for the purchase and any needed repairs to mailbox.

Section 31. Trash and Garbage Receptacles. All garbage cans shall be screened so as to conceal from public view of any adjacent properties. All trash and garbage shall be regularly removed and shall not be allowed to accumulate. Receptacles must be placed and removed at the curb only on day of pickup. The Association may at any time require certain types of receptacles to be used.

Section 32. Transmission Equipment. No visible ham radios or radio transmission equipment shall be operated or permitted to be operator on any lot. No television or radio antennas shall be permitted on the property.

## ARTICLE VI

## MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every owner shall be a member of the Association. No owner, whether one or more persons, shall have more than one (1) membership per lot owned. If a lot is owned by more than one person, all co-owners shall be entitled to the privileges of membership; however, there shall be only one vote per lot. All such co-owners shall be jointly and severally obligated to perform the responsibilities of owners hereunder. The membership rights and privileges of an owner who is a natural person may be exercised by the member or the member's spouse. The membership rights of an owner which is a corporation, partnership or other legal entity shall be exercised by the individual designated from time to time by the owner in a written instrument provided to the Secretary of the Association.

Section 2. Voting Rights. The Association shall have two (2) classes of membership, Class "A", as follows:

a. Class "A". Class "A" members shall be the owners with the exception of Class "B" members, if any.

Class "A" members shall be entitled to one (1) vote in the association for each lot owned. When more than one person is the owner of any lot, the vote for such lot shall be exercised as those persons or entities themselves determine and advise the secretary of the Association prior to any meeting. In the absence of such advice, the lot's vote shall be suspended in the event more than one person seeks to exercise it.

(b) Class "B". Class "B" member shall be the Declarant and any successor Declarant who takes title for the purpose of development and sale, and who is designated as such in a recorded instrument executed by Declarant. The Class "B" member shall be a voting member and shall be entitled to cast the number of votes which are contained in the total of all Class "A" members, plus one (1) vote, until such time when Class "B" votes terminate and convert to Class "A" votes.

Class "B" membership shall terminate and become converted to Class "A" membership upon the happening of the earlier of the following:

- 1) When Class "A" members, other than the Declarant, owns ninety-five (95%) percent of the lots permitted by the Master Plan for property described in Exhibits "A";
- 2) January 1, 2012; or
- 3) When, at its discretion, the Declarant so determines, with the approval of any first mortgagee of Declarant, if necessary.

From and after the happening of these events, whichever occurs earlier, the Class "B" member shall be deemed to be a Class "A" member. At such time, the Declarant shall call a meeting, as provided in the Bylaws of the Association for special meetings of the Association, to advise the membership of the termination of Class "B" status and to elect the members of the Board of Directors.

**ARTICLE VII**  
**MAINTENANCE**

Section 1. The Association's Responsibility. The Association shall maintain and keep in good repair the area of common responsibility, which shall include, but need not be limited to:

- (a) all landscaping and other flora, parks, lakes, structures and improvements, including any private street, bike and pedestrian pathway/trails, situated upon the common area;
- (b) landscaping within public rights-of-way within or abutting the Properties, and landscaping and other flora within any public utility easement within the Properties (subject to the terms of any easement agreement relating thereto);
- (c) such portions of any additional property included within the area of common responsibility as may be dictated by this Declaration, any Supplementary Declaration, or any contract or agreement from maintenance thereof entered into by the Association;
- (d) all ponds, streams and/or wetlands 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; and
- (e) any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the area of common responsibility and be maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

Except as provided above, the area of common responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant.

The Association may assume maintenance responsibility for property within any neighborhood, in addition to that designated by any supplementary declaration, either by agreement with the neighborhood or because, in the opinion of the board, the level and quality of service then being provided is not consistent with the community-wide standard. All costs of maintenance pursuant to this paragraph shall be assessed as a neighborhood assessment only against the lots within the neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board of Directors determines that such maintenance is necessary or desirable to maintain the community-wide standard.

