

**APPENDIX E**  
**SUBDIVISION COVENANTS**

**Declaration Of Covenants, Easements, Conditions, And Restrictions**  
**of**  
**[XYZ] Subdivision**  
\_\_\_\_\_, **2022**

---

THIS INSTRUMENT PREPARED BY:  
Melinda E. Sellers  
Burr & Forman LLP  
420 North 20th Street, Suite 3400  
Birmingham, AL 35203  
(205) 251-3000

**TABLE OF CONTENTS****TABLE OF CONTENTS**

	<b><u>Page</u></b>
ARTICLE I DEFINITIONS .....	7
Section 1.1    Additional Property.....	7
Section 1.2    Annual Assessments. ....	7
Section 1.3    ARC. ....	7
Section 1.4    Architectural Standards.....	7
Section 1.5    Assessment.....	8
Section 1.6    Association.....	8
Section 1.7    Board.....	8
Section 1.8    Bylaws.....	8
Section 1.9    Certificate of Formation.....	8
Section 1.10    Common Areas. ....	8
Section 1.11    Common Expenses.....	9
Section 1.12    Declaration.....	9
Section 1.13    Developer. ....	9
Section 1.14    Developer Control Period. ....	9
Section 1.15    Governmental Authority. ....	9
Section 1.16    Improvement. ....	9
Section 1.17    Individual Assessment. ....	9
Section 1.18    Lot. ....	9
Section 1.19    Member. ....	10
Section 1.20    Mortgage. ....	10
Section 1.21    Mortgagee. ....	10
Section 1.22    Occupant. ....	10
Section 1.23    Owner.....	10
Section 1.24    Probate Office. ....	10
Section 1.25    Property.....	10
Section 1.26    Rules and Regulations.....	10
Section 1.27    Single Family Unit.....	10
Section 1.28    Special Assessments. ....	10
Section 1.29    Subdivision. ....	10

Section 1.30	Subdivision Record Map.....	11
<b>ARTICLE II RESTRICTIONS APPLICABLE TO THE PROPERTY.....</b>		<b>11</b>
Section 2.1	General Declaration. ....	11
Section 2.2	Additional Property.....	11
Section 2.3	Right of Developer to Modify Restrictions with Respect to Lots Owned by Developer. 11	11
Section 2.4	Mutuality of Benefit and Obligation.....	12
Section 2.5	Development of Property.....	12
Section 2.6	Subdivision Record Map.....	12
Section 2.7	Parking.....	13
<b>ARTICLE III ORGANIZATION AND MANAGEMENT OF THE ASSOCIATION.....</b>		<b>13</b>
Section 3.1	Members. ....	13
Section 3.2	Association Insurance Requirements.....	13
<b>ARTICLE IV EASEMENTS.....</b>		<b>13</b>
Section 4.1	Grant of Nonexclusive Easements to Owners: Subject to the terms and conditions of this Declaration and the Rules and Regulations from time to time established by the Association with respect to the Common Areas and Easement for Ingress and Egress, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege, and easement of access to and the use and enjoyment of the Common Areas and for purposes of ingress and egress to the Lots, an easement for ingress and egress as shown on the Subdivision Record Map (“Easement for Ingress and Egress”) in common with all other Owners and Occupants and their parties having a right or interest therein and their respective successors and/or assigns.....	13
Section 4.2	Utility Easements.....	14
Section 4.3	Additional Easements and Uses.....	14
Section 4.4	Reservation of General Access Easement.....	14
Section 4.5	Reservation of Easements With Respect to Common Areas.....	15
Section 4.6	Additional Documents. ....	15
Section 4.7	Limitations.....	15
<b>ARTICLE V ARCHITECTURAL CONTROL.....</b>		<b>16</b>
Section 5.1	Architectural Control. ....	16
Section 5.2	Architectural Standards.....	16
Section 5.3	Approval of Plans and Specifications.....	17
Section 5.4	Construction Without Approval.....	19
Section 5.5	Inspection.....	19
Section 5.6	Limitation of Liability.....	19
Section 5.7	Enforcement and Remedies. ....	20

ARTICLE VI RESTRICTIONS .....	20
Section 6.1 Rules and Regulations of the Association. ....	20
Section 6.2 Restrictions on Use. ....	21
Section 6.3 Landscaping. ....	23
Section 6.4 Storm Drains. ....	24
Section 6.5 Exterior Lighting.....	24
Section 6.6 Exterior Materials and Finishes. ....	24
Section 6.7 Fences. ....	24
Section 6.8 Windows, Window Treatments and Doors. ....	24
Section 6.9 Mailboxes.....	24
Section 6.10 Outdoor Furniture and Recreational Facilities.....	24
Section 6.11 Trash, Rubbish and Nuisances. ....	25
Section 6.12 Recreational Vehicles and Machinery and Equipment. ....	25
Section 6.13 Signage.....	26
Section 6.14 Construction of Improvements. ....	26
Section 6.15 Swimming Pools. ....	27
Section 6.16 Traffic Regulations. ....	27
Section 6.17 Lease of Lots.....	27
Section 6.18 Right of Access. ....	27
Section 6.19 Limitation of Liability.....	28
Section 6.20 Enforcement.....	28
Section 6.21 Failure of the Association to Insist on Strict Performance; No Waiver. ....	28
Section 6.22 Use by Developer.....	29
Section 6.23 Common Areas. ....	29
Section 6.24 Compliance with Governmental Regulations. ....	29
Section 6.25 Additional Regulations. ....	29
ARTICLE VII COVENANT FOR ASSESSMENTS.....	29
Section 7.1 Affirmative Covenant to Pay Assessments.....	29
Section 7.2 Purpose of Assessments.....	30
Section 7.3 Individual Assessment. ....	30
Section 7.4 Annual Assessments. ....	30
Section 7.5 Special Assessments. ....	30
Section 7.6 Special Meeting. ....	31
Section 7.7 Amount of Assessments.....	31

Section 7.8	Certificate.....	31
Section 7.9	Effect of Non-Payment of Assessments; Liens; Remedies.....	31
Section 7.10	Damages.....	32
Section 7.11	Exempt Property. ....	33
ARTICLE VIII MAINTENANCE RESPONSIBILITIES .....		33
Section 8.1	Responsibilities of Owners -Maintenance. ....	33
Section 8.2	Responsibilities of Owners - Utilities.....	34
Section 8.3	Responsibilities of Association – Maintenance. ....	34
Section 8.4	Responsibilities of Association - Common Expenses. ....	34
Section 8.5	Reserves. ....	35
Section 8.6	Interested Transactions. ....	35
ARTICLE IX ENFORCEMENT OF PROTECTIVE COVENANTS, DEFAULTS AND REMEDIES.....		35
Section 9.1	Covenants Running with the Land.....	35
Section 9.2	Remedies for Default. ....	36
Section 9.3	Nature of Remedies: Waiver.....	36
Section 9.4	Attorneys’ Fees and Costs. ....	36
Section 9.5	No Reverter. ....	36
ARTICLE X AMENDMENT OF DECLARATION .....		36
Section 10.1	Amendment by Association.....	36
Section 10.2	Scrivener’s Error.....	37
ARTICLE XI PERIOD OF DEVELOPER CONTROL.....		37
Section 11.1	Developer Control.....	37
ARTICLE XII GENERAL PROVISIONS.....		38
Section 12.1	Deeds Subject to Covenant. ....	38
Section 12.2	Obligation of Owner to Build or Restore.....	38
Section 12.3	No Trespass.....	38
Section 12.4	Notices. ....	38
Section 12.5	Severability. ....	38
Section 12.6	Governing Law. ....	38
Section 12.7	Captions. ....	38
Section 12.8	Usage.....	38
Section 12.9	Conflict. ....	38
Section 12.10	Effective Date. ....	39

**EXHIBITS**

- Exhibit "A"            Legal Description of Property
- Exhibit "B"            Bylaws of [XYZ] Subdivision Association, Inc.

**DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS AND  
RESTRICTIONS OF [XYZ] SUBDIVISION**

**THIS DECLARATION OF COVENANTS, EASEMENTS, CONDITIONS AND RESTRICTIONS FOR [XYZ] SUBDIVISION** (this “Declaration”) is made as of the \_\_ day of \_\_\_\_\_, 202\_\_ by [\_\_\_\_\_], LLC, an Alabama limited liability company (the “Developer”).

**RECITALS:**

**WHEREAS**, Developer is the owner of certain real property situated in Jefferson County, Alabama, more particularly described on Exhibit “A” attached hereto (the “Property”). Developer intends to develop, improve, lease and sell the Property for residential uses, subject to certain easements, covenants, conditions, restrictions, requirements, and obligations, in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the development, administration, and maintenance of the Property.

**NOW, THEREFORE**, Developer, upon the recording hereof, does hereby declare that all of the Property shall be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the easements, covenants, conditions, restrictions, requirements and obligations hereafter set forth as applicable to the Property, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property and their respective heirs, executors, administrators, personal representatives, successors and assigns.

**ARTICLE I  
DEFINITIONS**

As used in this Declaration, the following initially capitalized terms shall have the following meanings, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

**Section 1.1** Additional Property. The term “Additional Property” shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Property) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.2 below. The Additional Property may also include additional Common Areas.

**Section 1.2** Annual Assessments. The term “Annual Assessment” shall have the meaning ascribed to it in Section 6.4 hereof.

**Section 1.3** ARC. The term “ARC” shall mean the Architectural Review Committee appointed pursuant to Article IV hereof with the rights and obligations conferred upon such Architectural Review Committee pursuant to this Declaration.

**Section 1.4** Architectural Standards. The term “Architectural Standards” shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to



Article IV below for the purpose of establishing policies, guidelines and minimum requirements with regard to the construction, location, landscaping, design, architectural style and any other matters relating to the construction, repair, replacement and alteration of Improvements on the Lots. The Developer shall work with the City of [\_\_\_\_\_] to develop these standards for the Lots. In addition, the term “Architectural Standards” shall include, without limitation, any additional construction and development guidelines adopted from time to time by the ARC or the Board.

**Section 1.5** Assessment. The term “Assessment” shall mean the assessments to be assessed against the Owners pursuant to the authority vested in the Association, and such term shall include the Annual Assessments, Special Assessments and Individual Assessments.

**Section 1.6** Association. The term “Association” shall mean [XYZ] Subdivision Association, Inc., an Alabama non-profit corporation, and its successors and assigns.

**Section 1.7** Board. The term “Board” shall mean the Board of Directors of the Association and their duly elected successors as may be provided in the Certificate of Formation and Bylaws.

**Section 1.8** Bylaws. The term “Bylaws” shall mean the Bylaws of the Association attached hereto as Exhibit “B”, as such Bylaws may be amended from time to time.

**Section 1.9** Certificate of Formation. The term “Certificate of Formation” shall mean the Certificate of Formation of the Association, filed with the Secretary of State and having the Entity Number \_\_\_\_\_, as said Certificate may be amended from time to time.

**Section 1.10** Common Areas. The term “Common Areas” shall mean and refer to all real and/or personal property, including property which the Association now or hereafter owns or otherwise acquires by lease, easement or otherwise, for the common use and enjoyment of the Owners, and which shall be the responsibility of the Association to maintain, and which shall include, without limitation, the following: (a) all signage for the Property situated on or within any entrance easement, within private roads, or rights-of-way of any public roads within the Property (but specifically excluding any signage located within the boundaries of any Lot unless an easement has been granted to (and accepted by) Developer or the Association for signage on such Lot), including, without limitation, informational, traffic and street signage; (b) any street or roadway and landscaping lighting situated within the right-of-way of any streets within any portion of the Property (to the extent the same are not being maintained by any Governmental Authority); (c) all sidewalks, paths and on-street parking spaces, if any, situated within any portion of the Property (other than such areas located within the boundary lines of any Lot or which are maintained by any Governmental Authority); (d) all gates, walls, fences, Improvements, landscaping and landscaped areas situated within the Common Areas or rights-of-way of any public roadways within the Property, (e) all water features, storm drains and sewers, drainage and/or watershed protection or retention ponds, basins or other areas and facilities located within the Property (other than such areas located within the boundary lines of any Lot or which are maintained by any Governmental Authority); (f) all utility and irrigation lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which serve any portion of the Common Areas (which are not owned or maintained by any public or private utility

providers or any Governmental Authorities), including sanitary sewer pumping stations; (g) any and all other areas designated on any Subdivision Record Map as a “Common Area”; and (h) any other areas or Improvements on or within the Property which are designated by Developer as Common Areas from time to time. The designation of any land and/or Improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof.

**Section 1.11 Common Expenses.** The term “Common Expenses” shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Section 7.5 below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

**Section 1.12 Declaration.** The term “Declaration” shall mean and refer to this Declaration of Covenants, Easements, Conditions and Restrictions for [XYZ] Subdivision, together with all amendments thereto.

**Section 1.13 Developer.** The term “Developer” shall mean [\_\_\_\_\_], LLC, an Alabama limited liability company, and its successors and assigns, if such successors or assigns acquire any portion of the Property and are designated as successor developer by Developer.

**Section 1.14 Developer Control Period.** The term “Developer Control Period” shall have the meaning ascribed to it in Section 11.1 hereof.

**Section 1.15 Governmental Authority.** The term “Governmental Authority” shall mean and refer to any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Property or any Improvements thereto.

**Section 1.16 Improvement.** The term “Improvement” shall mean and refer to any dwellings, any building, structure, planting or device constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural condition of any Lot.

**Section 1.17 Individual Assessment.** The term “Individual Assessment” shall have the meaning ascribed to it in Section 6.3 hereof.

**Section 1.18 Lot.** The term “Lot” shall mean and refer to any portion of the Property upon which it is intended that a dwelling be constructed thereon. Upon the recordation of any Subdivision Record Map for any portion of the Property, each Lot indicated thereon (other than any Lots designated thereon as Common Areas or which subsequently become Common Areas) shall be deemed a Lot for purposes of this Declaration; provided, however, that a Lot may be unplatted and may be described by metes and bounds legal description.

**Section 1.19 Member.** The term “Member” shall mean any person who is a member of the Association. Every Owner shall be a Member of the Association.

**Section 1.20 Mortgage.** The term “Mortgage” shall mean any first mortgage encumbering a Lot or any interest therein and which shall have been duly and properly recorded in the Probate Office.

**Section 1.21 Mortgagee.** The term “Mortgagee” shall mean the holder of any first Mortgage.

**Section 1.22 Occupant.** The term “Occupant” shall mean and include any Owner, the family members, guests, tenants, agents, employees or invitees of any Owner and their respective family members, guests, tenants, agents, employees, invitees and any other person who occupies or uses any dwelling within the Subdivision. All action or omission of any Occupant is and shall be deemed the action or omission of the Owner of such dwelling.

**Section 1.23 Owner.** The term “Owner” shall mean and refer to the record owner, including Developer, of fee simple title to any Lot, whether a corporation, partnership, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee of Lot, unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or accepted a deed in lieu of foreclosure or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot solely by virtue of a lease, contract, installment contract or other agreement.

**Section 1.24 Probate Office.** The term “Probate Office” shall mean and refer to the Office of the Judge of Probate of Jefferson County, Alabama, and any successors thereto which serves as the official public registry for the public recording of real estate documents in Jefferson County, Alabama.

**Section 1.25 Property.** The term “Property” shall mean and refer to the real property more particularly described on Exhibit “A” attached hereto, including all the Lots described on Exhibit “A” and all easements as reflected on the Subdivision Record Map.

**Section 1.26 Rules and Regulations.** The term “Rules and Regulations” shall mean those Rules and Regulations adopted from time to time by the Board of Directors that are deemed necessary for the enjoyment of the Property.

**Section 1.27 Single Family Unit.** The term “Single Family Unit” shall mean a group of one or more persons each related to the other by 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 1.28 Special Assessments.** The term “Special Assessments” shall have the meaning ascribed to it in Section 6.5 hereof.

**Section 1.29 Subdivision.** The term “Subdivision” shall mean [XYZ] Subdivision as shown on the Subdivision Record Map, as may be amended from time to time.

**Section 1.30** Subdivision Record Map. The term “Subdivision Record Map” shall mean each recorded map or plat for one or more phases of [XYZ] Subdivision, each as shall be recorded in the Probate Office, and any amendments or supplements thereof.

## **ARTICLE II RESTRICTIONS APPLICABLE TO THE PROPERTY**

**Section 2.1** General Declaration. Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to such Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any Lot thereof. This Declaration shall not apply to any other real property owned by Developer unless the same is subjected specifically by written instrument to this Declaration in accordance with Section 2.2 hereof.

**Section 2.2** Additional Property. Developer reserves the right, in its sole and absolute discretion and without the consent of the Association, the Owners, Occupants, or Mortgagees of any Lot or dwelling, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot) and shall (a) refer to this Declaration stating the Instrument Number in the Probate Office where this Declaration is recorded, (b) contain a statement that such Additional Property is subject to the provisions of this Declaration, (c) contain a legal description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as the Developer, in its sole discretion, shall specify to regulate and control the use, occupancy and improvement of such Additional Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Subdivision. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.2 may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer and (2) the rights reserved by Developer pursuant to this Section 2.2 shall not be deemed to inure to the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to Section 2.2 of this Declaration.

**Section 2.3** Right of Developer to Modify Restrictions with Respect to Lots Owned by Developer. With respect to any Lot owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.2 above, modify

the provisions of this Declaration as the same apply to any such Lot, without the consent of the Association, or by any Owner, Occupant, or Mortgagee of any Lot or dwelling thereon.

**Section 2.4** Mutuality of Benefit and Obligation. The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot within the Property and are intended to create mutual, equitable servitudes upon and in favor of each Lot, (b) to create reciprocal rights and obligations between the respective Owners, Occupants and all future and subsequent Owners and Occupants of any Lot within the Property, and (c) to create a privity of contract and estate between the Owners and Occupants, their respective heirs, successors and assigns.

**Section 2.5** Development of Property. At any time during the Developer Control Period and at any time thereafter for so long as Developer owns any portion of the Property, Developer shall have the right to make improvements and changes to all Common Areas and to all Lots owned by Developer, including, without limitation, (a) installing and maintaining any Improvements in or to the Common Areas, (b) changing the location of the boundaries of any Lots owned by Developer or the boundaries of any of the Common Areas, (c) changing the boundaries of any portion of the Property owned by Developer including any Additional Property owned by Developer, (d) installing and maintaining any water, sanitary sewer, storm sewer and any other utility systems and facilities within any of the Common Areas, (e) converting and changing any Lots or any portion thereof owned by Developer into Common Areas, streets, roadways, paths, parks or other uses and (f) removing or exempting any portion of the Property and any Lots or Common Areas from the terms and provisions of this Declaration. The exercise by Developer of any of the rights reserved unto Developer in this Section 2.5 may be exercised by Developer without any requirement that the consent or approval of any Owners, the Association, the ARC or any Mortgagees be obtained.

**Section 2.6** Subdivision Record Map. Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, the Subdivision Record Map of the Property setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots, Common Areas, Additional Property, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, retention ponds and drainage basins. Any such Subdivision Record Maps or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such Subdivision Record Map were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, the rights reserved by Developer pursuant to this Section 2.6 may be exercised by Developer without any requirement that the consent or approval of any Owners or Mortgagees be obtained (other than the Owner or Mortgagee of any Lot which is being subdivided or re-subdivided) and shall include, without limitation, the right to (a) divide and re-subdivide, combine, subdivide and re-subdivide any Lots, Common Areas and other portions of the Property owned by Developer, and (b) amend from time to time and at any time Exhibit "A" to this Declaration to reflect any such subdivision or re-subdivision of any portion of the Property, or the addition of Additional Property.

**Section 2.7** Parking. All vehicles shall be parked within the garage located on the Lot. No vehicles may be parked on the street at any time. Guests may park in the driveway of the Lot they are visiting.

### **ARTICLE III ORGANIZATION AND MANAGEMENT OF THE ASSOCIATION**

**Section 3.1** Members. All Owners shall be members of the Association.

**Section 3.2** Association Insurance Requirements. The Association shall obtain and maintain at all times the following insurance:

(a) Fidelity Bonds and Directors' and Officers' Insurance covering all directors, officers and employees of the Association and all managing agents who handle Association funds;

(b) Adequate property and casualty insurance for the benefit of the Association insuring all insurable improvements, if any, located within the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism and malicious mischief, which coverage shall be in an amount, with such insurance carriers, at such costs and with such deductibles as the Association may determine;

(c) Public liability insurance coverage covering all of the Common Areas and any damage or injury caused by the negligence of the Association and its directors, officers, partners, agents and employees thereof, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Board may determine;

(d) If applicable, worker's compensation insurance, employer's liability insurance and all other types of insurance required by law, including, without limitation, errors and omissions insurance coverage, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Association may determine; and

(e) All insurance coverage authorized hereunder shall be written in the name of the Association. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Association, and the Owners, Occupants and the family members, servants, agents, and guests of the Owners and/or Occupants.

### **ARTICLE IV EASEMENTS**

**Section 4.1** Grant of Nonexclusive Easements to Owners: Subject to the terms and conditions of this Declaration and the Rules and Regulations from time to time established by the Association with respect to the Common Areas and Easement for Ingress and Egress, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege, and easement of access to and the use and enjoyment of the Common Areas and for purposes of ingress and egress to the Lots, an easement for ingress and egress as shown on the Subdivision Record

Map (“Easement for Ingress and Egress”) in common with all other Owners and Occupants and their parties having a right or interest therein and their respective successors and/or assigns. Subject to the remaining terms of this Declaration, the easement and rights granted pursuant to this Section 3.1 are and shall be permanent and perpetual, are nonexclusive, are appurtenant to, and shall pass and run with title to each Lot.

**Section 4.2** Utility Easements. Developer reserves for itself and the Association the right to use, dedicate and/or convey to the appropriate local authority or agency, and/or to the appropriate utility company or other companies, rights-of-way or easements on, over or under the ground to erect, maintain and use, electric and telephone poles, wires, cables, cable television, conduits, storm sewers, sanitary sewers, surface drainage, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, surface water drainage, cable television, or other public conveniences or utilities, on, in and over the utility easements reflected on the Subdivision Record Map or as may hereafter appear on any plat of record of the Property subject to this Declaration, together with the right to construct within such reserved easement such swales and other surface water drainage systems as Developer shall, in its sole discretion, deem necessary.