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 lots as part of the Base 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, other recorded covenants, or agreements with the owner(s) thereof. All costs associated with maintenance, repair and replacement of Exclusive Common Areas shall be a neighborhood expense assessed as a neighborhood assessment solely against the lots within the neighborhood(s) to which the Exclusive Common Areas are assigned, notwithstanding that the Association may be responsible for performing such maintenance hereunder.

Section 2. Owners Responsibility. In accordance with this Declaration and any subsequent amendments thereto, all maintenance of a lot and all structures, and other improvements within a lot shall be the sole responsibility of the owner thereof who shall perform such maintenance in a manner consistent with this Declaration and the applicable covenants; provided further, if this work is not properly performed by the owner, the Association may perform it and assess the owner as a special assessment; provided however, whenever entry is not required in an emergency situation, the Association shall afford the owner ten (10) days reasonable notice and an opportunity to cure the problem prior to entry; said notice to be not less than ten (10) days.

## ARTICLE VIII

### COVENANTS FOR MAINTENANCE ASSESSMENTS

Section 1. Purpose of Assessments. The assessments levied by the Association shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefits, and enjoyment of the owners and occupants in Highlands South and The Village, including maintenance of real and personal property, all as may be more specifically authorized by the board, including by way of example, but not limited to, the following: (a) the improvement and maintenance of the access easement and for provision of certain other services, (b) the procuring of services for the owners, including, but not limited to, maintenance and operation of common areas, areas of common responsibility, construction, repair or refinishing and improvement of common areas, construction, reconstruction, repair, replacement or refinishing of any portion of an access easement, and such other services which may be approved and (c) the repair of capital improvements on an access easement or common area. Notwithstanding the above restriction on use of funds for improvement and maintenance of the access easement or common area, the said funds, may to the extent of the excess of accumulated surplus over the total amount of regular assessments for the preceding year, be used for capital expenditures to benefit the access easement or common areas and fulfil the purposes of the Association.

members representing the majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration.

Annexation shall be accomplished by filing a supplementary Declaration describing the property being annexed in the public records of Houston County, Alabama. Any such supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

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 this Article, without prior notice and without the consent of any person, for the purpose of removing property then owned by the Declarant, its affiliates, or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in the Declarant's plans for the properties, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the properties.

4. Acquisition of Additional Common Area. Notwithstanding any other provision contained in this Declaration, Declarant may convey additional real estate, improved or unimproved, located within the property described in Exhibit "A" and upon said conveyance or dedication to the Association said property shall be accepted by the Association, and thereafter shall be maintained by the Association at its expense for the benefit of all its members.

4. Amendment. This Article shall not be amended without the prior written consent of the Declarant, so long as Declarant owns any property described in Exhibit "A".

#### ARTICLE XIV

#### ENFORCEMENT OF ASSOCIATION DECLARATION, BYLAWS, RULES, REGULATIONS, ETC.

Section 1. Enforcement. The board shall have the power to impose reasonable fines, which shall constitute a lien upon the property of the violating owner, and to suspend any owner's right to vote or any person's right to use the common area for violation of any duty imposed under the Declaration, the Bylaws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Association or the Board of Directors to limit ingress and egress to or from a lot. In the event that any occupant, guest or invitee of a lot violates the Declaration, Bylaws, or a 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 Association. The failure of the Board to enforce any provision of the Declaration, Bylaws, or any rule or

regulation shall not be deemed a waiver of the right of the Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction hereunder, the Board or its delegate shall serve the alleged violator written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request to the covenants committee, if any, or Board of Directors for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

(b) Hearing. If a hearing is requested within the allotted 10 day period, the hearing shall be held in executive session affording the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed. The Board of Directors or the covenants committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10 day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions of any rules by any person.

(c) Appeal. Following a hearing before the covenants committee, the violator shall have the right to appeal the decision to the Board of Directors. To perfect this right, a written notice of appeal must be received by the manager, President, or Secretary of the Association within 15 days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein, the Association, acting through the Board of Directors, may elect to enforce any provision of the Declaration, the Bylaws, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the owner or occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorneys' fees actually incurred.

#### ARTICLE XV

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF HIGHLANDS SOUTH OWNERS ASSOCIATION, INC.

## LITIGATION

Section 1. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of 75% of the Members. 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; (c) proceedings involving challenges to ad valorem taxation; or (d) counterclaims brought by the Association in proceedings instituted against it. 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.

## ARTICLE XVI

### DISPUTE RESOLUTION AND LIMITATION ON LITIGATION

Section 1. Agreement to Avoid Costs of Litigation and to Limit Right to Litigate Disputes. The Association, Declarant, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Parties") agree 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, each Bound Party covenants and agrees that all claims, grievances or disputes between such Bound Party and any other Bound Party involving the Properties, including, without limitation, claims, grievances or disputes arising out of or relating to the interpretation, application or enforcement of the Declaration, the Bylaws, the Association rules, or Articles (collectively "Claim"), except those claims authorized in Section 2 shall be resolved using the procedures set forth in Section 3 in lieu of filing suit in any court or initiating proceedings before any administrative tribunal seeking redress or resolution of such claim.

Section 2. Exempt Claims. The following claims ("Exempt Claims") shall be exempt from the provisions of Section 3:

- (a) any suit by the Association against any Bound Party to enforce the provisions of Article VIII;
- (b) any suit by the Association to obtain a temporary restraining order (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the Association's ability to enforce the provisions of Article IV, Article V and Article VIII;
- (c) any suit between owners (other than Declarant) seeking redress on the basis of a claim which would constitute a cause of action under Federal law or the laws of the State of Alabama in the absence of a claim based on the Declaration, Bylaws, Articles or rules of the Association, in which the

amount in controversy exceeds \$5,000.00.

(d) any suit by the Association in which similar or identical claims are asserted against more than one Bound Party; and

Any Bound Party having an Exempt Claim may submit it to alternative dispute resolution procedures set forth in Section 3, but there shall be no obligation to do so. The submission of an Exempt Claim involving the Association to alternative dispute resolution procedures of Section 3 shall require approval of the Association.

Section 3. Mandatory Procedures for all other claim. All claims other than exempt claims shall be resolved using the following procedures:

(a) Notice. Any Bound Party having a Claim ("Claimant") against any other Bound Party ("Respondent"), other than an exempt Claim, shall notify each Respondent in writing of the Claim (the "Notice"), stating plainly and concisely:

1. the nature of the Claim, including date, time, location, persons involved, and Respondent's role in the Claim;
2. the basis of the Claim (i.e., the provisions of this Declaration, the Bylaws, the Articles or rules or other authority out of which the Claim arises);
3. what Claimant wants Respondent to do or not to do to resolve the Claim; and
4. that Claimant wishes to resolve the Claim by mutual agreement with Respondent and is willing to meet in person with Respondent at a mutually agreeable time and place to discuss in good faith ways to resolve the Claim.

(b) Negotiation.

1. Each Claimant and Respondent (the "Parties") shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation.
2. Upon receipt of a written request from any Party, accompanied by a copy of the notice, the board may appoint a representative to assist the Parties in resolving the dispute by negotiation, if in its discretion it believes its efforts will be beneficial to the Parties and to the welfare of the community.

(c) Mediation.

1. If the Parties do not resolve the Claim through negotiation within 30 days of the date of the notice (or within such other period as may be agreed upon by the Parties) ("Termination of Negotiations"), Claimant shall have 30 additional days within which to submit the Claim to mediation under the auspices of a Dispute Resolution Center or Mediation Center or independent agency providing similar services upon which the Parties may mutually agree.
2. If Claimant does not submit the Claim to mediation within 30 days after termination of negotiations, Claimant shall be deemed to have waived the Claim, and Respondent shall be

released and discharged from any and all liability to Claimant on account of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons not a Party to the foregoing proceedings.

3. If the Parties do not settle the Claim within 30 days after submission of the matter to the mediation process, or within such time as determined reasonable or appropriate by the mediator, the mediator shall issue a notice of termination of the mediation proceedings ("Termination of Mediation"). The Termination of Mediation notice shall set forth when and where the Parties met, that the Parties are at an impasse, and the date that mediation was terminated.