**Section 4.3** Additional Easements and Uses. For so long as Developer owns any Lot, Developer, and, thereafter, the Association, on its own behalf and on behalf of all Owners, who hereby appoint Developer and/or the Association, as the case may be, irrevocably, as their attorney-in-fact for such purposes, shall have the right to grant such additional electric, telephone, water, sanitary sewer, landscaping, irrigation, security, maintenance, drainage, gas, cable television and/or other utility, recreational or service easements or facilities (subject to applicable restrictions), in any portion of the Property, and to grant access easements or relocate any existing access easements in any portion of the Property, as Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, or for the general welfare of the Owners, or for the purpose of carrying out any provisions of this Declaration, provided (a) such new easements or relocation of existing easements will not, in the opinion of the Board, unreasonably interfere with any Owner’s enjoyment of the portion of the Property owned by such Owner, (b) any required work is done at the sole cost and expense of the Association, and after completing such work, the Association will restore any portion of the Property which was affected to the same or as good a condition as existed immediately before the commencement of such work, and (c) following the completion of such work, the Association shall cause a survey to be made of the easement showing its location on the Property and cause the same to be recorded in the Probate Office. In furtherance of the rights granted in this Section, Developer and/or the Association may, as it deems necessary or desirable, provide for the simultaneous or concurrent use of any presently existing or additional easements by the Owners, Occupants, and the Owner’s and Occupant’s respective tenants, employees, guests, invitees, licensees and/or agents.

**Section 4.4** Reservation of General Access Easement. Developer does hereby establish and reserve for itself and its successors and assigns and does hereby grant to the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot for the purposes of (a) providing ingress to and egress from each Lot for (i) inspecting each Lot and any Improvements thereon in order to determine compliance with the

provisions of this Declaration and (ii) the performance of the respective duties of Developer and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the ARC and the Association pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any dwelling, then the foregoing easement shall not be deemed to allow or grant any rights to Developer, the ARC or the Association to enter onto any Lot and dwelling located thereon, except in the case of emergencies, and shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot directly affected thereby, and (b) painting, repairs, mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within the Property; provided, however, that such easement shall not impose any duty or obligation upon Developer, the ARC or the Association to perform any of the foregoing actions.

**Section 4.5** Reservation of Easements With Respect to Common Areas.

(a) Easement Upon Common Areas. Developer does hereby establish and reserve, for itself, the ARC, the Association, and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing, installing, repairing and replacing any Improvements to the Property or to the Common Areas, and (ii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that nothing in this sentence shall obligate Developer to undertake any of the foregoing.

(b) Changes in Common Areas. Developer does hereby establish and reserve unto itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas, any Lots, or other portions of the Property or of the Development owned by Developer. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Association at any time and from time to time any portion of the Property, or any Improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine.

**Section 4.6** Additional Documents. All Owners shall be required to execute such other documents as are necessary or convenient to effectuate the intent of this Declaration with respect to all easements which may be created pursuant to this Article III.

**Section 4.7** Limitations. Any easements which may be created pursuant to this Article III shall be appurtenant to, and the benefits and burdens thereof shall pass along with the title to, every Lot and are further subject to the following limitations:

(a) All provisions of this Declaration and the Certificate of Formation and Bylaws of the Association;

(b) All the Rules and Regulations governing the use and enjoyment of the Property which may or may have been or may hereafter be adopted by the Association;



(c) All restrictions contained on any and all plats of all or any part of the Common Areas or any other part or parts of the Property; and

(d) Developer does hereby establish and reserve for itself and its successors and assigns and does hereby grant to the Association and its agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across, through and upon all Lots and all unimproved portions of any Lots for the purpose of taking any action necessary to effect compliance with the Architectural Standards and any watershed, soil erosion or environmental rules, regulations and procedures from time to time affecting or otherwise promulgated or instituted by any Governmental Authorities or the Board. The easement and right established, reserved and granted herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any Governmental Authorities, including, without limitation, any watershed, soil erosion, storm water discharge or environmental rules, regulations or procedures affecting the Property. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved or granted in this Section 3.8 shall not unreasonably interfere with the use or occupancy of any Improvement.

## **ARTICLE V ARCHITECTURAL CONTROL**

**Section 5.1** Architectural Control. The Board may appoint an Architectural Review Committee (“ARC”) consisting of not less than three (3) and no more than five (5) members to review and approve plans and specifications for Improvements to be constructed on the Lots to ensure compliance with the Declaration and Architectural Standards. The members of the ARC may consist of architects, landscape designers, and other professionals and need not be made up of members of the Association. Further, the ARC shall meet as often as is necessary to review and approve the plans and specifications. A majority of the members of the ARC shall constitute a quorum of the ARC and any submitted plans must be approved by at least a majority of the members present of the ARC. If the Board of Directors does not appoint an ARC, the Board shall act as the ARC.

**Section 5.2** Architectural Standards. The ARC is hereby authorized to promulgate and amend or modify from time to time the Architectural Standards, which includes, without limitation, regulations governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, location, landscaping and design of all Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Improvements on a Lot are to be submitted to and approved by the ARC, and any other matters affecting the construction, alteration, repair or maintenance of any Improvements on any Lot. The Architectural Standards adopted by the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners. The ARC will be responsible for review and approval of initial proposed plans for all development and improvements of the Lots and any changes thereto following the initial construction.

**Section 5.3** Approval of Plans and Specifications.

(a) IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE PROPERTY AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS AND ALL IMPROVEMENTS THEREON, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT BY ANY OWNER, OTHER THAN DEVELOPER, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY IMPROVEMENTS ON THE LOT UNLESS PLANS AND SPECIFICATIONS THEREFOR HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 4.3(b) BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY FURTHER IMPROVEMENTS ON THE LOT SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION OR CHANGE OR ALTERATION BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE) TO ANY IMPROVEMENTS, UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 4.3(b) BELOW.

(b) The ARC is hereby authorized and empowered to approve all plans and specifications and the construction or alteration of all Improvements on any part of the Property. Prior to the commencement of construction, repair or replacement of any Improvements on any Lot, the Owner thereof shall submit to the ARC plans and specification and related data for all such Improvements, which shall include two copies of each of the following, if applicable:

- (i) Plans and specifications;
- (ii) Color samples and specifications of all exterior materials and finishes or proposed changes to exterior materials and finishes;
- (iii) Site development plan prepared by a licensed surveyor; and
- (iv) Such other plans, specifications or other information or documentation as may be required by the rules and regulations of the ARC;

(c) The ARC shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. One copy of all plans, specifications and related data so submitted to the ARC shall be retained in the records of the ARC and the other copy shall be returned to the Owner submitting the same marked “approved,” “approved as noted” or “rejected.” The ARC will charge a reasonable fee, initially in the amount of \$250.00, to be paid by each Owner who submits a request to the ARC for approval of significant construction and alteration of

Improvements to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve or reject such plans and specifications and to monitor and otherwise enforce the terms hereof. The ARC may waive or increase the fee from time to time as needed. Notwithstanding anything provided herein to the contrary, an Owner may, without the necessity or requirement that ARC approval or consent be obtained, make interior improvements or alterations within his dwelling that do not affect exterior appearance of the dwelling or other Improvements in any way.

(d) The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the rules and regulations of the ARC, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed Improvement or alteration with the scheme of development proposed for the Property, objection to the location of any proposed Improvements on any such Lot, objection to the landscaping plan for such Lot, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for the Property. The ARC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements. Approval of plans and specifications by the ARC for Improvements to one particular Lot shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot within the Property.

(e) The ARC shall have forty-five (45) days after the physical receipt of the plans and specifications and other required materials to “approve,” “approve as noted” or “reject” the request. In the event the ARC fails to “approve,” or “approve as noted,” in writing any such proposed plans and specifications within forty-five (45) days after such plans and specifications have been submitted, then the plans and specifications so submitted will be deemed to have been disapproved.

(f) Any revisions, modifications or changes to any plans and specifications previously approved by the ARC must be approved by the ARC in the same manner specified above.

(g) If construction of any approved Improvement has not substantially commenced (by clearing and grading, pouring of footing and otherwise commencing framing and other related construction work) within one (1) year of approval by the ARC of the plans and specifications for such Improvements, then no construction may be commenced (or continued) on such Lot and the Owner of such Lot shall be required to resubmit all plans and specifications for any such Improvements to the ARC for approval in the same manner specified above.

(h) Any approval of plans and specifications by the ARC pursuant to this Section 4.3 shall not be construed in any respect as a representation or warranty of the ARC, the Developer, or the Association that such plans are in conformity with any applicable rules, regulations, and requirements of any governmental authorities or that any such plan or the dwelling based thereon is architecturally sound or meets any standards of engineering compliance or is properly designed but is rather for aesthetic concerns only. It shall be the responsibility of each Owner who submits any such plans to the ARC to satisfy himself as to such conformity with all other requirements and proper design.

(i) Before any significant construction of Improvements to be constructed on the Lot in the Property begins, a \$1,000.00 Common Area repair deposit must be paid to the Association. If the road shoulders, roads and other Common Areas have not been damaged during construction, in the sole opinion of the ARC, the deposit, or a portion thereof, will be refunded.

(j) All construction or alterations of Improvements, once begun, must be completed within a reasonable time not to exceed twelve (12) months.

**Section 5.4** Construction Without Approval. If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot without ARC approval of the plans and specifications for the same, or (b) the ARC shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot are not being complied with, then, in either event, the Owner of such Lot shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 4.7 below.

**Section 5.5** Inspection. The ARC, the Association, or any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Lot or any Improvements being constructed thereon in order to determine whether the approved plans and specifications therefor are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the ARC.

**Section 5.6** Limitation of Liability. Notwithstanding anything provided herein to the contrary, neither Developer, the ARC, the Association, nor any agent, employee, representative, member, shareholder, partner, joint venturer, officer or director thereof, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered which may be claimed, paid or incurred by any Owner or any other person on account of (a) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article IV, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) any failure to approve or disapprove any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article IV, (d) any construction or performance of any work related to such plans, drawings and specifications, (e) any bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Improvements or the personal property of any Owner, Occupant or his family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of any defect, structural or otherwise, in any

Improvements or the plans and specifications therefore or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, underground mines, tunnels or other geological formations or conditions on or under any Lot) and (f) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner or Occupant arising out of or in connection with the use and occupancy of any Lot or any Improvements situated thereon.

**Section 5.7 Enforcement and Remedies.** In the event any of the provisions of this Article IV are breached or are not otherwise being complied with in all respects by any Owner or Occupant or his family members, guest, invitees, agents, employees or contractors of any Owner or Occupant, then the ARC and the Association shall each have the right, but not the obligation, at their option to (a) enjoin any further construction, repair, replacement or alteration on any Lot and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements, and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot and take all action necessary to extinguish such violation or breach and/or (c) levy a fine (in an amount to be determined by the Board of Directors of the Association and set forth in the Rules and Regulations) against the Owner or Occupant which fine shall constitute a lien against the Lot. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article IV, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provision of this Article IV, shall be paid by such Owner, shall constitute an individual Assessment to such Owner and, if the same is not paid when due, shall become a lien on the Lot as provided for in Article VI below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or hereunder.

## **ARTICLE VI RESTRICTIONS**

**Section 6.1 Rules and Regulations of the Association.** The Association is authorized to promulgate, amend and enforce Rules and Regulations concerning the operation and use of the Property; provided that such Rules and Regulations are not contrary to or inconsistent with the Covenants or Certificate of Formation. A copy of the Rules and Regulations shall be furnished by the Board of Directors to each Owner prior to the time they become effective. All present and future Owners and Occupants of the Lots and any person who uses any part of the Property in any manner, are subject to, and shall comply with the provisions of the Covenants and the Rules and Regulations. The acquisition, rental or occupancy of a Lot or the use of any part of the Property by any person shall constitute his agreement to be subject to and bound by the provisions of this Declaration and the Rules and Regulations, and such provisions shall be deemed to be enforceable as equitable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Lot, as though such provisions were recited and stipulated in full in each and every deed of conveyance or lease thereof. The Association may

promulgate enforcement provisions for violation of any Rule or Regulation by an Owner or Occupant, his family members, guests, invitees, lessees or renters, including the payment of fines for such violations.

**Section 6.2** Restrictions on Use. The use of the Property is subject to the following restrictions:

(a) Each Lot is restricted to residential use by a Single Family Unit and the parking areas and driveways are limited to the parking of passenger automobiles. No commercial vehicle shall be parked on the Property, except to make deliveries. The garages shall be used for the parking of vehicles and storage space and shall not be used as living space.

(b) There shall be no obstruction of the Common Areas, nor shall anything be kept or stored in the Common Areas (except appropriate furniture on the patios or terraces appurtenant to any Improvement located on a Lot), nor shall anything be constructed on or planted in or removed from the Common Areas, nor shall the Common Areas in any other way be altered without the prior written consent of the Association.

(c) No immoral, improper, offensive or unlawful use shall be made of any Lot, Common Area, or any part thereof, and all laws, zoning ordinances and regulations of all Governmental Authorities having jurisdiction over the Property shall be observed.

(d) No Owner shall permit anything to be done or kept in or on his Lot or in the Common Areas which will result in any increase of fire or hazard insurance premiums or the cancellation of insurance on any part of the Property, or which would be in violation of any law.

(e) No noxious or offensive activities shall be carried on, nor shall any outside lighting or sound speakers or other sound producing devices be used, nor shall anything be done, on any part of the Property which in the judgment of the Board of Directors of the Association, may be or become an unreasonable annoyance or nuisance to the other Owners.

(f) No Owner shall cause or permit anything to be placed on the Common Areas immediately surrounding the Lot. No awning, canopy, window air conditioning unit, shutter, or other fixture shall be affixed to or placed upon the exterior walls or roof of any dwelling or Improvement on any part of the Common Areas.

(g) No satellite dishes over one (1) meter shall be allowed on the Property at any time. Satellite dishes less than one (1) meter shall not be allowed on any part of the Common Areas. Satellite dishes less than one meter may be allowed on the Lot with the express approval of the Board of Directors as to location of the receiving equipment and dish.

(h) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall. No clothes, sheets, blankets, laundry of

any kind or other articles shall be hung out or exposed from or on any part of the Common Areas. The Common Areas shall be kept clear of rubbish, debris and other unsightly materials.

(i) No one shall use or permit to be brought into any Lot or upon any of the Common Areas and facilities any inflammable oils or fluids such as gasoline, kerosene, naphtha or benzene, or other explosives or articles deemed extra hazardous to life, limb or property, without the written consent of the Board of Directors of the Association.

(j) No Owner or Occupant may conduct any business, trade, garage sale, moving sale, rummage sale, tag sale or similar activity at or about the Property, whether on a Lot or otherwise unless scheduled as a planned community activity approved by the Association, except that an Owner or Occupant residing in a dwelling or other Improvement on a Lot may conduct business activities on the Lot so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the Lot or from outside any dwelling or other Improvement located on the Lot; (ii) the business activity conforms to all zoning and other legal requirements for the Property; (iii) the business activity does not, in the Board's reasonable judgment, generate any vehicular or pedestrian traffic or a number of vehicles being parked in the Property; (iv) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of compensation.

(k) No animal or pet shall be kept for commercial purposes or be allowed to create or cause any disturbance or nuisance of any kind, and if an animal or pet does cause or create a nuisance or an unreasonable disturbance, said animal or pet shall be permanently removed from the Property within seven (7) days from the date the Owner receives written notice from the Board of Directors to remove such animal or pet. The Owner of any pet or animal shall be liable for any and all damage caused by such animal or pet to any part of the Property. Notwithstanding the foregoing, no more than two (2) domesticated pets may be kept on any Lot without the permission of the Board of Directors and no potbellied pigs, venomous snakes, or animals, including particular breeds of dogs and cats, deemed vicious or dangerous by the Board may be brought onto or kept on the Property at any time. The Board of Directors shall be entitled to adopt Rules and Regulations relating to the maintenance of pets on the Property and the Association may charge a fee or deposit for the privilege of maintaining pets on the Property.

(l) No structure of a temporary character, trailer, tent, shack, carport, garage, barn, fence or other outbuilding shall be erected by any Owner, other than the Developer, on any portion of the Property, at any time, either temporarily or permanently, without the prior written approval of the Association.

(m) The display or discharge of firearms or fireworks on the Common Areas is prohibited; provided, however, that the display of lawful firearms on the Common Areas is permitted by law enforcement officers and also is permitted for the limited purpose of transferring firearms across the Common Areas to or from an Owner's Lot so long as the firearm is not loaded and not carried in a threatening manner. The terms "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size.

(n) Lot Owners and Occupants are prohibited from smoking or vaping inside a dwelling.

(o) One (1) generator per Lot may be used during power outages and shall be approved by the Architectural Review Board before being installed.

### **Section 6.3** Landscaping.

(a) Each Owner shall be responsible for the cost of installation, replacement and maintenance of all landscaping in the back yard of the Lot. The landscaping plan shall be submitted to the ARC for approval prior to installing or changing the plant materials. The Association shall be responsible for maintenance of all landscaping in the front and side yards of the Lots.

(b) No Owner shall allow the lawn grass on his or her Lot to grow to a height where it looks unkempt, in the sole discretion of the Association.

(c) No hedge or shrubbery planting which obstructs sight-lines of streets and roadways shall be placed or permitted to remain on any Lot. The determination of whether any such obstruction exists shall be made by the Association, whose determination shall be final, conclusive and binding on all Owners.

(d) No rocks or other substances shall be placed on any Lot as a front or side yard border. No bird baths, fountains, waterfalls, pools, ponds, reflectors, flag poles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses or other fixtures and accessories shall be placed or installed within the front or side yards of any Lot, or on the rear (back) yard of any Lot if it can be seen from the street.

(e) No vegetable, herb or similar gardens or plants shall be planted or maintained in the front or side yards of any Lot or in the rear (back) yard of any Lot if the same would be visible from any street.

(f) The Association may from time to time promulgate Rules and Regulations adopting an approved list of plant life which may be utilized on any Lot, which Rules and Regulations may require that either a minimum dollar amount be established and utilized as the landscaping budget for each Lot, or that a minimum number of plantings of certain sizes, types and specifications be used on any Lot.

(g) Seasonal or holiday decorations (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be promptly removed from each Lot within fifteen (15) days after such holiday.



**Section 6.4** Storm Drains. Developer has installed, or will cause to be installed, pipes, swales, headwalls, flumes, surface inlets and other structures necessary for proper control of storm drainage and runoff. Owners shall not alter, modify, or in any way interfere with the functionality of these structures. Additionally, Owners shall not allow debris, grass clippings, fences or any other items to impede the function of the drainage structure and shall maintain the same.

**Section 6.5** Exterior Lighting. All exterior lighting, including, without limitation, free standing lighting and utility (e.g., flood) lights, must be of a design and in a location approved by the ARC.

**Section 6.6** Exterior Materials and Finishes. No exterior materials and finishes of any Improvement on any Lot may be changed except with approval of the Association. All wood surfaces utilized on the exterior of any dwelling, including windows and doors, shall be painted or stained at all times in colors approved by the Association.

**Section 6.7** Fences. No fences, including but not limited to chain link, vinyl coated, wire or above ground electric fences, shall be permitted on the Property other than those built by the Developer pursuant to the development plan.

**Section 6.8** Windows, Window Treatments and Doors.

(a) Reflective glass shall not be permitted on any portion of any dwelling or Improvement. No foil or other reflective materials shall be installed on any windows or used for sun screens, blinds, shades or other purposes.

(b) The ARC may adopt guidelines for the types of windows and materials from which windows may be allowed on any dwelling. Burglar bars or doors (including wrought iron doors) are not permitted. No aluminum or metal doors with glass fronts (e.g., storm doors) shall be allowed on any dwelling or Improvement. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets, foil and paper or plastic bags are not appropriate window treatments.

**Section 6.9** Mailboxes. Mailboxes shall be maintained for the Lot as installed by the Developer. Mailboxes shall contain only the name and address of the Owner or Lot. No further inscription, paintings, ornaments or artistry shall be allowed on the mailboxes.

**Section 6.10** Outdoor Furniture and Recreational Facilities.

(a) No furniture shall be placed, kept, installed, maintained or located in or on the front or side yards or areas of a Lot. Any furniture placed, kept, installed, maintained or located at the rear of or behind a dwelling shall, to the greatest extent practicable, be located so that the same shall not be visible from any street.

(b) Basketball backboards and goals are not allowed on the Lot.

(c) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear of a dwelling and, to the extent practicable, shall not be visible from any street.

**Section 6.11** Trash, Rubbish and Nuisances.

(a) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots. Noxious or offensive activities shall not be carried on in or from any Lot or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use of a Lot which could cause disorderly, unsightly or unkempt conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Property or be in violation of any law, statute, ordinance, rule, regulation or requirement of any Governmental Authority. Without limiting the generality of the foregoing, no horns, whistles, bells, speakers or other sound devices, other than reasonable security and fire alarm devices used exclusively for such purposes, shall be located, used or placed upon any Lot. Any Owner or Occupant or any of the respective family members, guests, invitees, servants, agents, employees or contractors of such Owner or Occupant who dumps, places or allows trash or debris to accumulate on his or her Lot or on any other portion of the Property shall be liable to the Association for all costs incurred by the Association to remove the same.

(b) Trash, garbage and any other refuse or waste shall not be kept on any Lot except in sanitary containers or garbage compactor units. Trash cans and containers shall at all times be kept at the rear of or inside a dwelling and shall be screened from view from streets and adjacent Lots and dwellings by appropriate landscaping or fencing approved by the Association. Each Owner shall promptly deposit all trash in the appropriate receptacle provided. Owners shall not use any garbage disposal containers of the Developer for trash disposal.

(c) No outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any Lot or other portion of the Property.

**Section 6.12** Recreational Vehicles and Machinery and Equipment.

(a) Mobile homes, motor homes, trailers of any kind, campers, motorized carts and all-terrain vehicles, tractors, construction machinery and equipment of any nature, golf carts, boats and any other type of water craft, including boat trailers, and any other similar types of vehicles, machinery or equipment shall not be permitted, stored or allowed to remain on the Common Areas or the Lot except inside the garage. The Common Areas shall not be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery or equipment. Any bicycles, lawnmowers, tools or any other vehicles, machinery or equipment brought onto a Lot shall be stored in the garage or dwelling.

(b) Any vehicle which is inoperable shall be immediately removed from the Property. No Owner or Occupant shall repair or restore any vehicle, machinery or equipment of any kind upon or within any Lot or on any portion of the Common Areas, except for emergency repairs and then only to the extent necessary to enable the immediate movement thereof to a proper repair facility located outside of the Property.