4. Each Party shall, within five days of the Termination of Mediation, make a written offer of settlement in an effort to resolve the Claim. The Claimant shall make a final written Settlement Demand ("Settlement Demand") to the Respondent. The Respondent shall make a final written Settlement Offer ("Settlement Offer") to the Claimant. If the Claimant fails to make a Settlement Demand, Claimant's original notice shall constitute the Settlement Demand. If the Respondent fails to make a Settlement Offer, Respondent shall be deemed to have made a "zero" or "take nothing" Settlement Offer.

(d) Final and Binding Arbitration.

1. If the Parties do not agree in writing to accept either the Settlement Demand, the Settlement Offer, or otherwise resolve the Claim within 15 days of the Termination of Mediation, the Claimant shall have 15 additional days to submit the Claim to arbitration in accordance with the rules of arbitration contained in Exhibit "B" or the Claim shall be deemed abandoned, and the Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge Respondent from any liability to persons not a Party to the foregoing proceedings.

2. Subsection (d) is an agreement of the Bound Parties to arbitrate all Claims except exempt Claims and is specifically enforceable under the applicable arbitration laws of the State of Alabama. The arbitration award (the "Award") shall be final and binding, and judgment may be entered upon it in any court of competent jurisdiction to the fullest extent permitted under the laws of the State of Alabama.

Section 4. Allocation of Costs of Resolving Claims.

(a) Each Party shall bear its own costs incurred prior to and during the proceedings described in Section 3 (a), (b), and (C), including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the mediator(s) pursuant to Section 3 (c).

(b) Each Party shall bear its own costs (including the fees of its attorney or other representative) incurred after the Termination of Medication under Section 3(c) and shall share equally in the costs of conducting the arbitration proceedings (collectively, "Post Mediation Costs"), except as

Section 2. Creation of Lien and Personal Obligation for Assessments. There are hereby created assessments for Association expenses as the Board may specifically authorize from time to time. There shall be four types of assessments: (a) Base Assessments to fund Common Expenses for the general benefit of all lots; (b) Special Assessments as described herein; and (c) Benefitted Assessments as described herein. Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments.

All assessments, together with interest (at a rate not to exceed the highest rate allowed by Alabama law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each lot against which the assessment is made until paid, as more particularly provided herein. Each such assessment, together with interest, late charges, costs and reasonable attorneys' fees, also shall be the personal obligation to the person who was the owner of such lot at the time the assessment arose. Upon a transfer of title to a lot, 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 lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Board may establish. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance on the first day of each fiscal year. If any Owner is delinquent in paying any assessments or other charges levied on his lot, the Board may require any unpaid installments of all outstanding assessments to be paid in full immediately.

No owner may exempt himself from liability for assessments, by non-use of Common Area, abandonment of his or her lot, 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.

During the Class "B" Control Period, Declarant may annually elect either to pay regular assessments on all of its unsold lots, notwithstanding the commencement date for assessments set forth herein, or to pay the difference between the amount of assessments collected on all other lots subject to

assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

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.

Section 3. Computation of Base Assessment. At least 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 a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided herein.

The Base Assessment shall be levied equally against all lots and 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 level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of lots subject to assessment hereunder on the first day of the fiscal year for which the budget is prepared and the number of lots reasonably anticipated to become subject to assessment during the fiscal year.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article XIII, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant hereunder), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Board shall send a copy of the budget and notice of the amount of the Base Agreement for the following year to be delivered to each Owner at least 15 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members holding at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the current year.

Section 4. Reserve Budget and Capital Contribution. The Board shall annually prepare reserve budgets for general purposes which take into account the number and nature of replacement cost. The Board may set a capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments, as appropriate, over the budget period.

Section 5. 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. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members holding at least 51% of the total votes allocated to lots which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. 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.

Section 6. Benefited Assessments. The Board shall have the power to specifically assess expenses of the Association against lots (a) receiving benefits, items, or services not provided to all lots within a Neighborhood or within the Properties that are incurred upon request of the Owner of a lot for specific items or services relating to the lot or (b) that are incurred as a consequence of the conduct of less than all Owners, their licensees, invitees, or guests. The Association may also levy a Benefited Assessment against any lot to reimburse the Association for costs incurred in bringing the lot, or the Neighborhood in which such lot is located, into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the ByLaws, and rules, provided the Board gives prior notice to the applicable Owners and an opportunity for a hearing.

Section 7. Lien for Assessments. The Association shall have a lien against each lot to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Alabama law), and costs of collection (including attorneys fees). Such 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 first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Association may bid for the lot at the foreclosure sale and acquire, hold, lease, mortgage, and

convey the lot. While a lot is owned by the Association following foreclosures: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such lot had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any lot shall not affect the assessment lien or relieve such lot from the lien for any subsequent assessments. However, the sale or transfer of any lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such lot due prior to such acquisition of title. Such unpaid assessment shall be deemed to be Common Expenses collectible from owners of all lots subject to assessment hereunder, including such acquirer, its successors and assigns.

Section 8. Date of Commencement of Assessments. The obligation to pay assessments shall commence as to each lot on the first day of the month following: (a) the month in which the lot is made subject to this Declaration, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment, if any, levied on each lot shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the lot.

Section 9. Failure to Assess. Failure of the Board to fix 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 Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

Section 10. Exempt Property. The following property shall be exempt from payment of Base Assessments, Neighborhood Assessments, and Special Assessments:

- (a) All Common Area;
- (b) Any property dedicated to and accepted by any governmental authority or public utility.

## ARTICLE IX

### MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of first mortgages on residences in the Development. The provisions of this Article apply to both this Declaration and the Bylaws notwithstanding any other provisions contained therein.

Section 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, guarantor and the residence number, therefore becoming an "eligible holder"), will be entitled to timely notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the properties or which affects any residence 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 an owner of a residence, subject to the mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an owner of a residence of any obligation under the Declaration or Bylaws of the Association 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.

Section 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 two-thirds (2/3) of the first mortgagees or at least two-thirds (2/3) of the total Association vote entitled to vote thereon consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer common area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the common area shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or charges which may be levied against an owner of a residence (a decision, including contracts, by the board or provisions of any supplementary Declaration regarding assessments for neighborhoods or other similar areas shall not be subject to this provision where such decision or supplementary Declaration is otherwise authorized by this Declaration);

(c) By act or omission, change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of residences and of the common areas (the issuance and amendment of architectural guidelines, 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.

The first mortgagees may, jointly or singly, pay taxes or other charges which are in default in 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 any association policy and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any owner or other party priority over any rights of the first mortgagee of any residence in the case of distribution to such owner of insurance proceeds or condemnation awards for losses to or a taking of the common area.

Section 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 residence.

Section 5. Amendment by Board. Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the board, without approval of the owners, may cause any amendments to this Article to be recorded to reflect such changes.

Section 6. HUD/VA Approval. As long as there is a Class "B" membership, the following actions shall require the prior approval of the Federal Housing Administration ("FHA") or the US Department of Veterans Affairs ("VA"), if either such agency is insuring or guaranteeing the mortgage on any lot: annexation of additional property other than that described on Exhibit "A", dedication of common area, mortgaging of common area, or any material amendment of this Declaration. If either FHA or VA is insuring or guaranteeing the mortgage on any lot, no portion of the common area may be mortgaged or conveyed unless at least sixty-seven percent (67%) of the total Class "A" members consent without regard to lots owned by the Declarant.

Section 7. Applicability of Article IX. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Alabama law for any of the acts set out in this Article.

Section 8. Failure of Mortgagee to Respond. Any Mortgagee (or insurer or guarantor of a mortgage) 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.

**ARTICLE X**  
**ASSOCIATION INSURANCE**

Section 1. Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain blanket "all-risk" property insurance, if reasonably available, for all insurable improvements on the Common Area to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If blanket "all-risk" coverage is not generally available at reasonable cost, then fire and extended coverage, including coverage for vandalism and malicious mischief, shall be obtained. The face amount of the policy shall be sufficient to cover the full replacement cost of the insured property.

The Association also shall obtain a public liability policy on the Area of Common Responsibility, insuring the Association and its Members for damage or injury caused by the negligence of the Association of any of its members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the public liability policy shall have at least a \$1,000,000.00 combined single limit as respects bodily injury and property damage and at least a \$3,000,000.00 limit per occurrence and in the aggregate.