**Section 6.13 Signage.** A maximum of two (2) signs, in size and color to be approved by the ARC, may be posted on a Lot upon a single sign slab approved by the ARC, at a height not to exceed five (5) feet from the ground level advertising the Lot for sale, or during the construction of the dwelling, containing information identifying the builder of such dwelling. No other signage, banners, flags, or advertising posters shall be allowed without obtaining ARC approval. The location of such signage shall be established by the ARC but in no event shall any signage authorized by this Section or which may be approved by the ARC be attached, nailed or otherwise adhered to any tree or other plant life on a Lot.

**Section 6.14 Construction of Improvements.**

(a) During the construction of any Improvements, (i) all Lots subject to such construction shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any street, (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside the Property immediately, and (iv) any temporary or portable toilet will be placed out of view from any street.

(b) During the construction of any Improvements, care should be taken that construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers do not interfere with the use of the Common Area parking for the Owners and Occupants.

(c) Any Improvements made to the Lot shall be constructed in compliance with any rules established by the Association, all applicable federal, state, county and local laws, ordinances, rules, regulations, and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate Governmental Authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Lot. Each Owner shall also be responsible for strict compliance with any rules established by the Association and all governmental requirements, both during and after completion of construction of any Improvements on such Owner's Lot.

(d) When any Owner submits to the ARC plans and specifications for construction of Improvements in accordance with Article IV above, the name of the building contractor selected by such Owner for construction of such Improvement shall also then be submitted to the ARC; however, if the identity of the building contractor is not known at that time, then the name of the building contractor will be submitted when determined prior to construction. The ARC shall have the right, in its sole discretion, to approve or disapprove of any building contractor so selected by such Owner. Each building contractor approved by the ARC in accordance with this Section 5.14(d) will be required

to remit to the ARC a refundable damage/clean up deposit (the “Deposit”) in an amount established by the ARC or the ARC. Should such building contractor damage or fail to properly clean up the Property or Common Areas as required herein, or any supplemental rules or regulations promulgated by the ARC, the ARC may, in its sole discretion, initiate appropriate action to remediate any such condition at such building contractor’s expense. The cost of any such remediation shall be deducted from the Deposit and any amount expended by the ARC in excess of the Deposit in remediating such condition shall be billed to such building contractor. Within thirty (30) days of the completion of any improvement, the ARC shall refund to such building contractor any unexpended portion of the deposit.

**Section 6.15 Swimming Pools.** Outdoor hot tubs, reflecting ponds, saunas, whirlpools, or lap pools shall not be constructed, installed or maintained on any Lot.

**Section 6.16 Traffic Regulations.** The Association shall be entitled to make and enforce any traffic Rules and Regulations it deems appropriate, including the right to levy fines for the violation thereof. In the event of any conflict between the provisions of the laws of the State of Alabama and the traffic Rules and Regulations promulgated by the Association, the more restrictive shall govern.

**Section 6.17 Lease of Lots.** Entire Lots or any dwelling thereon may be leased by the Owners; provided, however, that any such lease and the rights of any tenant thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable Rules and Regulations relating to the lease and rental of Lots or any dwelling and to enforce the same directly against such tenant or other Occupant by the exercise of such remedies as the Board deems appropriate; provided, however, that no restrictions shall be imposed which shall have the individual or cumulative effect of prohibiting or materially impairing the rental or lease of Lots or any dwelling. No individual rooms may be rented. Further, all leases must be in writing, with a copy provided to the Association upon request by the Association. This restriction on use shall be a covenant running with each Lot, creating a burden on each single Lot and Owner for the benefit of every other Lot and Owner. No lease shall be for less than six (6) months and no more than one (1) Single Family Unit per Lot or two (2) people per bedroom of any dwelling on a Lot shall occupy a Lot. Notwithstanding anything contained in this Section to the contrary, each Owner shall be responsible for the actions of his tenants and the Occupants and nothing herein or in any such lease shall relieve an Owner of his obligations under the Covenants. The provisions of this Section shall not be applicable to the Developer who is irrevocably empowered without any limitation at all times, whether for permanent or temporary occupancy to sell, lease or rent Lots, or any dwelling or other Improvement thereon, for any period and under any terms to any lessees or purchasers or transferees with the right to take any action necessary to consummate the sale or rental of said Lots, including, but not limited to, the right to maintain model Lots with any Improvements thereon, post signs, have employees in the offices maintained on the Property, use the Common Areas and show Lots and any Improvements thereon to prospective tenants or purchasers. Sales and rental office signs and all items pertaining to the rental or sale of Lots shall not be considered Common Areas and shall remain the property of the Developer.

**Section 6.18 Right of Access.** Each Owner or Occupant grants a right of access to his Lot to the Association, and any other person authorized by the Association for the purpose of making inspections and for the purpose of correcting any condition originating on his Lot and

threatening other Lots, Common Areas, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Areas within his Lot, if any, or to correct any condition which violates the provisions of any Mortgage covering another Lot, or to enforce any provision of the Covenants, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner or Occupant. In case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not. Each Owner further grants a right of access to his Lot to the Developer or his agent, or other authorized representative who is not Developer's agent, for the purpose of making all repairs required by any warranty delivered to the Owner at the closing of his Lot. To the extent that damages inflicted on the Common Areas or any Lot through which access is taken, the Owner or the Association, if it caused the same, shall be liable for the prompt repair thereof.

**Section 6.19 Limitation of Liability.** The Association shall not be liable for any failure of water or power supply, telephone, security, fire protection or other service to be obtained by the Association or paid for out of the Common Expense funds, for problems resulting from the operation or lack of operation of sewer lines servicing the Property, or for injury or damage to a person or property caused by the natural elements or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Areas or from any wire, pipe, drain, conduit, appliance or equipment, however, this provision does not relieve the Association from maintenance responsibility or for damage to the Lots arising from or related to water intrusion from the Common Areas on account of maintenance or lack thereof. The Association shall not be liable to the Owner of any Lot for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Areas. No diminution or abatement of the Common Expense assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or to any Lot, or from any action taken by the Association to comply with any law or ordinance or with the order or directive of any municipal or other Governmental Authority or judicial authority or for the dispossession of the Owner by reason of fire or other casualty, except to the extent covered by insurance.

**Section 6.20 Enforcement.** If a determination is made by the ARC or Board that any of the restrictions in this Article V or the Architectural Standards are being or have been violated upon any Lot, then the ARC shall so notify the Owner in writing, specifying the violation. If within fifteen (15) days from such notification, the ARC shall make a second determination that sufficient progress has not been made to remedy the violation, the ARC may itself, direct such actions to be taken as shall be necessary or appropriate to remedy such violation, including, without limitation, those remedies set forth in Section 4.7 herein. The Owner shall be liable for the cost and expense of all such actions, including legal fees, and the ARC may treat all such costs and expenses therefor as a charge which shall become a lien against the Lot. The Association, any Lot owner, and/or the ARC may initiate a proceeding at law or in equity to enforce the restrictions set forth in this Article V, or the Architectural Standards and/or to seek damages as incurred as a result of any breach or violation of the same.

**Section 6.21 Failure of the Association to Insist on Strict Performance; No Waiver.** Failure of the Association to insist in any one or more instances upon the strict performance of any provision of the Covenants, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a

relinquishment from the future performance of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Association of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed to be a waiver of such breach and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors of the Association.

**Section 6.22 Use by Developer.** Subject to the rights of the Mortgagees hereunder, neither the Owners nor the Board of Directors of the Association nor their use of the Property or application of these Covenants shall interfere with completion of Improvements, sales of the Lots, construction of Improvements or development of the Property by the Developer. Subject to the rights of the Mortgagees hereunder, the Developer may make such use of the unsold Lots and the Common Areas as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, management office and model units, the showing of the Property and the Lots therein, the display of signs, balloons, banners and marketing materials thereon and therein and the holding of sales and promotional activities thereon. These rights exist so long as Developer holds any Lot in the Property for sale in the ordinary course of business. The Developer expressly reserves the right to lease any Lot which it may own in the Property on such terms as it may deem proper and desirable and may transfer Lots subject to such lease.

**Section 6.23 Common Areas.** The Developer shall convey to the Association, the title to the Common Areas as shown on the Subdivision Record Map for the benefit and use of the Owners. The Association shall assess the Common Areas in the name of the Association for tax purposes, improve and maintain the Common Areas and obtain and maintain liability insurance coverage on the Common Areas in the name of the Association.

**Section 6.24 Compliance with Governmental Regulations.** Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements and code provisions of the Governmental Authorities.

**Section 6.25 Additional Regulations.** In addition to the restrictions set forth in these Covenants, the (i) Association shall have the right, in its sole discretion, from time to time and at any time to adopt, modify and amend the Rules and Regulations in order to impose such other, further or different requirements or restrictions which shall be binding on all Owners and Lots, including the adoption of additional or different requirements or restrictions which shall be binding on all Owners and Lots, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot, and (ii) the Association shall have the right from time to time and at any time to adopt, modify and amend such Rules and Regulations as the Association, in its sole discretion, determines to be in the best interests of all Owners, which Rules and Regulations shall be binding on all Owners and Lots.

## ARTICLE VII COVENANT FOR ASSESSMENTS

**Section 7.1 Affirmative Covenant to Pay Assessments.** Each Owner, by acceptance of a deed for a Lot, whether or not it should be so expressed in such deed, shall be obligated and hereby covenants and agrees to pay to the Association (or to an independent entity

or agency which may be designated by the Association to receive such monies), in the manner set forth herein: (i) Annual Assessments or charges levied each year by the Association, (ii) Special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided, and (iii) Individual Assessments which may be levied against any Lot and the Owner thereof as a result of such Owner's or Occupant's failure to comply with the terms of this Declaration, the Rules and Regulations adopted by the Board, or as a result of damage caused by an Owner or Occupant. Notwithstanding the foregoing, Lots owned by Developer, shall not be subject to any Assessment by the Association. The Annual Assessments, Special Assessments and Individual Assessments, together with interest, late charges, costs and reasonable attorneys' fees, shall also be a charge on each Lot and shall be a continuing lien upon each Lot against which such Assessment is made, which lien may be enforced in the manner hereinafter provided. Each such Assessment, together with interest, late charges, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due or was due.

**Section 7.2 Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the preservation of the appearance, value and amenities of the Property, and in particular for the improvement, preservation, maintenance and administration of the Common Areas (including, without limitation, the payment of Common Expenses under Article VII below) and of any easement in favor of the Association and/or the Owners/Occupants, as well as for such other purposes as are properly undertaken by the Association. No profit, gain, or other benefit is to be derived by the Association from the Assessments, but, instead, such funds shall be expended only as agent for the Owners, and no part of the net earnings of the Association shall inure (other than by acquiring, constructing or providing management, maintenance, and care of the Common Areas) to the benefit of any individual.

**Section 7.3 Individual Assessment.** Any expenses incurred by the Association in enforcing any of the provisions of this Declaration against any specific Owner or Occupant shall be deemed an Individual Assessment against such Owner and the respective Lot owned by such Owner. Any expenses incurred by the Association as a result of damage caused by an Owner or Occupant shall be levied against the Owner and his Lot as an Individual Assessment. Such Individual Assessment shall be levied by the Association and shall be specified in a notice to the Owner, which notice shall also specify the due date for payment of the same.

**Section 7.4 Annual Assessments.** The Association shall levy Annual Assessments in such amounts as are necessary to meet the Common Expenses (as defined in Article VII below) and such other recurring or projected expenses as the Board of Directors of the Association may deem appropriate. The Annual Assessment for the Subdivision shall commence on January 1 of each year, and shall be paid in advance.

**Section 7.5 Special Assessments.** In addition to the Annual Assessments specified in Section 6.4 above, the Association may levy, at any time, one or more Special Assessments for the purpose of defraying, in whole or in part the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, provided that any such Assessment must have the assent and approval of (a) at least fifty-one percent (51%) of the Owners who are voting in person or by proxy at a meeting duly called for this purpose, and (b) to the extent Developer is the Owner of any Lot in the Subdivision, the approval of Developer.

**Section 7.6** Special Meeting. Written notice of any meeting called for the purpose of taking any action authorized under Section 6.5 above shall be sent to all Owners not less than fourteen (14) days but no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners, either in person or by proxy, entitled to cast fifty-one percent (51%) or more of all votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting.

**Section 7.7** Amount of Assessments. Both Annual and Special Assessments must be fixed at a uniform rate for all Lots within the Subdivision, and shall commence upon the closing of the sale of the Lot from the Developer to a third party purchaser, and shall be due and payable in such manner as established by the Board of Directors of the Association. The Board of Directors of the Association shall fix the amount of the Annual Assessment against each Lot at least thirty days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner. The due date for the payment of Annual Assessments shall be established by the Board of Directors in such notice (but such due date shall be, at a minimum, thirty (30) days from the date of such notice).

**Section 7.8** Certificate. The Association shall, upon written demand by Owner or Mortgagee and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments levied against the Lot have been paid. A properly executed certification of the Association as the status of the Assessment on a Lot is binding upon the Association as of the date of its issuance.

**Section 7.9** Effect of Non-Payment of Assessments; Liens; Remedies.

(a) The obligation to pay any assessment (whether Annual, Special or Individual) or installment thereof due the Association shall be in default if such assessment or any installment thereof is not paid to the Association on or before the due date for such payment. When in default, the delinquent assessment or delinquent installment due the Association shall bear interest at the rate established by the Board not to exceed the maximum legal rate on judgments allowed by law or eighteen percent (18%) until such delinquent assessment or installment and all interest due thereon has been paid in full. The Association shall have a lien against Lot for delinquent assessments. Said lien shall secure and does secure the monies due for all assessments then or thereafter levied against the Lot, and such lien shall also secure interest, if any, which may be due on the amount of any delinquent assessment owing the Association. Said lien shall also secure all costs and expenses, including late penalties and reasonable attorneys' fees incurred by the Association in collecting delinquent assessments and enforcing the lien upon said Lot. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages in the State of Alabama, but the Association shall give reasonable advance notice of its proposed action to the Owner, the Mortgagee and all other lienholders of record of the Lot.

(b) The lien herein granted to the Association may be foreclosed by the Association, or its successors or assign, (the "Foreclosing Party") in the same manner as



real estate mortgages in the State of Alabama, and the Foreclosing Party, or its agent, may sell the Lot at a public sale before the door of the courthouse of the county or counties, as may be required, in which the Lot or any part of thereof is situated, after having first given notice of the time, place and terms of sale at least once a week for three (3) successive weeks preceding the date of such sale in some newspaper published in said county or counties, and after having given reasonable advance notice of the foreclosure sale to the Owner, any Mortgagee, and all other lienholders of record of the Lot. At any such sale, the Foreclosing Party may execute and deliver to the purchaser a deed and conveyance of the Lot. In the event of any sale under this Declaration by virtue of the exercise of the powers herein granted, or pursuant to any order in any judicial proceedings or otherwise, the Lot may be sold as an entirety and the Foreclosing Party in its sole discretion may elect to sell the personal property covered by this Declaration at one or more separate sales in any manner permitted by the Uniform Commercial Code of the state of Alabama, and one or more exercises of the powers herein granted shall not extinguish or exhaust such powers. If the lien granted herein is now or hereafter further secured by any chattel mortgages, pledges, contracts of guaranty, assignments of lease or other security instruments, then Foreclosing Party at its option may exhaust the remedies granted under any of said security instruments or this Declaration either concurrently or independently, and in such order as Foreclosing Party may determine. Said sale may be adjourned by Foreclosing Party, or its agent, and reset at a later date without additional publication; provided that an announcement to that effect be made at the scheduled place of sale at the time and on the date the sale is originally set. In the event of any sale of the Lot as authorized by this Section, all prerequisites of such sale shall be presumed to have been performed, and in any conveyance given hereunder all statements of facts, or other recitals therein made, as to the nonpayment or nonperformance by the Owner or as to the advertisement of sale, or the time, place and manner of sale, or as to any other fact or thing, shall be taken in all courts of law or equity as prima facie evidence that the facts so stated or recited are true. Additionally, any foreclosure sale or sale of all or any portion of the Lot under the power herein granted, Foreclosing Party may credit bid for and purchase the Lot if the highest bidder therefor, but all proceeds of such sale shall be applied: (a) first, to the expenses of such sale and of all proceedings in connection therewith, including fees and expenses of Foreclosing Party's attorneys; (b) then to the repayment of the lien granted herein; and (c) finally the remainder, if any, shall be paid to such parties as are legally entitled to it, after deducting any expenses incurred in ascertaining the identity of such parties, or as may otherwise be provided by law.

**Section 7.10 Damages.** In addition to the rights and remedies set forth above, if any Owner or Occupant (or any Owner's or Occupant's contractor, family members, guests or invitees) shall violate or attempt to violate any of the covenants and restrictions set forth herein, then Developer, the Association, the ARC, or any Owner, jointly and severally, shall each have the right to prosecute proceedings at law for the recovery of damages against such Owner as a result of such violations and/or maintain a proceeding in equity against such Owner to enjoin such violation; provided, however, that the rights and remedies set forth herein shall be deemed to be cumulative of all other rights and remedies available at law or in equity. In any such proceedings, Developer, the Association, the ARC or any Owner, jointly and severally, shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred by any of them in such proceedings, as well as interest on all unpaid amounts as specified in Section 6.9 above. The

failure of Developer, the Association, the ARC or any Owner to institute proceedings for any one (1) or more violations of this Declaration shall not constitute approval of the same or be construed as a waiver of any right of action contained herein for past or future violations of said Declaration.

**Section 7.11 Exempt Property.** The Board shall have the right to exempt any portion of the Property from the Assessment and liens created herein provided that such part of the Property exempted is used (and as long as it is used) for any of the following purposes:

- (a) As an easement or other interest therein dedicated and accepted by the local public authority and devoted to public use; or
- (b) As a Common Area.

## **ARTICLE VIII MAINTENANCE RESPONSIBILITIES**

### **Section 8.1 Responsibilities of Owners -Maintenance.**

(a) Unless specifically identified herein as being the responsibility of the Association, the maintenance and repair of all Improvements situated on the Lots or therein shall be the responsibility of the Owner of such Lot. Each Owner shall be responsible for maintaining his, her or its Lot, as the case may be, in a neat, clean and sanitary condition, both inside and outside of any dwellings or Improvements thereto.

(b) Each Owner agrees as follows:

(i) To perform all maintenance, repairs and replacements which are his obligations under subparagraph (a) of this Section 7.1;

(ii) To pay all utilities as herein provided and all taxes levied against his Lot;

(iii) Not to make any addition or alteration to the Lot or any dwelling or other Improvement thereon or to the Common Areas or to do any act that would impair the structural soundness, safety or overall design and aesthetics scheme of any part of the Property or that would impair any easement or right of an Owner without the prior written consent of the Board or ARC as provided in Article V of these Covenants;

(iv) Not to make any alteration, addition, improvement, decoration, repair, replacement or change to the Common Areas, or to any outside or exterior portion of the any Improvement located on a Lot, excluding any alteration or additions made pursuant to the procedure described in subparagraph (iv) above and including, but not limited to, altering in any way exterior doors and windows, affixing outshutters to windows or painting any part of the exterior part of such Improvement, without the prior written consent of the Association as provided in Article V of these Covenants; and

(v) To promptly report to the Association any defects or needed repairs for which the Association is responsible.

**Section 8.2** Responsibilities of Owners - Utilities. Each Owner shall be required to pay all charges for utilities serving that Lot, including but not limited to electricity, water, gas, cable television, and telephone service, used or consumed in or on the Lot or any Improvement thereon. The utilities serving the Common Areas only shall be separately metered and paid by the Association as a Common Expense. The Association shall have authority, however, with regard to any utility, to use a common meter, pay the cost of such utilities used or consumed in the Lots, and have the costs thereof apportioned among the Lots based upon the Common Expense liability, use of the utility, or any other formula the Association may deem appropriate.

**Section 8.3** Responsibilities of Association – Maintenance. The Association shall, in the discretion of the Board, without any approval of the Members being required:

(a) Maintain, install, reinstall, construct and repair all of the Improvements within the Common Areas, to include maintenance of all storm water detention facilities, and to maintain, repair and operate any other easement area shown on the Subdivision Record Map which is not under the control or management of a public utility or governmental authority;

(b) Maintain, install and replace all landscaping located within the Common Areas;

(c) Maintain and manage the Common Areas shown on the Subdivision Record Map so as to preserve the Common Areas in their improved state and prevent any unlawful or obnoxious activity, or other activity prohibited by this Declaration to be conducted thereon;

(d) Do all such other acts which the Board deems necessary to preserve and protect the Property and the beauty thereof, in accordance with the general purposes specified in this Declaration;

**Section 8.4** Responsibilities of Association - Common Expenses. The following expenses are hereby declared to be Common Expenses which the Association is obligated to collect by Assessment and which Owners are obligated to pay as provided in Article VI hereof; provided, however, that the enumeration below of these expenses shall in no way limit the Association from considering other expenses incurred in managing the Association or any part of the Common Areas and/or the Property as expenses subject to collection by assessment:

(a) Maintenance and Repair of Common Areas: The cost and expense to keep and maintain the Common Areas in good repair and in a clean and attractive condition, if any, including the charges in Section 7.5 of this Declaration, as well as the following charges:

(i) Any electrical costs to run all common lighting and any other electrical device necessary to the Common Areas, including street lighting;

- (ii) Sanitary sewer and storm sewer lines within private drives, if applicable;
- (iii) Gas bills of the Association, if any;
- (iv) Water bills and sprinkler systems for use on the Common Areas;
- (v) Any insurance for the Common Areas;
- (vi) Any management fees, accounting fees, and legal expenses incurred by the Association;
- (vii) Maintenance costs of all detention ponds and storm water drainage areas, if applicable; and
- (viii) Such other matters which involve the use of the Common Areas as determined by the Association.

(b) Management. The cost and expense of such (i) employees or agents, including professional management agents, accountants and attorneys, and (ii) materials, supplies and equipment as may be needed to provide for the management, supervision and maintenance of the Common Areas.

(c) Property Taxes. All ad valorem taxes and other Assessments levied on the Common Areas, if any.

(d) Insurance. All premiums for insurance obtained by the Association and any deductibles required to be paid by the Association.