Except as otherwise provided, premiums for all insurance on the Area of Common Responsibility shall be Common Expenses and shall be included in the Base Assessment.

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 insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense 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 Article XIV herein, that the loss is the result of the negligence or willful conduct of one or more lot owners, then the Board may specifically assess the full amount of such deductible against such owner(s) and their lots pursuant to Article IX.

All insurance coverage obtained by the Board shall:

- (a) Be written with a company authorized to do business in Alabama which holds a Best's rating of A or better and is assigned a financial size category of IX or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available.
- (b) Be written in the name of the Association as Trustee for the benefitted parties. Policies on the Common Area shall be for the benefit of the Association and its members, and their Mortgagees, as their interests may appear.
- (c) Vest 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.

(d) Not be brought into contribution with insurance purchased by individual owners, occupants or their Mortgagees.

(e) Have an inflation guard endorsement, if reasonably available. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. 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 in the real estate industry and familiar with construction in the Houston County area.

(f) The Board shall be required to use reasonable efforts to secure insurance policies containing endorsements that:

(i) waive 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) waive the insurer's rights to repair and reconstruct instead of paying cash;

(iii) preclude cancellation, invalidation, suspension, or nonrenewal 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) exclude individual Owners' policies from consideration under any "other insurance" clause; and

(v) require at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

The Association shall also obtain, as a Common Expense, worker's compensation insurance if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, and flood insurance, if advisable.

The Association also shall obtain, as a Common Expense, a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds. The Board shall determine the amount of fidelity coverage in its best business judgment but, if reasonably available, shall secure coverage equal to not less than one-sixth of the annual Base Assessments on all lots plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least 30 days' prior written notice to the Association of any cancellation, substantial modification or nonrenewal.

Section 2. Owners Insurance. By virtue of taking title to a lot, each owner covenants and agrees with all other owners and with Association to carry blanket "all-risk" property insurance on its lot(s) and structures thereon providing full replacement cost coverage less a reasonable deductible, unless the Association carries such insurance (which they are not obligated to do hereunder).

Each owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his lot, he shall proceed promptly to repair or to construct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV of

this Declaration. Alternatively, the owner shall clear the lot of all debris and ruins and maintain the lot in a neat and attractive, landscaped condition consistent with the Declaration, Bylaws, and any Rules and Regulation of the Association. The Owner shall pay any costs which are not covered by insurance proceeds.

Section 3. Damage and Destruction.

(a) 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 of Directors 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.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members holding at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 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 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days.

(c) 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, as applicable, in a neat and attractive, landscaped condition consistent with the Declaration, Bylaws, and any Rules and Regulations of the Association.

Section 5. Disbursement of Proceeds. 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, as appropriate, 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 lot.

Section 6. Repair and Reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors shall, without a vote of the Members, levy Special Assessments against those lot owners responsible for the premiums for the applicable insurance coverage under Section 6 of Article IX.

ARTICLE XI

## **NO SECURITY**

Neither Declarant nor the Board nor the Association shall provide any security or surveillance to protect the person or property of any owner or occupant, their licensees, invitees or guests and nothing in this Declaration, the Bylaws or Articles shall be construed to imply or infer or require the Declarant, Association or Board to supply or provide security and protection for any owner or occupant, their licensees, invitees, or guests.

## **ARTICLE XII**

### **NO PARTITION**

Except as permitted in this Declaration or amendments hereto, there shall be no physical partition of any common area or any part thereof, nor shall any person acquiring an interest in any lot or property of the subdivision seek any such judicial partition of a common area or any part thereof. This Article shall not be construed to prohibit the Board of Directors from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

## **ARTICLE XIII**

### **ANNEXATION AND WITHDRAWAL OF PROPERTY**

1. Annexation without approval of Membership. At any time until December 31, 2012, Declarant may unilaterally annex to the provisions of this Declaration all or any portion of the real property described in Exhibit "A". Declarant also may unilaterally assign the right, privilege, and option to annex property to this Declaration which is herein reserved to the Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the real property described in Exhibits "A" and that such assignment is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a supplementary Declaration annexing such property to the public records of Houston County, Alabama. Such supplementary Declaration shall not require the consent of voting members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon filing for record of such supplementary 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 "A" in any manner whatsoever.

2. Annexation with Approval of Membership. The association may annex real property other than that described in Exhibit "A", and after December 31, 2012, any property described in Exhibit "A", to the provisions of this Declaration with the consent of the owner of such property, the affirmative vote of

otherwise provided in subsection 4 (c)).

(c) Any award which is equal to or more favorable to Claimant than Claimant's Settlement Demand shall add such Claimant's Post Mediation Costs to the award, such costs to be borne equally by all Respondents. Any award which is equal to or less favorable to Claimant than Respondent's Settlement Offer to that Claimant shall also award to such Respondent its Post Mediation Costs, such costs to be borne by all such Claimants.

Section 5. Enforcement of Resolution. If the Parties agree to resolve any Claim through negotiation or mediation in accordance with Section 3 and any Party thereafter fails to abide by the terms of such agreement, or if the Parties agree to accept the award following arbitration and any Party thereafter fails to comply with such award, then any other Party may file suit or initiate administrative proceedings to enforce such agreement or award without the need to again comply with the procedures set forth in Section 3. In such event, the Party taking action to enforce the agreement or award shall be entitled to recover from the non-complying Party (or if more than one non-complying Party, from all such Parties pro rata) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys fees and court costs.

## ARTICLE XVII

### GENERAL PROVISIONS

1. Term. The Covenants and Restrictions of this Declaration shall run with and be binding on the lots herein, and shall enure to the benefit of and shall be enforceable by the Association or the owner of any lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by majority of the then owners, has been recorded within the year proceeding the beginning of each successive period of ten (10) years agreeing to change Covenants and Restrictions in whole or in part, or to terminate the same.

2. Amendment.

(A) By Declarant. Until the first lot is conveyed by Declarant to a Purchaser, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the lots; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on the lots; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the lots; or (v) otherwise

necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any lot unless the owner shall consent thereto in writing. So long as the Declarant still owns property described in Exhibits "A" or "B" for development as part of the Properties, 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 Owners. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of 67% of the total Class "A" votes in the Association, and the consent of the Declarant, so long the Declarant has an option to subject additional property to this Declaration pursuant to Article XIV. In addition, the approval requirements set forth in Article X hereof shall be met if applicable.

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. To be effective, any amendment must be recorded in the public records of Houston County, Alabama.

If an owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such owner has the authority so 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.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

Any procedural challenge to an amendment must be made within six (6) months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of the Declaration or Bylaws.

3. Scrivener's Error. Notwithstanding the foregoing amendment provisions, the Declarant shall have the rights at any time within five (5) years from the date hereof to amend this Declaration to correct scrivener's errors and to clarify any ambiguities determined to exist herein, or to change or add provisions to this Declaration for the purpose of meeting the requirements of governmental agencies, including but not limited to the Federal Housing Administration and the Veteran's Administration. Such amendment needs to be executed and acknowledged by the Declarant only, and need not be approved by the Association, owners, loaners, or mortgagees of lots, whether or not elsewhere required for amendments. No amendments shall alter the subordination provisions of the Declaration without prior approval of any mortgagee enjoying such protection.

4. Notices. Any notice required to be sent to any owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by United States Mail, postage prepaid, to the street address of the lot owned by such owner or the address as it last appeared on the records of the Association.

5. Severability. Invalidation of any provision or provisions hereof by judgment or court order shall in no way affect any previous other provision, all of which shall remain in full force and affect.

6. Governing Law. Should any dispute or litigation arise between any of the Parties whose rights or duties are affected or determined by this Declaration, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Alabama.

7. Captions. The captions and titles of the various Articles and Sections in this Declaration are for convenience of reference only, and in no way defined, limit or describe the scope or intent of this Declaration.

8. Effective Date. This Declaration shall become effective upon its recordation in the Office of the Judge of Probate of Houston County, Alabama.