**Section 8.5** Reserves. The Association may establish reserves for the payment of Common Expenses in the future.

**Section 8.6** Interested Transactions. The Association may obtain materials and/or services from Developer and/or any of its Affiliates and/or any Members in connection with the management of the Association or any part of the Common Areas as herein contemplated; provided that the compensation for such materials and/or services is, in the opinion of the Association, comparable with the compensation of any non-affiliated third party providing similar materials and/or services which can be reasonably made available to the Association.

## **ARTICLE IX ENFORCEMENT OF PROTECTIVE COVENANTS, DEFAULTS AND REMEDIES**

**Section 9.1** Covenants Running with the Land. The easements, covenants, and restrictions set forth in this Declaration shall run with the Property and inure to the benefit of and be enforceable by Developer, its designated successors and assigns, the Association, or by any Owner and its respective heirs, successors and assigns, for a term of fifty (50) years from the date this Declaration is recorded, after which time the said protective covenants provided for herein shall automatically be extended for successive periods of ten (10) years, unless an agreement which

has been signed by Owners who own two-thirds or more of the then existing Lots of the Property, agreeing to terminate or modify this Declaration, has been recorded in the Probate Office.

**Section 9.2** Remedies for Default. The existence of any breach or default hereunder by any person or entity subject to the terms, conditions, covenants and restrictions of this Declaration shall give Developer, its successors or assigns, any Owner, and/or their respective heirs, successors and assigns, and the Association, in addition to all other remedies specified therein, the right to proceed at law or in equity to compel compliance with the terms of this Declaration and to prevent the violation or breach of any of them; provided, this Declaration shall be recorded for the benefit of Developer, the ARC, the Association, the Owners and their respective Mortgagees, and the Occupants, and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

**Section 9.3** Nature of Remedies: Waiver. All rights, remedies and privileges granted to Developer, the ARC, the Association, the Owners, their respective heirs, successors and assigns, and the Occupants pursuant to the provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure at any point in time to enforce any covenant or restriction shall in no event be deemed a waiver of the right thereafter to enforce any such covenant or restriction.

**Section 9.4** Attorneys' Fees and Costs. All fees, costs and expenses, including attorneys' fees through all appellate levels, in connection with the Association's duty to enforce all of the protective covenants and other terms contained in or imposed by this Declaration, and all Rules and Regulations adopted pursuant to the Certificate of Formation, by the Bylaws or this Declaration may be assessed against the Owner in violation of this Declaration.

**Section 9.5** No Reverter. No restriction or provision herein is intended to be, or shall be construed as, a condition subsequent or as creating any possibility of a reverter

## ARTICLE X AMENDMENT OF DECLARATION

**Section 10.1** Amendment by Association. During the Developer Control Period, this Declaration may be amended by Developer in Developer's sole discretion. Following the expiration of the Developer Control Period, an amendment to this Declaration may be proposed by the Board of Directors or by written instrument signed by the Owners of not less than one-fourth (1/4) of the Lots within the Property. Such proposed amendment or amendments shall be considered at a meeting of the Owners after written or printed notice of such meeting, stating the time and place thereof, and providing information regarding the proposed amendment or amendments in reasonably detailed form, shall be mailed to the Owners not less than ten days nor more than thirty days, before the date set for such meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to each Owner at the

street address of its Lot, the postage thereon being prepaid. Any Owner may, by written waiver of notice signed by such Owner, waive such notice, and such waiver whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Owner. At such meeting, the amendment or amendments proposed must be approved by the affirmative vote of Owners who own not less than two-thirds (2/3) of the total Lots of the Property in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments to the Declaration shall be transcribed and certified by the Board as having been duly adopted and the original or executed copy of such amendment or amendments so certified and executed with the same formalities as a deed shall be recorded in the Probate Office, within twenty days from the date on which the same became effective, such amendment or amendments to specifically refer to the recording identifying this Declaration. At any meeting held to consider such amendment or amendments, the written vote of any Owner shall be recognized if such Owner is not in attendance in person or by proxy at such meeting, provided such written vote is delivered to the Board at or prior to such meeting.

**Section 10.2 Scrivener's Error.** Notwithstanding the foregoing amendment provisions, any scrivener's error omission may be corrected by the filing of any amendment to this Declaration consented to by Developer and any Owners or Mortgagees of record directly affected by the amendment. No other Owner is required to consent to any such amendment. If there appears to be any other omissions or errors in this Declaration, scrivener's or otherwise, and such error or omission does not materially adversely affect the rights and interests of any other party, then such error or omission may be corrected by the filing of an amendment of this Declaration executed by Developer or the Association without the consent of any other party.

## **ARTICLE XI PERIOD OF DEVELOPER CONTROL**

### **Section 11.1 Developer Control.**

(a) Notwithstanding any provision contained herein to the contrary, until such time as Developer has sold and no longer retains ownership of any of the Lots within the Subdivision, or until the Developer elects to terminate its control of the Association, whichever is earlier (such period of time being referred to herein as the "Developer Control Period"), the Developer shall have the exclusive right to appoint and remove the members of the Board of Directors of the Association and the members of the ARC (who need not be Owners) and the right to amend the this Declaration, the Certificate of Formation, and the Bylaws of the Association.

(b) Notwithstanding the provisions of Section 11.1(a) above, no Assessments shall be imposed by the Association against the Developer as the Owner of an unsold Lot until the construction of the dwelling and other Improvements upon the Lot is completed.

(c) Developer may terminate its right to appoint the members of the Board of Directors and its other rights and obligations set forth herein, or any portion thereof, by relinquishing control of the Association in writing to the Owners at any time prior to the expiration of said Developer Control Period.

## ARTICLE XII GENERAL PROVISIONS

**Section 12.1** Deeds Subject to Covenant. Each deed for the sale of a Lot in the Subdivision will be subject to the terms and conditions of this Declaration regardless whether the deed contains a reference to this Declaration.

**Section 12.2** Obligation of Owner to Build or Restore. In the event an Improvement on any Lot within the Property is damaged or destroyed in whole or in part, the Owner shall be obligated to repair or replace said structure within a reasonable time not to exceed one (1) year from the date of such damage or destruction and such repair or replacement of such structure shall be in accordance with the covenants and restrictions set forth in this Declaration. Further, all debris resulting from such damage or destruction must be removed and the Lot restored to a slightly condition with reasonable promptness, but not later than ninety (90) days after such damage or destruction.

**Section 12.3** No Trespass. Whenever the Association, Developer, the ARC and their respective agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot or dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

**Section 12.4** 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, return receipt requested, to the street address of the Lot owned by such Owner or at such other address designated by Owner in writing to the Board, except for meeting notices as provided in the Bylaws.

**Section 12.5** Severability. Invalidation of any provision or provisions hereof by judgment or court order shall in no way affect any other provisions, all of which shall remain in full force and effect.

**Section 12.6** 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.

**Section 12.7** Captions. The captions and titles of the various articles and Sections in this Declaration are for convenience of reference only, and in no way define, limit or describe the scope or intent of this Declaration.

**Section 12.8** Usage. Whenever used herein the singular shall include the plural and the singular, and the use of any gender shall include all genders.

**Section 12.9** Conflict. If any irreconcilable conflict shall exist, or hereafter arise, with respect to the interpretation of any provisions of this Declaration, and any covenant of a Lot, then the provisions of this Declaration shall prevail.

**Section 12.10 Effective Date.** This Declaration shall become effective upon its recordation in the Probate Office.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]



**IN WITNESS WHEREOF**, Developer has caused this Declaration to be executed on the \_\_\_\_ day of \_\_\_\_\_ 2022.

**DEVELOPER:**

[ \_\_\_\_\_ ],  
an Alabama limited liability company

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

Print Name: \_\_\_\_\_

Its: \_\_\_\_\_

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, \_\_\_\_\_, a Notary Public in and for said County, in said State, hereby certify that \_\_\_\_\_ whose name as \_\_\_\_\_ of \_\_\_\_\_, an Alabama limited liability company, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he/she, in such capacity and with full authority, executed the same voluntarily for and as the act of said company, acting in his capacity as aforesaid.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this, the \_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

[SEAL]

My Commission Expires: \_\_\_\_\_

The undersigned, as **MORTGAGEE** under the Mortgage encumbering the real property identified in the foregoing Declaration of Covenants, Conditions and Restrictions of [XYZ] Subdivision, joins in the execution of the foregoing Declaration of Covenants, Conditions and Restrictions of [XYZ] Subdivision for the purposes of i) consenting to the filing of the Declaration of Covenants, Conditions and Restrictions of [XYZ Subdivision] and ii) subordinating its Mortgage thereto.

**MORTGAGEE:**

[ \_\_\_\_\_ ] a [ \_\_\_\_\_ ] corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its \_\_\_\_\_

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_, whose name as \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ corporation is signed to the foregoing Declaration of Covenants, Conditions and Restrictions, and who is known to me, acknowledged before me on this day that, being informed of the contents of the Declaration of Covenants, Conditions and Restrictions, he/she, as such officer, and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and seal of office this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My commission expires: \_\_\_\_\_

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT B**

**BYLAWS OF [XYZ] SUBDIVISION ASSOCIATION, INC.**

**APPENDIX F**  
**CONDOMINIUM DECLARATION**

**DECLARATION OF CONDOMINIUM  
OF  
[XYZ] CONDOMINIUM**

Date: \_\_\_\_\_, 20\_\_

This instrument prepared by:

Melinda E. Sellers  
Burr & Forman LLP  
420 North 20th Street  
Suite 3400  
Birmingham, Alabama 35203

**TABLE OF CONTENTS**  
**DECLARATION OF CONDOMINIUM**  
**[XYZ] CONDOMINIUM**

**Table of Contents**

	<b>Page</b>
ARTICLE I DEFINITIONS .....	2
Section 1.01    Definitions.....	2
ARTICLE II PROPERTY SUBJECT TO THIS DECLARATION.....	6
Section 2.01    Description of Improvements and Identification of Units.....	6
Section 2.02    Amendment of Condominium Plan.....	6
Section 2.03    Easements and Restrictions .....	6
Section 2.04    Ownership of Common Elements .....	8
Section 2.05    Rights in or to Limited Common Elements.....	9
ARTICLE III DEVELOPMENT RIGHTS TO ADD ADDITIONAL PROPERTY TO THE CONDOMINIUM.....	9
Section 3.01    Reservation of Development Rights.....	9
Section 3.02    Exercise of Development Rights.....	10
Section 3.03    Expiration of Development Rights.....	10
Section 3.04    Improvements on Additional Property .....	10
Section 3.05    Reallocations and Amendment.....	11
ARTICLE IV ORGANIZATION AND MANAGEMENT OF THE ASSOCIATION.....	11
Section 4.01    Management of the Condominium Property .....	11
Section 4.02    Members.....	11
Section 4.03    Bylaws.....	12
Section 4.04    Voting Requirements.....	12
Section 4.05    Master Association .....	12
ARTICLE V ASSESSMENTS .....	12
Section 5.01    Liability, Lien and Enforcement .....	12
Section 5.02    Assessments.....	12
Section 5.03    Annual Budget.....	13
Section 5.04    Omission of Assessment .....	13
Section 5.05    Detailed Records .....	14
Section 5.06    Payment of Common Expenses and Limited Common Expenses by Unit Owners .....	14
Section 5.07    Default in Payment of Assessments .....	14
Section 5.08    Required Reserve Funds.....	15
Section 5.09    Election of Remedies.....	15

ARTICLE VI MAINTENANCE AND OPERATION OF THE CONDOMINIUM PROPERTY .....	15
Section 6.01    The Association's Obligation to Repair.....	15
Section 6.02    Each Owner's Obligation to Repair.....	16
Section 6.03    Maintenance of Limited Common Elements.....	18
Section 6.04    Alterations, Additions and Improvements by the Association.....	19
Section 6.05    Utilities and Services.....	19
ARTICLE VII RESTRICTIONS ON USE OF UNITS, COMMON ELEMENTS .....	20
Section 7.01    Rules and Regulations of the Association.....	20
Section 7.02    Restrictions on Use.....	20
Section 7.03    Lease of Units.....	22
Section 7.04    Right of Access .....	23
Section 7.05    Limitation of Liability.....	23
Section 7.06    Abatement of Violations .....	24
Section 7.07    Failure of the Association to Insist on Strict Performance; No Waiver .....	24
ARTICLE VIII RIGHTS OF MORTGAGEES .....	24
Section 8.01    Notification of Mortgagees Required.....	24
Section 8.02    Right of Inspection .....	24
Section 8.03    Priority of Mortgagees.....	25
Section 8.04    Request for Protection by Mortgagees .....	25
ARTICLE IX CASUALTY LOSS AND INSURANCE.....	26
Section 9.01    Responsibility of Owners; Separate Insurance Coverage. ....	26
Section 9.02    Insurance to be Maintained by the Association.....	26
Section 9.03    Governing Provisions .....	28
Section 9.04    Premiums and Deductibles .....	29
Section 9.05    Insurance Trustee. ....	29
Section 9.06    Loss to Common Elements Only.....	30
Section 9.07    Loss to Common Elements, Limited Common Elements and/or Units .....	30
Section 9.08    Estimates of Repair; Plans and Specifications; Payment of Assessments.....	31
ARTICLE X CONDEMNATION .....	32
Section 10.01    Condemnation Considered a Casualty Loss.....	32
Section 10.02    Partial Condemnation .....	32
Section 10.03    Association Appointed As Attorney-In-Fact for Unit Owners .....	34
ARTICLE XI TERMINATION.....	34
Section 11.01    Termination by Consent .....	34
Section 11.02    The Association Appointed as Attorney-In-Fact for Unit Owners .....	34
ARTICLE XII CONTROL OF THE ASSOCIATION.....	34
Section 12.01    Election of Board of Directors .....	34
Section 12.02    Notice of Meeting.....	35
Section 12.03    Status of Unsold Units.....	35



Section 12.04 Professional Management and Other Contracts .....36

ARTICLE XIII AMENDMENT.....36

Section 13.01 Amendment .....36

Section 13.02 Effectiveness of Amendments.....37

ARTICLE XIV DISPUTE RESOLUTION .....37

Section 14.01 Agreement to Resolve Disputes Without Litigation. ....37

Section 14.02 Dispute Resolution Procedures. ....38

Section 14.03 Initiation of Litigation by Association. ....40

ARTICLE XV MISCELLANEOUS.....41

Section 15.01 Rights and Powers of Successors and Assignees .....41

Section 15.02 Headings .....41

Section 15.03 Mold and Mildew; Potential for Water Intrusion .....41

Section 15.04 Gender/Number .....41

Section 15.05 Exhibits.....41

Section 15.06 Invalidity and Severability .....41

Section 15.07 Interpretation .....41

**EXHIBITS**

Exhibit "A" Legal Description of Property

Exhibit "B" Additional Property

Exhibit "C" Bylaws of the Association

Exhibit "D" Plat and Plan of the Condominium

Exhibit "E" Allocated Interests, Limited Common Elements Assignments and Votes

Exhibit "F" Allocated Interests upon Addition of Additional Property

Exhibit "G" Easements and Restrictions of Record

**DECLARATION OF CONDOMINIUM  
OF  
[XYZ] CONDOMINIUM**

**THIS DECLARATION** is made this \_\_\_\_ day of \_\_\_\_\_ 20\_\_, by [\_\_\_\_\_] (the "Developer"), pursuant to the provisions of the Alabama Uniform Condominium Act of 1991, CODE OF ALABAMA 1975 §§ 35-8A-101 *et seq.* (the "Act"), for the purpose of forming a condominium and establishing certain easements, covenants and restrictions to run with the land:

**W I T N E S E T H:**

**WHEREAS**, Developer is the owner of certain real property located in the City of Mountain Brook, Jefferson County, Alabama, more particularly described on Exhibit "A" attached hereto on which is located \_\_\_\_ (\_\_) building, containing \_\_\_\_ (\_\_) levels with \_\_\_\_ (\_\_) Units on each level. The entire Condominium initially shall contain \_\_\_\_\_ (\_\_) Units and certain other improvements in accordance with the Plan (as defined below) a copy of which is included in Exhibit "D" attached to this Declaration (the "Property" or "Condominium Property");

**WHEREAS**, the Developer reserves the right to (i) add Additional Property (hereinafter defined) to the Condominium, (ii) create additional Units and Common Elements in the Condominium, (iii) construct patios, terraces, rooftop amenities, boat slips, and other recreational amenities within the Condominium Property and/or the Additional Property, subject to the terms and conditions set forth herein; and

**WHEREAS**, it is the desire and intent of the Developer, by recording this Declaration, to establish a condominium (as defined in the Act) to be known as [XYZ] Condominium under the provisions of the Act and to impose upon the Property mutually beneficial restrictions under a general plan for the benefit of all of the Condominium Units contained therein and the Owners thereof.

**NOW, THEREFORE**, Developer, upon recording hereof, does submit the Property to the provisions of the Alabama Uniform Condominium Act of 1991 to be held, conveyed, hypothecated, encumbered, leased, used, occupied, improved and in any other manner utilized subject to the provisions of said Act and subject to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Declaration, all of which are declared and agreed to be in furtherance of a plan for the improvement of said property and the division thereof into condominium ownership and all of which shall run with the land and shall be binding on all parties (including Owners as hereinafter defined) having or acquiring any right, title or interest in the Property or any part thereof, and shall be for the benefit of each Owner of any portion of the Property or any interest therein, and shall inure to the benefit of and be binding upon each successor in interest to the Owners thereof.

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions** Initially capitalized terms as used in this Declaration shall be defined as follows, unless the context clearly indicates a different meaning therefore:

(a) **"Act"** shall mean the Alabama Uniform Condominium Act of 1991, CODE OF ALABAMA §§ 35-8A-101 *et seq.*, as the same may be amended from time to time.

(b) **"Additional Property"** shall mean all or any portion of the real property described on Exhibit "B" attached hereto and the improvements now or hereafter constructed thereon including Units and Common Elements, which property may be submitted in whole or in part in one or more phases to the Condominium, in Developer's sole discretion.

(c) **"Association"** shall mean [XYZ] Condominium Association, Inc., a nonprofit corporation organized pursuant to the Alabama Nonprofit Corporation Law, CODE OF ALABAMA §§ 10A-1-1.01 *et seq.*, of which all Owners shall be members and which corporation shall administer the operation, management, maintenance, and administration of the Condominium Property.

(d) **"Board of Directors"** or **"Board"** shall mean the Board of Directors of the Association, appointed or elected pursuant to the Bylaws of the Association.

(e) **"Bylaws"** shall mean the set of Bylaws, a copy of which is attached hereto as Exhibit "C", recorded simultaneously with this Declaration.

(f) **"Certificate of Formation"** shall mean the Certificate of Formation of the Association recorded as Entity No. \_\_\_\_\_ in the Office of the Secretary of State of the State of Alabama, on \_\_\_\_\_, 20\_\_, as said Certificate may be amended from time to time.

(g) **"Common Elements"** shall mean and include the following:

(i) The Land;

(ii) The foundations and footings, bearing walls, perimeter walls, structural slabs, columns, beams and supports;

(iii) The balconies, roof, hallways, elevator, mechanical equipment, garbage, and storage areas designated as Common Elements on the Plat or for common use, stairways and entrances and exits or communication ways, some of which may be designated as Limited Common Elements;

(iv) The compartments or installations of central services such as central air conditioning, ventilation, heating, power, light, electricity, fire protection,

security, cold and hot water, plumbing, reservoirs, water tanks and pumps, sewer lines, flues, and the like, and all similar devices and installations existing for common use, but excluding all compartments or installations of utilities and services which exist for private use in the Units;

(v) The premises and facilities, if any, used for the maintenance or repair of the Property;

(vi) The grounds, courtyard, landscaping, sidewalks and central mail boxes;

(vii) All easements, rights or appurtenances affecting or relating to the use of the Condominium Property; and

(viii) All other elements (other than the Units) desirable or rationally of common use or necessary to the existence, upkeep and safety of the Condominium Property.

(h) **"Common Expenses"** shall mean the expenses arising out of the ownership of the Common Elements for which the Owners are liable to the Association and shall include, but not be limited to, expenses of administration of the Condominium Property; expenses of insurance; expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation and betterment of the Common Elements and any portion of a Unit maintained by the Association; any valid charge against the Condominium Property as a whole; a proportionate share of all Master Association Expenses; and expenses declared to be Common Expenses by the provisions of the Condominium Documents, as the same may be amended, from time to time, in accordance with the provisions thereof.

(i) **"Common Surplus"** shall mean the excess of all the receipts of the Association including, but not limited to, assessments, rents, profits and revenues over the amount of the Common Expenses.

(j) **"Condominium Documents"** shall mean this Declaration of Condominium and all Exhibits hereto, the Bylaws, the Certificate of Formation of the Association, as the same shall be amended from time to time and the Rules and Regulations of the Association.

(k) **"Declaration of Condominium"** or **"Declaration"** shall mean this instrument and all Exhibits hereto as it, from time to time, may be amended.

(l) **"Developer"** or **"Declarant"** shall mean [XYZ] DEVELOPMENT, LLC, an Alabama limited liability company, or such other person, who shall receive by assignment from the said Developer all, or a portion of its rights hereunder as such Developer, by an instrument expressly assigning such rights as Developer to such assignee.

(m) **"Land"** shall mean the parcel or tract of real estate described in Exhibit "A" to this Declaration, submitted to the provisions of the Act.

(n) **"Limited Common Elements"** shall mean and include any area designated as Limited Common Elements on the Plan and any amendment to the Plan and any areas defined in the Act as Limited Common Elements including parking spaces and storage units. The Limited Common Elements shall include among any other property so designated, the balconies, patios, and terraces, elevators, the chutes, flues, wires, conduit, bearing walls, bearing columns or any other fixture serving only that Unit. Should any Limited Common Element ever be determined not to be a Limited Common Element under the Act, the same shall be part of the Common Elements with an exclusive easement of use appurtenant to the Unit to which it was originally assigned as a Limited Common Element.

(o) **"Limited Common Expenses"** shall mean the expenses arising from the maintenance or repair of the Limited Common Elements for which the Unit Owners to which the Limited Common Elements are appurtenant shall be liable to the Association. Limited Common Expenses may include, but not be limited to, the expenses of maintenance, operation, repair, replacement, rehabilitation, restoration, renovation, and betterment of the Limited Common Elements; and expenses declared to be Limited Common Expenses by the provisions of the Condominium Documents, as the same may be amended, from time to time, in accordance with the provisions thereof.