IN WITNESS WHEREOF, the undersigned has duly executed this Declaration as of the date first above written.

WHEELLESS DEVELOPMENT, LTD.

BY: \_\_\_\_\_

Hugh W. Wheelless, Jr  
Its General Partner

## EXHIBIT "B"

### Rules of Arbitration

1. Claimant shall submit a claim to arbitration under these rules by giving written notice to all other Parties stating plainly and concisely the nature of the claim, the remedy sought and Claimant's desire to submit the Claim to arbitration ("Arbitration Notice").
2. Each Party shall select an Arbitrator ("Party Appointed Arbitrator"). The Parties are encouraged to select an Arbitrator who has experience in the real estate industry and who is familiar with the arbitration of real estate related disputes. The Party Appointed Arbitrators shall, by unanimous agreement, select one or two neutral Arbitrators ("Neutral(s)") so that the total arbitration panel ("Panel") has an odd number of Arbitrators. If any Party fails to appoint a Party Appointed Arbitrator within 20 days from the date of the Arbitration Notice, the remaining Arbitrators shall conduct the proceedings, selecting a neutral in place of any missing Party Appointed Arbitrator. The Neutral Arbitrator(s) shall select a chairperson ("Chair").
3. If the Panel is not selected under Rule 2 within 45 days from the date of the Arbitration Notice, or if the Parties earlier agree, Claimant may notify the Alabama State Bar Task Force on alternative methods of dispute resolution for recommendation of an arbitration or mediation agency which will appoint one neutral ("Appointed Neutral"), notifying the Appointed Neutral and all Parties in writing of such appointment. The Appointed Neutral shall be experienced in the arbitration of real estate related disputes or knowledgeable of real estate issues as determined by Alabama State Bar Task Force on alternative methods of dispute resolution for recommendation of an arbitration or mediation agency. The Appointed Neutral shall thereafter be the sole Arbitrator ("Arbitrator"), and any Party Appointed Arbitrators or their designees shall have no further duties involving the arbitration proceedings.
4. No person may serve as a Neutral in any arbitration under these rules in which that person has any financial or personal interest in the result of the arbitration. Any person designated as a Neutral shall immediately disclose in writing to all Parties any circumstances likely to affect impartiality, including any bias or financial or personal interest in the outcome of the arbitration ("Bias Disclosure"). If any Party objects to the service of any Neutral after receipt of that Neutral's Bias Disclosure, such Neutral shall be replaced in the same manner in which that Neutral was selected.
5. The Arbitrator or Chair, as the case may be ("Arbitrator") shall fix the date, time and place for

the hearing. The place of the hearing shall be within the properties unless otherwise agreed by the Parties.

6. Any Party may be represented by an attorney or other authorized representative throughout the arbitration proceedings.

7. All persons who, in the judgment of the Arbitrator, have a direct interest in the arbitration are entitled to attend hearings.

8. There shall be no stenographic record of the proceedings.

9. The hearing shall be conducted in whatever manner will, in the Arbitrator's judgment, most fairly and expeditiously permit the full presentation of the evidence and arguments of the Parties.

10. The Parties may offer such evidence as is relevant and material to the Claim, and shall produce such additional evidence as the Arbitrator may deem necessary to an understanding and determination of the Claim. The Arbitrator shall be the sole judge of the relevance and materiality of any evidence offered, and conformity to the legal rules of evidence shall not be necessary. The Arbitrator shall be authorized, but not required, to administer oaths to witnesses.

11. The Arbitrator shall declare the hearings closed when satisfied the record is complete.

12. There will be no posthearings briefs.

13. The award shall be rendered immediately following the close of the hearing, if possible, and not later than 14 days from the close of the hearing, unless otherwise agreed by the Parties. The award shall be in writing, shall be signed by the Arbitrator and acknowledged before a notary public. If the Arbitrator believes an opinion is necessary, it shall be in summary form.

14. If there is more than one Arbitrator, all decisions of the panel and the award shall be by majority vote.

15. Each Party agrees to accept as legal delivery of the award the deposit of a true copy in the mail addressed to that Party or its attorney at the address communicated to the Arbitrator at the hearing.