(p) **"Master Association"** shall mean the [XYZ] Subdivision Association, Inc., an Alabama nonprofit corporation created by filing the Certificate of Formation of the [XYZ] Subdivision Association, Inc. in the Office of the Secretary of State of the State of Alabama with File Number \_\_\_\_\_.

(q) **"Master Common Areas"** shall mean those areas designated as [\_\_\_\_\_] as shown on the [XYZ] Condominiums Final Plat recorded in the Probate Office in Map Book \_\_\_\_\_, Page \_\_ and all improvements as have been or may be constructed thereon including [\_\_\_\_\_].

(r) **"Mortgage"** shall mean a first lien Mortgage on one or more Units.

(s) **"Mortgagee"** shall mean a holder of a Mortgage who has given notice to the Association that it is the holder of a first Mortgage encumbering a Unit and has provided an address for written notices.

(t) **"Occupant"** shall mean a person or persons in possession of a Unit including family members, tenants, invitees or guests, regardless of whether that person is the Unit Owner. Each Unit Owner shall be responsible for the acts or omissions of any Occupant of such Owner's Unit.

(u) **"Owner"** or **"Unit Owner"** shall mean and refer to every person or entity who is an owner of a Unit.

(v) **"Plan"** or **"Plat"** shall mean the plat and plans showing the Units, the Common Elements and the Limited Common Elements of the Condominium Property attached hereto as Exhibit "D" and recorded in Instrument Number \_\_\_\_\_ in the Probate Office, and made a part hereof for all purposes, as such Plan may from time to time be amended.

(w) **"Probate Office"** shall mean the Office of the Judge of Probate of Jefferson County, Alabama.

(x) **"Property"** or **"Condominium Property"** shall mean the Land and all improvements and structures erected, constructed or contained therein or thereon, including the building, and all easements, rights and appurtenances belonging thereto, and all furniture, furnishings, fixtures and equipment intended for the mutual use, benefit or enjoyment of the Owners, submitted to the provisions of the Act under this Declaration, as amended from time to time.

(y) **"Rules and Regulations"** shall mean those Rules and Regulations adopted from time to time by the Board of Directors of the Association that are deemed necessary for the enjoyment of the Condominium Property, provided they are not in conflict with the Act or the Condominium Documents.

(z) **"Unit"** or **"Condominium Unit"** shall mean the parts of the Condominium Property as set forth in the Plan intended for the exclusive ownership and possession by a Unit Owner. The Unit is identified in a diagrammatic floor plan of the floor on which the Unit is situated as shown on the Plan and shall consist of the volumes or cubicles of space which lie between the lower, upper and lateral or perimetrical boundaries described as follows:

(i) *Upper and Lower Boundaries:* The upper and lower boundaries extended to their planer intersections with the perimetrical boundaries as follows:

(A) The upper boundary shall be the horizontal plane of the lower unpainted surface of the material which constitutes the ceiling or the plane of the lower surface of any exposed beam or joist that is a part of the ceiling;

(B) The lower boundary shall be the horizontal plane of the upper unpainted or unfinished surface of the material which serves as the Unit's floor. Any floor covering such as subflooring, painting, carpeting, finishing, hardwood or ceramic tile is part of the Unit.

(ii) *Perimetrical Boundaries:* The perimetrical boundaries shall be the vertical planes of the exterior surfaces of the exterior windows and exterior doors, and the interior unpainted surfaces of the material which forms the perimeter wall of the Unit. All sheetrock, wall boards, including paint, wallpaper and light coverings, extended to their planer intersections with each other and with the upper and lower boundaries are part of the Unit.

Each Unit shall include all non-structural interior partition walls located within the boundaries of the Unit except such part as may comprise part of the Common Elements; the decorated surfaces of all boundary walls, ceilings and floors, including wallpaper, paint, interior brick surface, lathe, wallboard, plaster, carpeting, flooring and other finishing materials; all immediately visible fixtures, appliances, cabinets, and water and sewer pipes located within the boundaries of the Unit and serving only the Unit; and the mechanical systems and installations providing electrical power, gas, water, heating and air conditioning service to the Unit, including the individual compressor or meter even though such equipment may be located outside the boundaries of the Unit, provided that no pipes, wires, conduits, ducts, flues, shafts and other facilities situated within such Unit and forming a part of any system serving one or more other Units or the Common Elements shall be deemed to be a part of such Unit; and provided further that no bearing wall, joist, or beam providing structural support and located within the boundaries of the Unit shall be deemed part of the Unit.

## ARTICLE II

### PROPERTY SUBJECT TO THIS DECLARATION

**Section 2.01 Description of Improvements and Identification of Units.** The Condominium Property shall initially consist of \_\_\_\_ ( ) building containing \_\_\_\_ ( ) levels with \_\_\_\_ ( ) Units on each level; the total building containing \_\_\_\_\_ ( ) Units. A plat of the Land and improvements thereon and a graphic description of the improvements in which the Units are located, identifying each Unit by a number and/or letter so that no Unit bears the same designation as any other Unit, all in sufficient detail to identify the Common Elements, the Limited Common Elements and each Unit and their relative locations and approximate dimensions, are set forth in the Plan attached hereto as Exhibit “D”. There is no obligation to submit any Additional Property or additional phases to the Condominium.

**Section 2.02 Amendment of Condominium Plan.** Developer reserves the right to change the interior design and arrangement of any Unit, to alter the boundaries between Units and to increase or decrease the number of Units so long as the Developer owns the Units so altered. Developer reserves the right to create additional Units and Limited Common Elements from the Common Elements. Also, Developer reserves to itself or any subsequent Owner the right to combine two or more Units or to subdivide any of the Units into as many Units as Developer or the Unit Owner determines, in its sole discretion, which number shall not exceed \_\_\_\_\_ ( ) Units. Upon subdivision of any Unit, the allocated interests assigned to the Unit subdivided shall be allocated to the resulting Units as determined by the Developer or such affected Unit Owner but which total allocated interests shall not exceed the amount originally assigned to the single Unit. Changes in the boundaries between the Units, as hereinbefore provided, shall be reflected by an amendment to the Plan, and if necessary, an amendment to this Declaration. An amendment to the Plan or the Declaration reflecting an alteration of the boundaries of the Units or addition of Units need be signed and acknowledged only by the Developer or affected Unit Owner and need not be approved by the other Owners and Mortgagees, whether or not such approval may elsewhere be required herein.

**Section 2.03 Easements and Restrictions.** The Units, Common Elements and Limited Common Elements shall be, and the same are hereby declared to be subject to the

restrictions, easements, conditions and covenants prescribed and established in the Condominium Documents governing the use of said Units, Common Elements and Limited Common Elements in setting forth the obligations and responsibilities incident to ownership of each Unit and its appurtenant undivided interest in the Common Elements. The Units, Common Elements and Limited Common Elements are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the Condominium Property, which easements and restrictions are described on Exhibit "G" attached hereto. Additional easements established hereunder include the following:

(a) Utility Easements. Utility easements are reserved throughout the whole of the Property, including Units, as may be required for utility services (including, without limitation, water, sewer, gas, electricity, telephone, internet and cable television) in order to adequately serve the Condominium Property.

(b) Utility Equipment. There may be utility equipment which is appurtenant to the Units, but which is located on the Common Elements. An easement is hereby reserved in favor of each Unit for the purpose of placement, maintenance, repair and replacement of said utility equipment by Developer and the Owners of the Unit; provided that no utility equipment shall be placed on any part of the Common Elements or Limited Common Elements other than the present location unless the written approval of the Association shall have been first obtained.

(c) Easements for Ingress and Egress. The Common Elements shall be, and the same are hereby declared to be subject to a perpetual nonexclusive easement of way over all walkways, halls, stairways, and other common areas in favor of all Owners for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners, subject to all restrictions in the Condominium Documents.

(d) Easement for Use of Leased or Acquired Property. Each Unit Owner shall have a nonexclusive easement for use of any property hereafter acquired by the Association for the common benefit of the Owners by purchase, lease or otherwise for all normal and proper purposes for which the same are reasonably intended, subject to all restrictions in the Condominium Documents and the Rules and Regulations.

(e) Easements for Encroachments. To the extent that any Unit, Common Element or Limited Common Element encroaches on any other Unit, Common Element, or Limited Common Element, whether by reason of any deviation from the Plan in the original construction, repair, renovation, restoration or replacement of any improvement, or by reason of the settling or shifting of any land or improvement, a valid easement shall exist for the encroachment and/or the maintenance of the same, so long as the encroaching Unit, Common Element or Limited Common Element stands. This easement, however, shall not relieve an Owner of liability for his or his agent's negligence, intentional acts or willful and intentional misconduct in causing the encroachment. In the event any Unit, any adjoining Unit, or any adjoining Common Elements or Limited Common Elements shall be partially or totally destroyed as a result of fire or other casualty or as a result of



condemnation or eminent domain proceedings, and then constructed, reconstructed or repaired, encroachment of parts of the Common Elements or Limited Common Elements upon any Unit, or encroachment of any Unit upon any other Units, Common Elements or Limited Common Elements resulting from such construction, reconstruction or repair shall be permitted, and valid easements for such encroachment and the maintenance thereof shall exist so long as the encroaching improvements shall stand.

(f) Easement for Services and Emergencies. There shall be nonexclusive easements for all police, firemen, ambulance operators, mail carriers, delivery services, garbage service workers, and all similar persons, and the Association, but not the public in general, to enter upon the Common Elements in the performance of their duties, subject to reasonable rules and regulations as the Board may establish from time to time.

(g) Easement of Support. Each Unit and the Common Elements and Limited Common Elements shall have an easement of support from every other Unit, Common Elements or Limited Common Elements which provide such support.

(h) Easement for Use of Limited Common Elements. Each Owner shall have an easement for the use and upkeep of the Limited Common Elements appurtenant to his Unit and for ingress and egress to and from the Limited Common Elements for so long as the Limited Common Elements exist. The aforesaid easement shall be for the benefit of each Unit Owner to which the Limited Common Element is appurtenant.

(i) Easements Appurtenant to Units. The easements and other rights created herein for the Unit Owners shall be appurtenant to the Unit of that Owner and all conveyances of title to the Unit shall include a conveyance of the easements and rights as are herein provided even though no specific reference to such easements and rights appear in such instrument. The Owners do hereby designate the Developer and/or the Association as their lawful attorney-in-fact to execute any and all instruments on their behalf for the purpose of creating all such easements as are contemplated by the provisions hereof.

(j) Easements in Favor of Additional Property. There shall be a perpetual non-exclusive easement for vehicular and pedestrian ingress and egress over the Common Elements of the Property for the benefit of the Developer and the owners of the Additional Property for all purposes incident to the development of the Additional Property. Further, there shall be a perpetual, non-exclusive easement for the benefit of the Developer and the owners of the Additional Property for the maintenance and use of all sewage disposal, storm drainage and utility distribution systems and facilities as are presently located on the Property, and for the maintenance and use of such sewage disposal, storm drainage and utility distribution systems and facilities as may be constructed or installed on the Property in the future.

**Section 2.04 Ownership of Common Elements**. Each Owner shall own an undivided interest in the Common Elements with all other Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of the Unit as herein provided, without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run along with

the Units. The extent or amount of such ownership shall be expressed by a percentage relating to each Unit and shall remain constant, unless changed in accordance with the provisions of Section 2.02 or Article III hereof or by the unanimous approval of all Owners and Mortgagees affected hereby. The percentage ownership in the Common Elements relating to each Unit is set forth on Exhibit "E" attached hereto.

**Section 2.05 Rights in or to Limited Common Elements.**

(a) The Limited Common Elements appurtenant to the Unit shall be as described by the Act, as shown on the Plan, a copy of which is attached as Exhibit "D," and/or as set forth in the chart attached hereto as Exhibit "E." The description shall be expressed by identifying the type of Limited Common Elements which are appurtenant to the Unit, if any, and the Owners of such Units shall have the exclusive right to use such Limited Common Elements so designated or described unless changed by the Developer as permitted in Section 2.02 or Article III hereof or by the unanimous approval of the Owners of the Units to which Limited Common Elements are appurtenant and their respective Mortgagees. Each Owner of a Unit to which the Limited Common Element is appurtenant shall have the right to use the Limited Common Element for all purposes incident to the use and occupancy of his Unit as herein provided without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run along with the Units to which the Limited Common Elements are attached.

(b) The hallways on each level of the building are Limited Common Elements appurtenant to the Units located on that level.

**ARTICLE III**

**DEVELOPMENT RIGHTS TO ADD  
ADDITIONAL PROPERTY TO THE CONDOMINIUM**

**Section 3.01 Reservation of Development Rights.** Developer reserves the right, but has no obligation, to add all or any portion of the Additional Property described on Exhibit "B" attached hereto, together with any improvements constructed thereon, which may eventually consist of as many as \_\_\_\_\_ ( ) additional Units, Common Elements and Limited Common Elements (including boat slips) to the Condominium Property within ten (10) years from the conveyance of the first Unit in the Condominium, in one or more additional phases; the total condominium shall never contain more than \_\_\_\_\_ ( ) Units. Any future phase of the Condominium may include recreational facilities as well as additional Units, Common Elements and/or Limited Common Elements. Developer also reserves the right to designate portions of Common Elements in the initial Condominium as Limited Common Elements to initial Condominium Units should it develop the Additional Property. For example, the Common Elements of the building in the initial Condominium could be designated as Limited Common Elements for the exclusive use of the Unit Owners in that building rather than in the future phases. The style and size of any additional building added to the Condominium shall be within Developer's sole discretion. Any additional improvements to be constructed on any portion of the Additional Property that is submitted to the Condominium shall be of substantially the same

quality as the currently existing improvements in the Condominium. The submission of the Additional Property may be accomplished in one or more phases within the ten (10) year period, by filing an amendment to this Declaration and the Plat and Plans, which amendment(s) only need to be signed by the Developer and the Developer's Mortgagee, if any. If all or any portion of the Additional Property is later submitted to the condominium form of ownership by amendment to this Declaration, the Additional Property may only be added if developed in conjunction with the allocation of percentage ownership of the Common Elements, the sharing of Common Expenses, and the allocation of voting rights as set forth on Exhibit "F" attached hereto. Nothing contained herein shall obligate the Developer to submit the Additional Property to the Condominium; however, the Developer may submit all, part or none of the Additional Property to the Condominium. Prior to being added to the Condominium, if so added, no portion of the Additional Property shall be subject to this Declaration. If any portion of the Additional Property is added to the Condominium, only such portion added shall be subject to this Declaration. Any part of the Additional Property not submitted to the Condominium may be developed or used by the Developer in any manner it deems proper, including the development of another mixed-use project.

**Section 3.02 Exercise of Development Rights.** Except as otherwise specifically set forth in this Declaration, there shall be no limitations on the development right to add any portion of the Additional Property, Units, Common Elements, and/or Limited Common Elements to the Condominium or the exercise thereof. The right may be exercised to add all or any portion of the Additional Property to the Condominium at one time or at different times, or the right may not be exercised at all, in Developer's sole discretion. There shall be no limitations to the boundaries of any portion of the Additional Property added to the Condominium. The exercise of the right to add a portion of the Additional Property, which may contain Units, Common Elements and/or Limited Common Elements to the Condominium shall not prohibit Developer from, or obligate Developer to, further exercise of the right as to any other portion of the Additional Property.

**Section 3.03 Expiration of Development Rights.** The development rights set forth herein, specifically including the right to submit all or any portion of the Additional Property to the Condominium may be exercised by Developer at any time and from time to time for a period of ten (10) years from the date of recording this Declaration in the Probate Office. Upon the expiration of said ten (10) year period, to the extent not exercised or previously terminated by Developer by express amendment to this Declaration, the right shall expire and terminate; provided, however, that Developer may extend said period for the exercise of the development rights with the consent of the Unit Owners of Units to which two-thirds (2/3) of the votes in the Association appertain within one (1) year prior to the date upon which the development rights would otherwise have expired.

**Section 3.04 Improvements on Additional Property.** Any and all structures erected on any portion of the Additional Property or improvements to the Additional Property if added to the Condominium will be compatible with the structures on the Property in terms of physical appearance, structure, type, quality of construction, and architectural style. The maximum number of Units that ever may be in the Condominium is seventy-five (75) Units. There are no limitations as to the particular location or type of any improvements that may be made on any portion of the Additional Property added to the Condominium. Developer shall have the right,

but not the obligation, to construct such improvements on the Additional Property, or any portion thereof added to the Condominium as Developer shall deem advisable for the common use and enjoyment of the Unit Owners, including limited common element boat slips. No limitations are placed on the right of Developer reserved hereby to create Limited Common Elements within any portion of the Additional Property or to designate Common Elements therein which may subsequently be assigned as Limited Common Elements. Except as expressly provided in this Section, there are no assurances that any Units created on any portion of the Additional Property added to the Condominium will be substantially identical to the Units submitted with this Declaration and there are no assurance as to what types of Units may be created on the Additional Property. All improvements on the Additional Property will be substantially completed in accordance with the Act prior to being added to the Condominium.

**Section 3.05 Reallocations and Amendment.** Upon the addition of any portion of the Additional Property containing Units to the Condominium, the share of undivided interest in the Common Elements and the share of liability for Common Expenses and Limited Common Expenses allocable to all Units then included in the Condominium shall be reallocated in accordance with the formula set forth on Exhibit "F," subject to the right of Developer to make adjustments based upon the number of additional Units added, so that the total of all interests equals 100%. Each Unit located upon any portion of the Additional Property added to the Condominium shall be allocated the number of votes in the Association as are comparable to the votes allocated to the existing Units of comparable size in the Condominium. Notwithstanding anything contained in this Declaration to the contrary, to add all or a portion of the Additional Property to the Condominium, Developer (and its lender, if any) alone shall execute and record an amendment to this Declaration and the Plan, submitting such portion of the Additional Property to the Act and this Declaration and reallocating the undivided interests in the Common Elements, the liabilities for Common Expenses and the votes in the Association.

## ARTICLE IV

### ORGANIZATION AND MANAGEMENT OF THE ASSOCIATION

**Section 4.01 Management of the Condominium Property.** Operation and administration of the Condominium Property shall be performed by the Association. The powers and duties of the Association shall include those set forth in the Act, the Alabama Nonprofit Corporations Act, CODE OF ALABAMA 1975 §§ 10A-1-1.01 *et seq.*, this Declaration, the Certificate of Formation and the Bylaws of the Association.

**Section 4.02 Members.** The members of the Association shall consist of all record Unit Owners. Change of membership in the Association shall be established by recording in the public records of Jefferson County, Alabama, the deed or other instrument establishing record title to a Unit in the Condominium Property, the Owner designated by such instrument thereby becoming a record Owner and a member of the Association. Membership of the prior Owner shall thereby be terminated. All present and future Owners and Occupants of the Units shall be subject to and shall comply with the provisions of the Declaration, the Bylaws and the Rules and Regulations, as the same may be amended from time to time. The votes for a Unit shall be cast by the record Owner thereof or the duly authorized proxy of the record Owner in the manner

provided in the Bylaws. Each Unit Owner is entitled to the number of votes for each Unit owned by him as set forth in Exhibit “E” attached hereto.

**Section 4.03 Bylaws.** The Bylaws of the Association shall be in the form attached as Exhibit “C” to this Declaration, and may be amended from time to time as set forth therein.

**Section 4.04 Voting Requirements.** Unless a specific voting requirement in excess of a simple majority is required by this Declaration or the Bylaws for either a vote of the Board of Directors or a vote of members, any such voting requirements shall be construed to require only a simple majority vote.

**Section 4.05 Master Association.** The Owners will be required to pay a pro rata share of Master Association Expenses. Each Unit Owner shall be a member of the Master Association.

## ARTICLE V

### ASSESSMENTS

**Section 5.01 Liability, Lien and Enforcement.** The Association is given the authority to administer the operation and the management of the Condominium Property, it being recognized that the delegation of such duties to one entity is in the best interest of the Owners of all Units. To provide the funds necessary for such proper operation, the Association is hereby granted the right to make, levy, and collect annual assessments against the Owners of all Units to pay Common Expenses and such other expenses which the Association is authorized to incur under the terms and conditions of this Declaration. The Association is also authorized to make, collect and levy assessments against Unit Owners for reimbursement of expenses the Association is caused to incur by reason of any act of the Unit Owner, his family members, guests, invitees or tenants for damages of any nature and for fines for rules violations. In furtherance of said grant of authority to the Association to make, levy and collect assessments to pay the costs and expenses for the operation and management of the Condominium Property and said fines, the following provisions in this Article V shall be effective and binding upon the Owners of all Units.

**Section 5.02 Assessments.**

(a) All assessments for the payment of Common Expenses shall be levied annually against the Owners of all Units, and unless specifically otherwise provided for in this Declaration, each Owner of a Unit and his Unit shall bear the same percentage share of such assessment as the percentage share of ownership for the undivided interest in the Common Elements appurtenant to said Unit. The Association may include the common expense assessments levied against the Units by the Master Association as a part of the Common Expenses. The assessments for Common Expenses shall be payable over the course of the year in advance monthly installments commencing on the date of purchase of a Unit or in such other installments and at such times as may be determined by the Board of Directors of the Association.

(b) Assessments for the payment of Limited Common Expenses may be levied against the Owners of those Units to which the Limited Common Elements are appurtenant if the Board of Directors determines that it is the most equitable method of assessment for Limited Common Expenses. The Limited Common Expenses may also be included in Common Expenses and assessed in the same proportion as Common Expenses if the Board of Directors chooses this method of assessment. The assessments for Limited Common Expenses, if any, shall be payable in such installments and at such times as may be determined by the Board of Directors of the Association.

(c) The Association may assess the Owners of Units for the repair and maintenance of various components of the Common Elements or Limited Common Elements based on the usage of any component of the Common Elements or Limited Common Elements. Such assessments shall not be included in the assessment for Common Expenses, but shall be payable in such manner and at such times as may be determined by the Board of Directors of the Association.

**Section 5.03 Annual Budget.** Within sixty (60) days prior to the beginning of each calendar year, the Board of Directors of the Association shall adopt a proposed annual budget for such calendar year, and such budget shall project the amount of funds for the forthcoming year which may be required for the proper operation, management and maintenance of the Condominium Property, including reasonable allowances for contingencies and reserves therefore, in accordance with the Act and this Declaration. Said budget shall take into account any projected anticipated income which is to be applied in reduction of the amounts required to be collected as an assessment each year. Within thirty (30) days after adoption of such annual budget by the Board of Directors of the Association, copies of said budget shall be made available to each Unit Owner and the Board shall set a date for a meeting of the Unit Owners to consider ratification of the budget not less than ten (10) nor more than thirty (30) days after delivery of the budget to the Unit Owners. Unless at the meeting a majority of the Unit Owners present in person or by proxy reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected the budget for the last year shall continue in effect until such time as a new budget is ratified. If the budget is ratified the assessments for said year shall be established based upon such budget.

Should the Board of Directors at any time determine in the sole discretion of said Board of Directors that the assessments levied are or may prove to be insufficient for any reason including emergencies and non-payment of any Owner's assessment, the Board of Directors shall have authority to levy such additional assessments as it shall deem necessary in accordance with the applicable provisions of the Condominium Documents and the Act.

**Section 5.04 Omission of Assessment.** The omission by the Association, before the expiration of any year, to fix the assessments for that or the next year shall not be deemed a waiver or modification in any respect of the provisions of this Declaration, or a release of any Owner from the obligation to pay assessments or any installment thereof for that or any subsequent year, but the assessment fixed for the preceding year shall continue until a new assessment is fixed.

**Section 5.05 Detailed Records.** The Association shall keep detailed, accurate records in chronological order of the receipts and expenditures and any other expenses incurred. Records and vouchers authorizing the payments involved shall be available for examination by any Owner or his representative at convenient hours of weekdays in the county where the Condominium is located.

**Section 5.06 Payment of Common Expenses and Limited Common Expenses by Unit Owners.** All Unit Owners shall be obligated to pay any assessment for Common Expenses and Limited Common Expenses adopted by the Board of Directors pursuant to the terms of this Article V. No Unit Owner may exempt himself from liability for his contribution toward Common Expenses or Limited Common Expenses by waiver of the use or enjoyment of any of the Common Elements, Limited Common Elements or by abandonment of his Unit. No Unit Owner shall be liable for the payment of any part of the Common Expenses or Limited Common Expenses assessed against his Unit subsequent to a sale or other conveyance by him of such Unit. The purchaser of a Unit shall be jointly and severally liable with the selling Unit Owner for all unpaid assessments against the latter up to the time of conveyance without prejudice to the purchaser's right to recover from the selling Unit Owner the amounts paid by the purchaser therefore. Whenever any Unit may be sold or mortgaged by the Owner thereof, which sale shall be concluded only upon compliance with the other provisions of this Declaration, the Association, upon written request of the Owner of such Unit, shall furnish to the Owner (within the time period prescribed by the Act) a statement verifying the status of the payment of any assessment which shall be due and payable to the Association by the Owner of such Unit and the other information required by the Act. Any purchaser or proposed Mortgagee may rely upon such statement in concluding the proposed lease, purchase or mortgage transaction and the Association shall be bound by such statement. In the event that a Unit is to be sold or mortgaged when any assessment is outstanding against the Owner of such Unit and such assessment due the Association is in default, the purchase or mortgage proceeds shall first be paid by purchaser or Mortgagee to the payment of any delinquent assessment or installment due the Association before the payment of the proceeds to or on behalf of the selling Unit Owner.

**Section 5.07 Default in Payment of Assessments.**

(a) The payment of any assessment or installment thereof due the Association shall be in default if such assessment or any installment thereof is not paid to the Association on or before the due date for such payment. When in default, the delinquent assessment or delinquent installment due the Association shall bear interest at eighteen percent (18%) until such delinquent assessment or installment and all interest due thereon has been paid in full. The Association shall have a lien against Units for delinquent assessments. Said lien shall secure and does secure the monies due for all assessments then or thereafter levied against the Unit, and such lien shall also secure interest, if any, which may be due on the amount of any delinquent assessment owing the Association. Said lien shall also secure all costs and expenses, including late penalties and reasonable attorneys' fees incurred by the Association in collecting delinquent assessments and enforcing the lien upon said Unit and its appurtenant undivided interest in the Common Elements or Limited Common Elements. The lien granted to the Association may be foreclosed in the same manner as real estate mortgages in the State of Alabama containing a power of sale

pursuant to Alabama Code §§ 35-10-11 *et seq.* as it may be amended, but the Association shall give reasonable advance notice of its proposed action to the Unit Owner, the Mortgagee and all other lienholders of record. The lien granted to the Association shall further secure such advances for taxes and payment on account of superior mortgages, liens or encumbrances which may be required to be advanced by the Association in order to protect and preserve its lien, and the Association shall further be entitled to interest at eighteen percent (18%) on any such advance made for such purpose. All persons, firms or corporations who shall acquire, by whatever means, any interest in the ownership of any Unit or who may be given or acquire a mortgage, lien or other encumbrance thereon are hereby placed on notice of the lien rights granted to the Association and shall acquire such interest in any Unit expressly subject to the lien.

(b) The lien herein granted to the Association shall be effective from and after the time of recording in the Probate Office, the Declaration of Condominium of [XYZ] Condominium and no further recordation of any claim of lien for assessment under this section is required. Such lien shall include only assessments which are due and payable when the action to enforce the lien is commenced plus late penalties and penalties imposed by the Association for Rules and Regulations violations, interest, costs, reasonable attorneys' fees, advances to pay taxes and prior encumbrances and interest thereon, all as above provided.

**Section 5.08 Required Reserve Funds.** Assessments levied by the Board of Directors of the Association shall include an adequate reserve fund for maintenance, repair and replacement of those Common Elements and Limited Common Elements that must be replaced or repaired on a periodic basis, and shall be payable in regular installments. Special assessments may be levied by the Board in the event that there is insufficient money in the reserve fund for the maintenance, repair or replacement of any portion of the Common Elements or Limited Common Elements.

**Section 5.09 Election of Remedies.** Institution of a suit at law to collect payment of any delinquent assessments shall not be deemed to be an election by the Association which shall prevent its thereafter seeking enforcement of the collection by foreclosure of any sums remaining owing to it. Nor shall proceeding by foreclosure to effect such collection be deemed to be an election precluding the institution of a suit at law to collect any sum then remaining owing to the Association. The Association shall be entitled to bid at any sale held in connection with the foreclosure of the assessment lien and may apply as a cash credit against its bid all sums secured by the lien enforced.

## ARTICLE VI

### **MAINTENANCE AND OPERATION OF THE CONDOMINIUM PROPERTY**

**Section 6.01 The Association's Obligation to Repair.** The Association, acting through the Board of Directors, shall be responsible for the maintenance, repair and replacement of the following, the cost of which shall be charged to all Unit Owners as a Common Expense:



- (i) The Common Elements, which by definition excludes the surfaces of all interior walls, floors, and ceilings, of a Unit;
- (ii) Incidental damage caused to a Unit by any work done by the Association; and
- (iii) Portions of Common or Limited Common Elements contained in the Units contributing to the support of the building, including outside walls and load bearing columns, support beams, and joists excluding, however, interior wall, ceiling and floor surfaces.

The Association shall be responsible for the maintenance, repair and replacement of the exterior doors and windows of the Units, which include all surrounding encasements, framing, thresholds and wood supports, the cost of which shall be assessed against the Unit Owner. The Unit Owner shall be responsible for the maintenance, repair and replacement of the door handles and associated locks, but may not change the color or design of the door handle and associated locks without written approval of the Board of Directors. The Association, acting through the Board of Directors, also shall be responsible for the maintenance, repair and replacement of the Limited Common Elements, the cost of which shall be charged to all Unit Owners to which said Limited Common Elements being maintained repaired or replaced attach as a Limited Common Expense.

This Section 6.01 shall not relieve a Unit Owner of liability for damage to the Common Elements, Limited Common Elements, a Unit of another person, adjacent property or any other property as a consequence of the negligence, recklessness or willful misconduct of the Unit Owner, Occupant, family members, guests, invitees, lessees or licensees. The cost of repair for any resulting damage including attorneys' fees, expenses, and insurance deductibles incurred by the Association shall be a special assessment against the Unit Owner and the Unit.

#### **Section 6.02 Each Owner's Obligation to Repair.**

- (a) Except for those portions of the Condominium Property which the Association is required to maintain and repair, each Owner shall, at such Owner's expense, maintain his or her Unit in good tenantable condition and repair, and shall be responsible for the repair, maintenance and replacement, if necessary, of the following items in his Unit:
  - (i) The fixtures and equipment in his Unit, including all appliances within the Unit; drains, sinks, plumbing and plumbing fixtures and connections within the Unit and serving only the Unit; electrical panels, wiring, outlets and electric fixtures within the Unit; interior doors, interior surfaces of the window frames, screening and glass; and interior surface of all exterior doors and windows; all wall coverings including paint, wallpaper and light coverings; and all floor coverings, including carpeting, hardwood, vinyl and ceramic tile within a Unit.
  - (ii) The plumbing, heating, air conditioning and electrical systems serving only that Unit, whether located within or without the boundary of that Unit,

including the fuse boxes, wiring, flues, and all other plumbing, electrical, gas or mechanical systems. In the event any such system or a portion thereof is within another Unit or requires access to another Unit, the repair, maintenance or replacement thereof shall be performed by the Association, and the cost thereof shall constitute an assessment against the Unit Owner responsible therefore.

(b) Each Unit Owner agrees as follows:

(i) To perform all maintenance, repairs and replacements which are his obligations under subparagraph (a) of this Section 6.02;

(ii) To pay all utilities as herein provided and all taxes levied against his Unit;

(iii) Not to make, or cause to be made, repairs to any plumbing, heating, ventilation or air conditioning systems located outside his Unit but required to be maintained by him under subparagraph 6.02(a)(ii), except by licensed plumbers, electricians or heating and air conditioning professionals authorized to do such work by the Association or its delegate;

(iv) Not to make any addition or alteration to the Unit or to the Common Elements or Limited Common Elements or to do any act that would impair the structural soundness, safety or overall design scheme of any part of the Condominium Property or that would impair any easement or right of a Unit Owner without the prior written consent of the Association and all Unit Owners affected thereby;

(v) Not to make any alteration, addition, improvement, decoration, repair, replacement or change to the Common Elements, Limited Common Elements, or to any outside or exterior portion of the Unit, including, but not limited to, altering in any way exterior doors, affixing outshutters to windows or painting any part of the exterior part of the Unit, without the prior written consent of the Association; provided that if such consent is granted, the Unit Owner shall use only a contractor approved by the Association, who shall comply with all Rules and Regulations with respect to the work which may be adopted by the Association, and the Unit Owner shall be liable for all damages to another Unit or to the Common Elements or Limited Common Elements caused by any contractor employed by such Unit Owner or by the subcontractors or employees of such contractor, whether said damages are caused by negligence, accident, or otherwise;

(vi) (1) regularly inspect the parts of the Condominium that the Unit Owner maintains for the existence of mold, mildew, and/or water intrusion and/or damage; (2) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Condominium that the Unit Owner is responsible for maintaining; (3) remediate or replace any building material located in the parts of the Condominium that the Unit Owner is responsible for maintaining that has absorbed water or moisture as a result of water

intrusion; and (4) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Condominium that the Unit Owner maintains in accordance with current industry-accepted methods. In addition, each Unit Owner shall notify the Association of the discovery of mold, mildew, and/or water intrusion and/or damage in the Units, and the Association shall notify the Developer of the discovery of mold, mildew, and/or water intrusion and/or damage in any part of the Condominium should the Developer own any Units at that time.

(vii) To promptly report to the Association any defects or needed repairs for which the Association is responsible; and

(viii) To promptly fix, or cause to be fixed, any violation discovered during an inspection of the Unit pursuant to Section 7.04 hereof after the Unit Owner has been provided with written notice of the violation(s). The Association may levy a fine pursuant to Section 5.01 hereof against a Unit Owner that fails to promptly address such violations.

(c) The Association shall be obligated to answer any request by a Unit Owner for any required approval of a proposed addition, alteration or improvement (by painting or otherwise) within forty-five (45) days after such request, but its failure to do so within the stipulated time shall not constitute a consent of the Association to the proposed addition, alteration or improvement. Any application to any governmental authority for a permit to make an addition, alteration or improvement in or to any Unit shall be executed by the Association, without, however, it incurring any liability on the part of the Board of Directors or any of them or the Association to any contractor, subcontractor or materialman on account of such addition, alteration or improvement, or to any person having any claim of injury to a person or damage to property arising therefrom. The review by the Association under this Section 6.02 shall in no way make the Association liable for any alterations, additions, or improvements by any Unit Owner. Rather, such review is for purposes of aesthetics and control only. The provisions of this Section 6.02 shall not apply to Units owned by the Developer until a deed for such Unit has been delivered to a purchaser other than Developer.

(d) Notwithstanding the foregoing, a Unit Owner shall not cause or permit any portion of the upper, lower, or perimetrical boundaries of a Unit to be damaged or disturbed without first receiving written permission of the Association. Developer makes no representations as to the presence on, in, under or near the Condominium Property of any material containing asbestos; however, each Unit Owner acknowledges that asbestos may be present on, in, under or near the Condominium Property, including those areas beyond the upper, lower, and perimetrical boundaries of a Unit.

**Section 6.03 Maintenance of Limited Common Elements.** The Limited Common Elements shall be maintained in accordance with the following:

(a) Each Unit Owner shall keep the Limited Common Elements appurtenant to the Unit in a clean, neat and presentable appearance and shall not allow such areas to be used for anything other than its intended use; and

(b) The Association shall perform all other maintenance and repair of the Limited Common Elements, the expense of which shall be a Limited Common Expense assessed against the Unit(s) and Unit Owner(s) to which the Limited Common Elements are appurtenant.

**Section 6.04 Alterations, Additions and Improvements by the Association.**

Except in the case of loss or damage to the Common Elements or Limited Common Elements as contemplated by Article IX of the Declaration, the Association shall not make any material structural alterations, capital additions or capital improvements to the Common Elements or Limited Common Elements the cost of which is estimated to exceed \$50,000.00 unless the same is authorized by the Board of Directors of the Association and ratified by the affirmative vote of the voting members casting not less than sixty-six and two-thirds percent (66.67%) of the total votes of the members of the Association present at any regular or special meeting of the Unit Owners called for that purpose at which a quorum is present and approved by a majority of the Mortgagees eligible to vote therefore. The cost of the foregoing shall be assessed against the Owners of Units as provided in Article V hereof except as otherwise provided in this Section 6.04. Where any alterations or additions as aforesaid are exclusively or substantially exclusively for the benefit of the Unit Owners requesting the same, then the cost of such alterations or additions shall be assessed against and collected solely from the Unit Owners exclusively, or substantially exclusively, benefiting therefrom, and the assessment shall be levied in such proportions as may be determined to be fair and equitable by the Board of Directors of the Association. Where such alterations or additions exclusively, or substantially exclusively, benefit Unit Owners requesting the same, said alterations and additions shall be made only when authorized by the Board of Directors and ratified by not less than sixty-six and two-thirds percent (66.67%) of the total votes of the Unit Owners exclusively, or substantially exclusively, benefiting there from. Alterations, improvements or repairs of an emergency nature may be made upon authorization by a vote of the majority of the Directors available for consultation if the same is necessary and in the best interest of the Unit Owners. Nothing in this Section 6.04 shall relieve the Association from its obligation to maintain, repair and replace the Condominium Property as described in the Condominium Documents and the Act.

**Section 6.05 Utilities and Services.** The utilities including water, power, and cable serving the Common or Limited Common Elements only shall paid by the Association as a Common or Limited Common Expense. The Association shall have authority with regard to any utility, to use a common meter, pay the cost of such utilities used or consumed in the Units, and have the costs thereof apportioned among the Units based upon the Common or Limited Common Expense liability, use of the utility, or any other formula the Association may deem appropriate or it may install separate meters for each of the Units and the Common Elements. The Association may enter into an agreement with a third party to provide internet service for the Condominium Property and may pay the cost of such internet service used or consumed on the Condominium Property, and have the costs thereof apportioned among the Units based upon the Common or Limited Common Expense liability, use of the service, or any other formula the Association may deem appropriate.

## ARTICLE VII

### **RESTRICTIONS ON USE OF UNITS, COMMON ELEMENTS**

**Section 7.01 Rules and Regulations of the Association.** The Association is authorized to promulgate, amend and enforce Rules and Regulations concerning the operation and use of the Condominium; provided that such Rules and Regulations are not contrary to or inconsistent with the Act and the other Condominium Documents. A copy of the Rules and Regulations shall be furnished by the Board of Directors to each Unit Owner prior to the time they become effective. All present and future Unit Owners, tenants, and Occupants of the Units and any person who uses any part of the Condominium Property in any manner, are subject to, and shall comply with the provisions of the Condominium Documents, including, without limitation, the Rules and Regulations. The acquisition, rental or occupancy of a Unit or the use of any part of the Condominium Property by any one person shall constitute his agreement to be subject to and bound by the provisions of the Condominium Documents, including, without limitation, the Rules and Regulations, and such provisions shall be deemed to be enforceable as equitable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated in full in each and every deed of conveyance or lease thereof. The Association may promulgate enforcement provisions for violation of any Rule or Regulation by a member, his guests, invitees, lessees or tenants, including the payment of penalties for such violations.

**Section 7.02 Restrictions on Use.** The use of the Condominium Property is subject to the following restrictions:

(a) Each Unit is hereby restricted to residential use in accordance with the Rules and Regulations of the Association and as allowed by the City of Mountain Brook.

(b) There shall be no obstruction of the Common Elements, nor shall anything be kept or stored in the Common Elements, nor shall anything be constructed on or planted in or removed from the Common Elements, nor shall the Common Elements in any other way be altered without the prior written consent of the Association.

(c) No immoral, improper, offensive or unlawful use shall be made of any Unit or Common Elements or any part thereof, and all laws, zoning ordinances and regulations of all governmental authorities having jurisdiction over the Condominium Property shall be observed.

(d) No Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in any increase of fire or hazard insurance premiums or the cancellation of insurance on any part of the Condominium Property, or which would be in violation of any law. No waste shall be committed to the Common Elements.

(e) No noxious or offensive activities shall be carried on, nor shall anything be done, on any part of the Condominium Property which in the judgment of the Board of Directors of the Association may be or become an unreasonable annoyance or nuisance to the other Owners.

(f) Smoking including, but not limited to, tobacco products or electronic cigarettes is prohibited on the Condominium Property.

(g) No Owner shall cause or permit anything to be placed on the Common Elements immediately surrounding the Unit. No sign, awning, canopy, window air conditioning unit, shutter, or other fixture shall be affixed to or placed upon the exterior walls or roof of the building, or any part of the Common Elements, without the prior written consent of the Board of Directors of the Association.

(h) No satellite dishes over one (1) meter shall be allowed on the Condominium Property at any time. Satellite dishes less than one (1) meter shall not be allowed on any part of the Common Elements of the Condominium except with the express approval of the Board of Directors as to location of the receiving equipment or dish.

(i) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed from or on any part of the Common Elements. The Common Elements shall be kept clear of rubbish, debris and other unsightly materials.

(j) No waterbed or aquarium exceeding five (5) gallons shall be placed or utilized in any Unit.

(k) Applicable building codes require that all clothes dryers installed in the Units must have specified venting characteristics. Accordingly, Unit Owners may install and replace their clothes dryers only with dryers meeting the required building code specifications.

(l) No one shall use or permit to be brought into any Unit or upon any of the Common Elements and facilities any flammable oils or fluids such as gasoline, kerosene, naphtha or benzene, or other explosives or articles deemed extra hazardous to life, limb or property, without the written consent of the Board of Directors of the Association.

(m) No animal or pet shall be kept for commercial purposes, nor be allowed to create or cause any disturbance or nuisance of any kind, and if an animal or pet does cause or create a nuisance or an unreasonable disturbance, said animal or pet shall be permanently removed from the Condominium Property within seven (7) days from the date the Owner receives written notice from the Board of Directors to remove such animal or pet. The Owner of any pet or animal shall be liable for any and all damage caused by such animal or pet to any part of the Condominium Property. No Owner shall keep more than two (2) domesticated cats or dogs in a Unit at any given time without prior written approval of the Board of Directors. In addition, no snakes, or animals deemed vicious or dangerous in the sole discretion of the Board may be brought onto or kept on the Condominium Property at any time. The Board shall have authority to pass and enforce Rules and Regulations regarding the keeping of pets on the Condominium Property, and charge a fee for the registration of such pet(s).

(n) No structure of a temporary character, trailer, tent, shack, carport, garage, barn or other outbuilding shall be erected by any Owner, other than the Developer, on any

portion of the Condominium Property, at any time, either temporarily or permanently, without the prior written approval of the Board.

(o) The display or discharge of firearms or fireworks on the Common Elements is prohibited; provided, however, that the display of lawful firearms on the Common Elements is permitted by law enforcement officers and also is permitted for the limited purpose of transferring firearms across the Common Elements to or from an Owner's Unit so long as the firearm is not loaded and not carried in a threatening manner. The term "firearms" includes "B-B" guns, pellet guns and other firearms of all types, regardless of size.

(p) No Owner or Occupant of the Units restricted to residential use may conduct any business, trade, garage sale, moving sale, rummage sale, or similar activity at or about the Condominium, whether within a Unit or otherwise, except that an Owner or Occupant residing in Unit may conduct business activities within the Unit so long as: (i) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Unit; (ii) the business activity conforms to all zoning and other legal requirements for the Condominium; (iii) the business activity does not, in the Board's reasonable judgment, generate any vehicular or pedestrian traffic or increase the number of vehicles being parked on the Condominium; and (iv) the business activity is consistent with the residential character of the Unit and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Condominium, as may be determined in the sole discretion of the Board. The terms "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work, or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation, or other form of compensation.

**Section 7.03 Lease of Units.** Units may be leased by the Unit Owners; provided, however, that any such lease and the rights of any tenant thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable rules and regulations relating to the lease and rental of Units and to enforce the same directly against such tenant or other Occupant by the exercise of such remedies as the Board deems appropriate; provided, however, that no restrictions shall be imposed which shall have the individual or cumulative effect of prohibiting or materially impairing the rental or lease of Units. No individual rooms may be rented in the Units restricted to residential use. Further, all leases must be in writing for a term no less than \_\_\_\_\_ (\_\_) \_\_\_\_\_, with a copy provided to the Association upon request by the Association and may be redacted to prevent sharing information related to the amount of rent. This restriction on use shall be a covenant running with each Unit, creating a burden on each single Unit and Unit Owner for the benefit of every other Unit and Unit Owner.

Notwithstanding anything contained in this Section to the contrary, each Owner shall be responsible for the actions of his tenants and nothing herein or in any such lease shall relieve an Owner of his obligations under the Condominium Documents. Each Unit Owner who has or who shall lease his Unit irrevocably empowers and authorizes the Association or its

managing agent to enforce the Rules and Regulations of the Association and to terminate the lease of and evict any tenant who fails to comply with said Rules or who provides other sufficient cause for termination of the lease and eviction in accordance with the laws of the State of Alabama, the Condominium Documents or any contract for lease. The Association, the Board or its managing agent shall not become liable to any Unit Owner or sublessor or other party for any loss of rents or other damages resulting from the reasonable exercise of the provisions of this Section. The provisions of this Section shall not be applicable to the Developer who is irrevocably empowered without any limitation at all times, whether for permanent or temporary occupancy to sell, lease or rent Units for any period and under any terms to any lessees or purchasers or transferees with the right to take any action necessary to consummate the sale or rental of said Units, including, but not limited to, the right to maintain model Units, post signs, have employees in the offices maintained in the Condominium buildings, use the Common Elements and show Units to prospective tenants. Sales and rental office signs and all items pertaining to the rental or sale of Units shall not be considered Common Elements and shall remain the property of the Developer.

**Section 7.04 Right of Access.** Each Unit Owner grants a right of access to his Unit to the Association, and any other person authorized by the Association for the purpose of making inspections and for the purpose of correcting any condition originating in his Unit and threatening other Units or Common Elements or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Elements on his Unit, if any, or to correct any condition which violates the provisions of any Mortgage covering another Unit, or to enforce any provision of the Condominium Documents, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Unit Owner. In case of an emergency, such right of entry shall be immediate whether the Unit Owner is present at the time or not. To the extent that damages are inflicted on the Common Elements or any Unit through which access is taken, the Unit Owner or the Association, if it caused the same, shall be liable for the prompt repair thereof. Access codes, remotes, or other security passwords shall not be provided to any person other than the Unit Owner, an Occupant under an approved lease, and the Association's management company.

**Section 7.05 Limitation of Liability.** The Association shall not be liable for any failure of water or power supply, telephone, security, fire protection or other service to be obtained by the Association or paid for out of the Common Expense funds, for problems resulting from the operation or lack of operation of sewer lines servicing the Condominium Property, or for injury or damage to a person or property caused by the natural elements or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Elements or from any wire, pipe, drain, conduit, appliance or equipment. The Association shall not be liable to the Owner of any Unit for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Elements. No diminution or abatement of the Common Expense assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Elements or to any Unit, or from any action taken by the Association to comply with any law or ordinance or with the order or directive of any municipal or other governmental or judicial authority or for the dispossession of the Unit Owner by reason of fire or other casualty, except to the extent covered by insurance.



**Section 7.06 Abatement of Violations.** The violation of any Rule or Regulation adopted by the Board of Directors of the Association or breach of the provisions of the Condominium Documents, shall give the Developer, the Association or any Unit Owner the right, in addition to any other right or remedy elsewhere available, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach. All expenses of such actions or proceedings against a defaulting Unit Owner, including court costs, attorney's fees and other fees and expenses, and all damages, liquidated or otherwise, together with interest thereon at the highest lawful rate on judgments until paid, shall be charged to and assessed against such defaulting Owner, and the Association shall have a lien for all of the same upon the Unit of such defaulting Owner, upon all of his additions and improvements thereto and a security interest under the Alabama Uniform Commercial Code upon all of his personal property in his Unit or located elsewhere on the Condominium Property. Nothing herein contained shall prevent an Owner from maintaining such an action or proceeding against the Association and the expense of any action to remedy a default of the Association shall be a Common Expense if a court of competent jurisdiction finds the Association to be in default as alleged in such action or proceeding.

**Section 7.07 Failure of the Association to Insist on Strict Performance; No Waiver.** Failure of the Association to insist in any one or more instances upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment from the future performance of such term, covenant, condition or restriction but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Association of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed to be a waiver of such breach and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors of the Association.

## ARTICLE VIII

### RIGHTS OF MORTGAGEES

**Section 8.01 Notification of Mortgagees Required.** Any Mortgagee shall have the right to be given written notification by the Association of (a) any sixty (60) day default by the Owner of the Unit covered by the Mortgage in the payment of assessments or in any other provision of the Condominium Documents; (b) any loss to or taking of the Common Elements or Limited Common Elements if such loss or taking exceeds \$10,000; (c) damage to a Unit covered by the Mortgage if the amount of such damage exceeds \$10,000; (d) any condemnation of all or a portion of the Condominium Property; (e) a lapse or cancellation or material modification of any insurance policy or fidelity bond maintained by the Association; and (f) any proposed action that requires the consent of a specified percentage of Mortgagees if such Mortgagee has given notice to the Association of its interest in the Condominium.

**Section 8.02 Right of Inspection.** Mortgagees shall have the right to examine the books and records of the Association or the Condominium Property during normal business hours and to receive annual reports, other financial data, and, upon request, an annual audited

statement, within one hundred twenty (120) days following the end of any fiscal year of the Association. If a Mortgagee requests an annual audited statement, the Mortgagee and the Association shall share equally the cost of the audit.

**Section 8.03 Priority of Mortgagees.**

(a) Any lien which is or may be created hereunder upon any Unit, including, but not limited to, the lien created for assessments under Section 5.07 hereof and the right to foreclose the same is and shall be subject and subordinate to and shall not affect the rights of the holder of the indebtedness secured by any Mortgage upon such interest made in good faith and for value and recorded prior to the creation of the lien hereunder, provided that after the foreclosure of any such Mortgage there may be a lien created pursuant to Section 5.07 hereof on the interest of the purchaser as an Owner after the date of such foreclosure sale to secure all assessments hereunder. After the date of such foreclosure sale, said lien, if any, shall be claimed and shall have the same effect and be enforced in the same manner provided herein.

Notwithstanding the above, the lien created pursuant to Section 5.07 hereof is prior to any Mortgage to the extent of the Common Expense assessments based on the annual budget which would have become due in absence of acceleration during the six (6) months immediately preceding institution of an action to enforce the lien.

(b) No provision of this Declaration, the Certificate of Formation, the Bylaws or the Rules and Regulations shall be construed to grant to any Unit Owner, or to any other party any priority over any rights of the Mortgagees of the Units pursuant to their Mortgages in the case of distribution to Unit Owners of the insurance proceeds or condemnation awards for losses or a taking of Units or the Common Elements, the Limited Common Elements or any portion thereof.

(c) As provided in the Act, all assessments, property taxes and other charges imposed by any taxing authority which may become liens prior to a Mortgage, shall be separately assessed against and collected on each Unit as a single parcel, and not on the Condominium Property as a whole.

(d) No breach of the covenants, conditions or restrictions herein contained shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but all of said covenants, conditions and restrictions shall be binding upon and effective against any Owner whose title is derived through foreclosure or otherwise.

**Section 8.04 Request for Protection by Mortgagees.** Whenever the holder of any Mortgage desires the benefit of the provisions of Article VIII, Section 8.01 to be applicable to it, it shall serve written notice of such fact upon the Association, by registered or certified mail, addressed to the Association's registered agent, identifying the Unit upon which it holds a Mortgage or identifying any Units owned by it, together with sufficient pertinent facts to identify any Mortgage which may be held by it. Said notice shall designate the place to which the notices are to be given by the Association to such Mortgagee. Should the Association send notice via certified mail of any action requiring the affirmative vote of the Mortgagee, and the Mortgagee

shall not respond within sixty (60) days from notice of such right, the Mortgagee shall be deemed to have given its implied consent to such action.

## ARTICLE IX

### **CASUALTY LOSS AND INSURANCE**

#### **Section 9.01 Responsibility of Owners; Separate Insurance Coverage.**

(a) The Owner of each Unit may, at his or her expense, obtain insurance coverage for loss of or damage to any furniture, furnishings, personal effects, and other property belonging to such Owner, and shall, at his or her expense, obtain insurance coverage against personal liability for injury or damage to the person or property of another while within such Owner's Unit or upon the Common Elements or Limited Common Elements in an amount not less than \$1,000,000.00. If a Unit Owner leases his Unit, such insurance shall cover any act by any Occupant. Risk of loss of or damage to any furniture, furnishings and personal property belonging to or carried on the person of the Owner, or which may be stored in any Unit, or in or upon Common Elements or Limited Common Elements, shall be borne by the Owner of each Unit. All furniture, furnishings and personal property constituting a portion of the Common Elements or Limited Common Elements and held for the joint use and benefit of all Owners of Units shall be covered by such insurance as shall be maintained in force and effect by the Association as hereinafter provided. Each Owner shall be required to notify the Association of all improvements made by the Owner to his Unit, the value of which is in excess of \$10,000. All insurance obtained by the Owner of each Unit shall, whenever such provisions shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners, the Association or Developer, and their respective servants, agents, employees and guests.

(b) Any Owner who obtains an individual insurance policy covering any portion of the Condominium Property other than personal property belonging to such Owner shall be required to file a copy of such individual policy or policies with the Association within thirty (30) days after the purchase of such insurance. In the event casualty insurance maintained by an Owner causes a decrease in the amount of the insurance coverage maintained by the Association for the benefit of all Owners on a casualty loss to the Condominium Property by reason of proration or otherwise, the Owner so maintaining such insurance shall be deemed to have assigned to the Association the proceeds collected on such policy for loss or damage to the Condominium Property and such proceeds shall be paid directly to the Association by the insurer. Any such insurance proceeds shall be applied and distributed by the Association in accordance with this Article IX.

#### **Section 9.02 Insurance to be Maintained by the Association.**

(a) **Hazard Insurance.** The Association shall obtain and maintain at all times a policy or policies of multi-peril type hazard insurance, including insurance for such other

risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium projects similar in construction, design and use, insuring the Condominium Property against loss or damage by the perils of fire, lightning and those perils contained in extended coverage, vandalism and malicious mischief endorsements, and if the Condominium Property is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards, the Board shall, to the extent obtainable, insure the insurable property included in the Condominium Property against the perils of flood under the National Flood Insurance Act of 1968 and acts amendatory thereto. The amount of insurance coverage shall be determined on a replacement cost basis in an amount not less than one hundred percent (100%) of the then current replacement cost of the improvements which constitute the Condominium Property, including the Common Elements, Limited Common Elements and the Unit as purchased by the Unit Owner (but excluding land, foundations, excavations and other items usually excluded from such insurance coverage). Such insurance coverage shall be written in the name of, and the proceeds thereof shall be payable to, the Association or the Insurance Trustee (hereinafter defined), as trustee for the use and benefit of the individual Owners (without naming them) in the proportionate shares equal to their respective percentage ownership of the Common Elements. Periodically, prior to the renewal of any such policy or policies of insurance, the Association should obtain an opinion or an appraisal from a qualified appraiser for the purpose of determining the full replacement cost of the Common Elements, the Limited Common Elements and the Units for the amount of insurance to be obtained pursuant hereto. The cost of any such opinion or appraisal shall be a Common Expense. All such policies of insurance shall comply with the provisions of Section 9.03 hereof and shall (i) contain standard mortgagee clause endorsements in favor of the Mortgagee or Mortgagees of each Unit, if any, as their respective interest may appear; and (ii) provide that the insurance shall not be invalidated by any act or neglect of any Owner.

(b) Public Liability and Property Damage Insurance. The Association shall obtain and maintain at all times a comprehensive policy or policies of public liability and property damage insurance in such amount (but not less than \$1,000,000) and in such form as shall be required by the Association to protect said Association and the Owners of all Units which provide coverage for bodily injury and property damage resulting from the operation, maintenance or use of the Common Elements and Limited Common Elements and for legal liability resulting from employment contracts to which the Association is a party.

(c) Workmen's Compensation Insurance. If required by the laws of the State of Alabama, the Association shall obtain and maintain at all times a policy or policies of workmen's compensation insurance to meet the requirements of the laws of the State of Alabama.

(d) Fidelity Bonds. The Association may obtain and maintain fidelity bonds for any person who either handles or is responsible for funds held or administered by the Association naming the Association as the obligee. The amount of the fidelity bond should cover the maximum funds that will be in the custody of the Association, but not less than

the sum of three (3) months' assessments on all Units plus the reserve funds of the Association.

(e) Directors and Officers Liability Insurance. The Association may maintain Directors and Officers liability insurance in an amount to be determined by the Board of Directors.

(f) Other Insurance. The Association shall obtain and maintain such other insurance coverage as the Board of Directors of the Association, in its sole discretion, may determine from time to time to be in the best interest of the Association and the Owners of all Units.

**Section 9.03 Governing Provisions**. All insurance obtained and maintained by the Association as provided in Section 9.02 above shall be governed by the following provisions:

(a) All policies shall (i) comply with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association as they shall apply to condominium loans; and (ii) be written with a company licensed to do business in the State of Alabama and holding a financial rating of Class V or better and a general policyholders rating of "A" or better by Best's Insurance Reports or other then comparable rating. To the extent that the provisions of this Declaration with respect to the maintenance of insurance shall conflict with the hazard and casualty insurance requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association, then the requirements of the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association shall control and such requirements shall be complied with by the Association.

(b) Exclusive authority to adjust all claims under the policies hereafter in force on the Condominium Property shall be vested in the Association or its authorized representatives.

(c) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with the insurance purchased by the individual Owners or their Mortgagees.

(d) The Association shall be required to make every effort to secure insurance policies that will provide for the following:

(i) A waiver of subrogation by the insurer as to any claims against the Association, the Board of Directors, the Developer or the Owners;

(ii) An agreement by the insurer that the insurance coverage cannot be terminated or materially changed without thirty (30) days prior written notice to the Association and the Mortgagee of each Unit;

(iii) The insurance coverage will be primary, even if a Unit Owner has other insurance that covers the same loss; and

(iv) No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void the policy or be a condition to recovery under the policy.

**Section 9.04 Premiums and Deductibles.** Premiums for insurance policies purchased by the Association shall be paid by the Association as a Common Expense; except that the amount of increase over the usual premium occasioned by the use, misuse, occupancy or abandonment of a Unit or its appurtenances or of the Common Elements or Limited Common Elements by an Owner shall be assessed against that Owner. Any deductible incurred by reason of a loss or claim under any insurance policy purchased under this Article IX shall be paid by the Association, unless such loss or claim was caused by a Unit Owner or Occupant, family member, lessee, guest or invitee thereof, resulted from the use, misuse, occupancy, negligence or abandonment of a Unit or any portion thereof, or the cause arose from the Owner's Unit even through no fault of the Unit Owner. In such event the Unit Owner from whose Unit the cause originated, will be responsible for the deductible under the Association's insurance policy, which may be assessed against that Unit Owner as a special assessment.

**Section 9.05 Insurance Trustee.** The Association may engage the services of a bank or trust company authorized to do trust business in the State of Alabama and having a capital and surplus of not less than \$50,000,000 to act on its behalf as an insurance trustee ("Insurance Trustee") and to receive and disburse the insurance proceeds in accordance with the provisions of this Declaration. In the event the lowest of two bids from reputable contractors for making all repairs required by any such loss shall exceed \$50,000, the Association upon written demand of the Mortgagee or Owner of any Unit shall engage the services of a bank or trust company to act as Insurance Trustee as aforesaid. The Association, as a Common Expense, shall pay a reasonable fee to said Insurance Trustee for its services rendered hereunder, and shall pay such costs and expenses as said Insurance Trustee may incur in the performance of any duties and obligations imposed upon it hereunder. Said Insurance Trustee shall be liable only for its willful misconduct, bad faith or gross negligence, and then for only such money which comes into the possession of said Insurance Trustee. Whenever the Insurance Trustee may be required to make distribution of insurance proceeds to Owners of Units and their Mortgagees, as their respective interests may appear, or to any other party for repair, replacement or reconstruction of property, the Insurance Trustee may rely upon a certificate of the President and Secretary of the Association, executed under oath, which certificate will be provided to said Insurance Trustee upon request made to the Association. Such certificate is to certify unto said Insurance Trustee the name of the Owner of each Unit, the name of the Mortgagee who may hold a Mortgage encumbering each Unit, and the respective percentages of any distribution which may be required to be made to the Owner of any Unit, and his respective Mortgagee, as their respective interests may appear, or to certify the name of the party to whom payments are to be made for repair, replacement or reconstruction of all or a portion of the Condominium Property. The rights of the Mortgagee of any Unit under any standard mortgage clause endorsement to such policy shall, notwithstanding anything to the contrary therein or in any Mortgage contained, at all times be subject to the provisions hereof with respect to the application of insurance proceeds to reconstruction of the damaged Condominium Property; provided, however, that if the Association or the Insurance Trustee fails to perform all the conditions precedent required by the policy or policies of insurance, and fails to collect the amount of the loss within the time required by law, and the Mortgagee or Mortgagees are required to avail

themselves of their rights under the standard mortgage clause to collect the proceeds of the policy or policies of insurance, any amount so collected through the efforts of said Mortgagee or Mortgagees shall be applied as directed by said Mortgagee or Mortgagees. No provision hereof shall entitle an Owner or any other party to any priority over a Mortgagee with respect to the distribution of any insurance proceeds with respect to such Unit.

**Section 9.06 Loss to Common Elements Only.** In the event of the loss of or damage to only Common Elements, real or personal, by reason of fire or other casualties, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association or the Insurance Trustee, as the case may be, to cover such loss or damage shall be applied to the repair, replacement or reconstruction of such loss or damage. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of such Common Elements, then such excess insurance proceeds shall be paid by the Insurance Trustee to the Owners of all Units, the distribution to be separately made to the Owner of each Unit and his respective Mortgagee, as their interests may appear, in such proportion that the share of such excess insurance proceeds paid to the Owner of each Unit and his Mortgagee shall bear the same ratio to the total excess insurance proceeds as the undivided interest in the Common Elements appurtenant to each Unit bears to the total undivided interest in the Common Elements appurtenant to all Units. If there is no insurance coverage for such loss or damage, or if it appears that the insurance proceeds covering the fire or casualty loss or damage payable to the Association or the Insurance Trustee are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be so sufficient, then the Association shall pay, or shall deposit with the Insurance Trustee, as the case may be, a sum, which together with the insurance proceeds received or to be received, if any, will enable said Insurance Trustee to completely pay for the repair, replacement or reconstruction of any loss or damage, as the case may be. The monies to be so paid, or deposited by the Association with the Insurance Trustee, may be paid by the Association out of its reserve for replacement fund and if the amount in such reserve for replacement fund is not sufficient, or if the Board of Directors determines not to use such fund for said purpose, then the Association shall levy and collect an assessment against the Owners of all Units in an amount which shall provide the funds required to pay for said repair, replacement or reconstruction.

**Section 9.07 Loss to Common Elements, Limited Common Elements and/or Units.** In the event of loss of or damage to Common Elements, Limited Common Elements and/or any Unit by reason of fire or other casualty, which loss or damage is covered by fire and casualty insurance, the proceeds paid to the Association or Insurance Trustee, as the case may be, to cover such loss or damage, shall be first applied to the repair, replacement or reconstruction of the Common Elements, then to the repair, replacement or reconstruction of the Limited Common Elements and any remaining insurance proceeds shall be applied to the repair, replacement or reconstruction of any Unit which may have sustained any loss or damage so covered. If the insurance proceeds are in excess of the cost of the repair, replacement or reconstruction of the Common Elements, the Limited Common Elements and the Units sustaining any loss or damage, then such excess insurance proceeds shall be paid and distributed by the Insurance Trustee to the Owners of all Units, and to their Mortgagees, as their respective interests may appear. Such distributions are to be made in the manner and in the proportions as are provided for the distribution of insurance proceeds under Section 9.06 above. If there is no insurance coverage for such loss or

damage, or if it appears that the insurance proceeds covering the fire and casualty loss or damage payable to the Association or the Insurance Trustee, as the case may be, are not sufficient to pay for the repair, replacement or reconstruction of the loss or damage, or that the insurance proceeds when collected will not be sufficient, then the Board of Directors of the Association shall, based on reliable and detailed estimates obtained by it from competent and qualified parties, determine and allocate the cost of repair, replacement or reconstruction among the Common Elements, the Limited Common Elements and the Units sustaining any loss or damage. If the proceeds of said fire or casualty insurance, if any, are sufficient to pay for the repair, replacement or reconstruction of any loss of or damage to the Common Elements and Limited Common Elements, but are not sufficient to repair, replace or reconstruct any loss of or damage to the Units sustaining damage, then the Association shall levy and collect an assessment from the respective Owners of the Units sustaining any loss or damage, and the assessment so collected from said Owners shall be deposited with the Insurance Trustee, so that the sum on deposit with said Insurance Trustee shall be sufficient to completely pay for the repair, replacement or reconstruction of all Common Elements, Limited Common Elements, and Units. In said latter event, the assessment to be levied and collected from the Owners of the Units shall be apportioned among such Owners in such manner that the assessment levied against each Owner of a Unit shall bear the same proportion to the total assessment levied against all of said Owners of Units sustaining loss or damage as the cost of repair, replacement or reconstruction of each Owner's Unit bears to the cost applicable to all of said Units sustaining loss or damage. If the fire or casualty insurance proceeds, if any, payable to the Association or the Insurance Trustee are not an amount which will pay for the complete repair, replacement or reconstruction of the Common Elements and Limited Common Elements, it being recognized that such insurance proceeds are to be first applied to the payment for repair, replacement or reconstruction of said Common Elements and Limited Common Elements before being applied to the repair, replacement or reconstruction of any Unit sustaining loss or damage, then the cost to repair, replace, or reconstruct said Common Elements and Limited Common Elements in excess of available fire and casualty insurance proceeds shall be levied and collected as an assessment from the Owners of all Units in the same manner as would be levied and collected had the loss or damage sustained been solely to the Common Elements and Limited Common Elements and the fire or casualty insurance proceeds had been insufficient to cover the cost of repair, replacement or reconstruction. The cost of repair, replacement or reconstruction of each Unit sustaining loss or damage shall then be levied and collected by assessment against the Owners of the Units sustaining the loss or damage in the same manner as is above provided for the apportionment of such assessment between Owners of any Units sustaining loss or damage.

**Section 9.08 Estimates of Repair; Plans and Specifications; Payment of Assessments.** In the event of loss or damage to Condominium Property for which there is complete or partial insurance coverage, the Association shall promptly repair or replace those portions of the Condominium Property for which the Association is required to obtain insurance coverage unless (i) the Condominium is terminated, or (ii) eighty percent (80%) of the Unit Owners, including every Owner of a Unit which Unit or appurtenant Limited Common Element will not be rebuilt, vote not to rebuild. The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing the Unit Owners in any proceeding, negotiation, settlement, or agreement arising from any loss or damage to the Condominium Property. Whenever it shall appear that the insurance proceeds payable for such loss or damage will not be sufficient to defray the cost of repair, replacement or reconstruction thereof, the additional money



required to completely pay for such repair, replacement or reconstruction of said loss or damage whether to be paid by all of the Owners of Units or only by the Owners of Units sustaining loss or damage, or both, as herein provided, shall be paid to the Association and deposited with the Insurance Trustee, if any, not later than thirty (30) days from the date on which the Association or the Insurance Trustee, as the case may be, shall receive the monies payable from the policies of fire and casualty insurance.

## ARTICLE X

### CONDEMNATION

**Section 10.01 Condemnation Considered a Casualty Loss.** The taking of a portion of a Unit, the Common Elements or the Limited Common Elements by eminent domain shall be deemed to be a casualty loss, and except as otherwise provided in Section 10.02 below, the awards for such taking shall be deemed to be proceeds from insurance on account of the casualty and shall be applied and distributed by the Association in accordance with the provisions of Article IX. Even though the awards may be payable to the Owners, the Owners shall deposit the awards with the Association or Insurance Trustee, as the case may be; and in the event of failure to do so, in the discretion of the Board of Directors of the Association, a special assessment shall be made against a defaulting Owner in the amount of his award, or the amount of such award shall be set off against the sums hereinafter made payable to such Owner. If any Unit or portion thereof is made the subject matter of any condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, the Mortgagee of such Unit shall be entitled to timely written notice of any such proceeding or proposed acquisition as provided in Section 8.01, and no provision hereof shall entitle the Owner of such Unit or other party to priority over such Mortgagee with respect to the distribution of any award or settlement to the Owner of the Unit.

**Section 10.02 Partial Condemnation.** In the event that the Condominium Property is not to be terminated and one or more Units are taken in part, the taking shall have the following effects:

(a) If the taking reduces the size of a Unit and the remaining portion of that Unit can be made tenantable, the award for the taking for a portion of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium Property:

(i) The Unit shall be made tenantable and if the cost of such work exceeds the amount of the award, the additional funds shall be assessed against the Owner of the Unit.

(ii) The balance of the award, if any, shall be distributed to the Owner of the Unit and the Mortgagee of the Unit, as their respective interests may appear.

(iii) If there is a balance of the award distributed to the Owner and the Mortgagee, the share of the Common Elements or Limited Common Elements, if any, appurtenant to the Unit shall be equitably reduced. This shall be done by

reducing such share by the proportion which the balance of the award so distributed bears to the market value of the Unit immediately prior to the taking, and then recomputing the shares of all Owners in the Common Elements and the Owners of all Limited Common Elements as percentages of the total of their shares as reduced by the taking.

(b) If the taking destroys or so reduces the size of a Unit so that it may not be made tenantable, the award for the taking of the Unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the Condominium Property:

(i) The market value of such Unit immediately prior to the taking, shall be paid to the Owner of the Unit and to each Mortgagee of the Unit, as their respective interests may appear.

(ii) The remaining portion of such Unit, if any, shall become a part of the Common Elements and shall be placed in condition for use by all of the Owners, in the manner approved by the Board of Directors of the Association; provided, however, that if the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be approved in the manner required for further improvement of the Common Elements under Section 6.04 above.

(iii) The shares in the Common Elements and Limited Common Elements appurtenant to the Units which continue as a part of the Condominium Property shall be equitably adjusted to distribute the ownership to the Common Elements among the reduced number of Owners. This shall be done by recomputing the shares of such continuing Owners in the Common Elements as percentages of the total of the shares of such Owners as they exist prior to the adjustment.

(iv) If the amount of the award for taking is not sufficient to pay the market value of the condemned Unit to the Owner and to restore the remaining portion of the Unit in condition for use as a part of the Common Elements, the additional funds required for such purposes shall be raised by assessments against all of the Owners who will continue as Owners of the Units after the changes in the Condominium Property affected by the taking. Such assessment shall be made in proportion to the share of such Owners in the Common Elements after the changes affected by the taking.

(c) If the market value of a Unit prior to the taking cannot be determined by agreement between the Owner and the Mortgagee and the Association within thirty (30) days after notice by any such party that agreement cannot be reached, such value shall be determined by three independent qualified appraisers with one appraiser to be selected by the Association, one appraiser to be selected by the Owner and Mortgagee, and the third appraiser to be selected by the two appraisers so appointed, and the fair market value of the Unit shall be deemed to be the average of the two appraisals of the fair market value of the Unit made by said appraisers having the least difference in amount. The cost of such

appraisal shall be assessed against all Owners in the shares of the Owners in the Common Elements as they existed prior to the changes affected by the taking.

(d) Changes in the Units, in the ownership of the Common Elements and Limited Common Elements, and in the share of liability for Common Expenses and Limited Common Expenses which are affected by eminent domain, shall be evidenced by an amendment of this Declaration which needs be approved only by a majority of the Board of Directors of the Association.

**Section 10.03 Association Appointed As Attorney-In-Fact for Unit Owners.**

The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the condemnation or taking by eminent domain of the Condominium Property or any portion thereof.

**ARTICLE XI**

**TERMINATION**

**Section 11.01 Termination by Consent.** Except in the event of a condemnation of all Units by eminent domain, this Declaration and plan of condominium ownership established herein may only otherwise be terminated by the consent of the Owners of Units to which at least eighty (80%) of the votes in the Association are allocated and sixty-seven percent (67%) of the votes of all Mortgagees, in which event the termination of the Condominium shall be by such plans as may be then adopted by at least eighty (80%) percent of the votes in the Association and sixty-seven (67%) percent of the votes of the Mortgagees. Such election to terminate this Declaration and the plan of condominium ownership established herein shall be evidenced by a termination agreement executed in writing by all of the aforesaid parties in recordable form, and such instrument shall be recorded in the Probate Office. Any termination agreement and the ownership of the property which constituted the Condominium Property and all other assets of the Association shall be subject to Section 35-8A-218 of the Act.

**Section 11.02 The Association Appointed as Attorney-In-Fact for Unit Owners.** The Association shall be appointed as attorney-in-fact for each Unit Owner for the purpose of representing such Unit Owners in any proceeding, negotiation, settlement or agreement arising from the termination of this Declaration and plan of condominium ownership established herein.

**ARTICLE XII**

**CONTROL OF THE ASSOCIATION**

**Section 12.01 Election of Board of Directors.** Developer may control by appointing and removing officers and members of the Board until the earlier of (a) sixty (60) days have elapsed since seventy-five percent (75%) of the Units in the Condominium which may ever be created have been conveyed to purchasers of Units other than the Developer, (b) two (2) years

have elapsed since Developer has ceased offering Units in the Condominium for sale in the ordinary course of business, or (c) the Developer elects, at its option, to terminate control of the Association, whichever first occurs. Not later than ninety (90) days after conveyance of twenty-five percent (25%) of the Units which may ever be created to Unit Owners other than the Developer, the Unit Owners other than Developer shall be entitled to elect one member or twenty-five percent (25%) of the members of the Board. Not later than ninety (90) days after conveyance of fifty percent (50%) of the Units which may ever be created to Unit Owners other than Developer, not less than thirty-three and one-third percent (33 $\frac{1}{3}$ %) of the members of the Board may be elected by the Unit Owners. Within sixty (60) days of the date of termination of control of the Association by the Developer, the Board of Directors shall call and give not less than ten (10), nor more than thirty (30), days' notice of a special meeting of the membership for the purpose of electing the members of the Board of Directors.

**Section 12.02 Notice of Meeting.** Within sixty (60) days before the date of termination of control of the Association by the Developer, the Association shall call and give not less than ten (10) days nor more than thirty (30) days' notice of a meeting of the Unit Owners for the purpose of electing the members of the Board of Directors of the Association. Such meeting shall be called and the notice given in accordance with the Bylaws.

**Section 12.03 Status of Unsold Units.**

(a) Developer shall be deemed to be the Owner of each Unit which has not been conveyed to a person other than the Developer. Unless otherwise provided in the Condominium Documents, the Developer shall be entitled to all rights and privileges available to, and shall be subject to any and all obligations and duties imposed upon, the Owner of any such Unit under the Condominium Documents.

(b) Any person having a first mortgage lien against any Unit which has not been conveyed to a person other than Developer, whether under a blanket mortgage affecting the Condominium Property generally or under a mortgage on one or more specific Units, shall be deemed to be a Mortgagee with respect to any such Unit, and shall be entitled to all rights and privileges available to a Mortgagee of any such Unit under the Condominium Documents so long as the Mortgagee has given notice to the Association that it is a Mortgagee.

(c) During the first year of operation of the Association, the Association may modify the initial operating budget to account for items under warranty, less than full occupancy and all other startup cost savings. The working capital fund deposit of an amount equal to three (3) months assessment shall be based on the full estimated operating budget, however. Notwithstanding the provisions of Sections 4.02 and 12.03 (a) above, no assessments shall be imposed by the Association against the Developer as the Owner of unsold Units until sixty (60) days after the conveyance of the first Unit. During such period, Developer shall be responsible for the Common Expenses and Limited Common Expenses of the Condominium Property, except that the Developer shall be entitled to use and apply to the payment of such Common Expenses and Limited Common Expenses any and all assessments made against the Unit Owners other than Developer and collected by

the Association for Common Expenses and Limited Common Expenses, including the assessments paid by each Owner at closing as working capital.

**Section 12.04 Professional Management and Other Contracts.** Any management contract, employment contract or lease of recreational facilities or any agreement between the Association and an affiliate of the Developer entered into by the Association prior to the passage of control of the Association from the Developer pursuant to Section 12.01 above shall provide the following:

(a) The Association shall have the right of termination which is exercisable without penalty any time upon not more than ninety (90) days' written notice to the other party thereto; and

(b) The Association shall have a right of termination for cause which is exercisable without penalty at any time upon not more than thirty (30) days' written notice to the other party thereto.

### **ARTICLE XIII**

#### **AMENDMENT**

**Section 13.01 Amendment.** The Declaration may be amended in the following manner:

(a) Developer.

(i) The Developer reserves the right to amend the Bylaws of the Association until such time as Developer relinquishes control of the Association as provided in Section 12.01.

(ii) The Developer reserves the right to amend the Declaration for any reason so long as there is no Unit Owner other than the Developer.

(iii) The Developer reserves the right at any time to amend the Declaration without the consent of other Owners if required by any Mortgagee as a condition of making a loan secured by an interest in a Unit in order to meet the requirements of the Federal Home Loan Mortgage Corporation or the Federal National Mortgage Association; provided, that any such changes or amendments requested by a Mortgagee shall not materially affect the rights of the Unit Owners or the value of the Condominium Unit or the undivided interest in the Common Elements or Limited Common Elements, if any, attributable to each Unit Owner.

(iv) The Developer reserves the right to amend the Declaration to exercise any and all development rights and/or special declarant rights set forth in the Declaration, and to make Limited Common Element assignments or reassignments or to correct any scrivener's errors in the Declaration.

(b) At such time as there is a Unit Owner other than the Developer, then, in addition to the amendments permitted under Paragraph (a) above, the Declaration may be amended in the following manner:

(i) A proposal to amend the Declaration may be considered at any meeting of the members of the Association called for that purpose in accordance with the provisions of the Bylaws; provided that the Association provides prior written notice of such meeting to the Mortgagees as provided in Section 8.01 of the Declaration. The proposal to amend the Declaration must be approved by the affirmative vote of the members representing not less than sixty-seven percent (67%) of the total allocated votes of the Association and by the affirmative vote of the Mortgagees representing fifty-one percent (51%) of the total allocated votes of the Units subject to Mortgages.

(ii) Notwithstanding the foregoing, no amendment to the Declaration shall:

(A) change a Unit, including the ownership in Common Elements, responsibility for Common Expenses and voting rights, without the prior written approval of the Unit Owner or Unit Owners so affected and prior written approval of the holders of record of any mortgage or other liens on the Unit or Units so affected unless amended pursuant to Developer's right to create additional Units; or

(B) change, impair or prejudice the rights of Developer or change the provisions of this Declaration with respect to the Developer's rights hereunder without Developer's prior written approval.

**Section 13.02 Effectiveness of Amendments.** A copy of each amendment adopted pursuant to Section 13.01(a) above need only be signed by the Developer and shall be effective when recorded in the Probate Office. A copy of each amendment adopted shall be certified by the President or a Vice President and Secretary of the Association as having been duly adopted, and shall be effective when recorded in the Probate Office.

## ARTICLE XIV

### DISPUTE RESOLUTION

#### **Section 14.01 Agreement to Resolve Disputes Without Litigation.**

(a) Developer, the Association and its officers, directors, and committee members, all Owners, all persons subject to this Declaration, and any person not otherwise subject to this Declaration who agrees to submit to this Article (collectively, "Bound Party"), agree that it is in the best interest of all concerned to resolve disputes involving the Condominium, the Association and/or the Owners without the emotional and financial costs of litigation. Accordingly, each Bound Party agrees not to file suit in any court with

respect to a Claim (hereinafter defined), and to submit such Claim to the alternative dispute resolution procedures set forth in Section 14.02 in a good faith effort to resolve such Claim.

(b) As used in this Article, the term “Claim” shall refer to any claim, grievance or dispute arising out of or relating to:

- (i) the interpretation, application, or enforcement of the Condominium Documents;
- (ii) the rights, obligations and duties of any Bound Party under the Condominium Documents or related argument; or
- (iii) the construction of the Condominium Property;

except that the following shall not be considered “Claims” unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in Section 14.02:

- (iv) any suit by the Association to collect Assessments or other amounts due from any Owner;
- (v) any suit by the Association to obtain a temporary restraining order (or emergency equitable relief) and such 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 this Declaration;
- (vi) any suit between Owners, which does not include Developer or the Association as a party, if such suit asserts a Claim which would constitute a cause of action independent of the Condominium Documents;
- (vii) any suit in which any indispensable party is not a Bound Party except the construction contractor or sales contractor or Condominium architect.
- (viii) any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the Notice required by Section 14.02(a), unless the party or parties against whom the Claim is made agree to toll the statute of limitations as to such Claim for such period as may reasonably be necessary to comply with this Article.

#### **Section 14.02 Dispute Resolution Procedures.**

(a) Notice. The Bound Party asserting a Claim (“Claimant”) against another Bound Party (“Respondent”) shall give written notice (“Notice”) to each Respondent and to the Board stating plainly and concisely:

- (i) the nature of the Claim, including the persons involved and the Respondent’s role in the Claim;

(ii) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);

(iii) the Claimant's proposed resolution or remedy; and

(iv) the Claimant's desire to meet with the Respondent to discuss in good faith ways to resolve the Claim.

(b) Negotiation. The Claimant and Respondent shall make every reasonable effort to meet in person and confer for the purpose of resolving the Claim by good faith negotiation. If requested in writing, accompanied by a copy of the Notice, the Board may appoint a representative to assist the parties in negotiating a resolution of the Claim.

(c) Mediation. If the parties have not resolved the Claim through negotiation within thirty (30) days of the date of the Notice described in Section 14.02(a) (or within such other period as the parties may agree upon), the Claimant shall have thirty (30) additional days to submit the Claim to mediation with an entity designated by the Association (if the Association is not a party to the Claim) or to an independent agency or individual providing dispute resolution services in the State of Alabama selected by both sides if the Association is a party. If the Claimant does not submit the Claim to mediation within such time, or does not appear for the mediation when scheduled, the Claimant shall be deemed to have waived the Claim, and the Respondent shall be relieved of any and all liability to the Claimant (but not third parties) on account of such Claim. If the parties do not settle the Claim within thirty (30) days after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that mediation was terminated. The Claimant shall thereafter be required to initiate arbitration proceedings on the Claim, as set forth in Section 14.02(e) below. Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

(d) Settlement. Any settlement of the Claim through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this Section. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

(e) **Arbitration; No Trial by Jury**. All Claims, Disputes regarding Alleged Defects or other matters in question arising out of, or relating in any way to the Condominium or the breach of and contract between the Bound Parties that are not resolved by negotiation or mediation shall be resolved by binding arbitration by a single arbitrator in Jefferson County, Alabama in accordance with the Commercial Arbitration Rules of the American Arbitration Association then in effect.



**EACH PARTY ACKNOWLEDGES THAT HE OR SHE IS KNOWINGLY WAIVING THE RIGHT TO A TRIAL BY JURY RELATING TO ALL CLAIMS.**

**All disputes concerning the arbitrability of any Claim or the enforceability or scope of this provision shall be subject to the same binding arbitration. The parties shall bear equally the cost of the arbitrator, and each party shall otherwise bear their own costs; provided, the arbitrator shall have the authority to award costs as a part of this award to the prevailing party. The arbitrator shall follow the law applicable to any Claim and shall be empowered to award any damages or other relief which would be available under the law applicable to any such Claim. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations. The determination of the arbitrator shall be final, binding on the parties, and non-appealable and may be entered in any court of competent jurisdiction to enforce it. The parties acknowledge and agree that the transactions contemplated by, and relating to, the Condominium, which may include the use of materials and components which are obtained from out-of-state and which otherwise include the use of interstate mails, roadways and commerce, involve interstate commerce, as that term is defined in the Federal Arbitration Act, 9 U.S.C. § 2.**

**Section 14.03 Initiation of Litigation by Association.** In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the Association shall not initiate any judicial or administrative proceedings, or arbitration unless first approved by a vote of the members entitled to cast sixty-six and two-thirds percent (66.67%) of the votes in the Association, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the period that the Developer controls the Association;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;
- (c) initiated to challenge property taxation or condemnation proceedings;
- (d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or
- (e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section 14.03 shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

## ARTICLE XV

### MISCELLANEOUS

**Section 15.01 Rights and Powers of Successors and Assignees.** The rights and powers reserved to or exercisable by the Developer under the Condominium Documents or the Act may be exercised by any successor or assignee of the Developer (i) who acquires title from the Developer by foreclosure or other judicial sale or deed in lieu of foreclosure, or (ii) to whom the Developer specifically assigns such rights and powers in an instrument recorded in the Probate Office.

**Section 15.02 Headings.** The captions herein are used solely as a matter of convenience and shall not define, limit or expand any term or provision of this Declaration.

**Section 15.03 Mold and Mildew; Potential for Water Intrusion.** Mold and/or mildew can grow in any portion of the Condominium that is exposed to elevated levels of moisture. Each Unit Owner agrees to: (1) regularly inspect the parts of the Condominium that the Unit Owners maintain; and which are visible and accessible without having to first conduct invasive testing, for the existence of mold, mildew, and/or water intrusion and/or damage; (2) upon discovery, immediately repair in a good and workmanlike condition the source of any water intrusion in the parts of the Condominium that they respectively maintain; (3) remediate or replace any building material located in the parts of the Condominium that they maintain that has absorbed water or moisture as a result of water intrusion; and (4) promptly and regularly remediate all mold and/or mildew discovered in the parts of the Condominium that they maintain in accordance with current industry-accepted methods. In addition, each Unit Owner shall notify the Association and the Developer of the discovery of mold, mildew, and/or water intrusion and/or damage in their Units, and the Association shall notify the Developer of the discovery of mold, mildew, and/or water intrusion and/or damage in any part of the Condominium should the Developer own any Units at that time.

**Section 15.04 Gender/Number.** Whenever the context so permits, the use of the plural shall include the singular, the singular shall include the plural, and any gender shall be deemed to include all genders.

**Section 15.05 Exhibits.** Exhibits “A,” “B,” “C,” “D,” “E,” “F” and “G” attached to this Declaration are an integral part of this Declaration.

**Section 15.06 Invalidity and Severability.** It is the intention of the Developer that the provisions of this Declaration are severable so that if any provision is invalid or void under any applicable federal, state or local law or ordinance, decree, order, judgment or otherwise, the remainder shall be unaffected thereby.

**Section 15.07 Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium project. Failure to enforce any provision hereof shall not constitute a waiver of the right to enforce said provision or any other provision hereof.

*[SIGNATURE PAGE FOLLOWS]*

**IN WITNESS WHEREOF**, the Developer has hereunto set its signature and seal on the day and year first above written.

**[XYZ] DEVELOPMENT, LLC**, an Alabama limited liability company

\_\_\_\_\_  
By:  
Its:\_\_\_\_\_

STATE OF ALABAMA     )  
COUNTY OF JEFFERSON )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_ as \_\_\_\_\_ of **[XYZ] DEVELOPMENT, LLC**, an Alabama limited liability company whose name is signed to the foregoing Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration of Condominium, executed the same voluntarily on the date the same bears date on behalf of said company.

Given under my hand and official seal of office this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_\_\_.

[NOTARIAL SEAL]

\_\_\_\_\_  
Notary Public  
My Commission Expires:\_\_\_\_\_

**[MORTGAGEE]**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ )

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that \_\_\_\_\_ as \_\_\_\_\_ of **[MORTGAGEE]**, whose name is signed to the foregoing Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Declaration of Condominium, executed the same voluntarily on the date the same bears date on behalf of said company.

Given under my hand and official seal of office this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_.

\_\_\_\_\_  
Notary Public

[NOTARIAL SEAL]

My Commission Expires: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**

**EXHIBIT B**  
**ADDITIONAL PROPERTY**

**EXHIBIT C**  
**BYLAWS OF**  
**[XYZ] CONDOMINIUM ASSOCIATION, INC.**



**EXHIBIT D**  
**PLAT AND PLANS**

[See Attached]

**EXHIBIT E****COMMON ELEMENT ALLOCATED INTERESTS, LIMITED  
COMMON ELEMENT ASSIGNMENTS AND VOTES**

<b>Unit #</b>	<b>Limited Common Element Parking Space Assignment</b>	<b>Limited Common Element Storage Space Assignment</b>	<b>Vote(s)</b>	<b>% Common Element Allocated Interest</b>
Unit				%
Unit				%
<b>TOTAL</b>				<b>100%</b>

**EXHIBIT F****ALLOCATED INTEREST UPON  
ADDITION OF ADDITIONAL PROPERTY**

Upon addition of any portion of the Additional Property or any additional Units to the Condominium, the Common Element and Limited Common Element Allocated Interest assigned to the additional Units shall be calculated by dividing the approximate square footage of each additional Unit by the total square footage of all Units then-existing in the Condominium. The Allocated Interest of all previously-existing Units in the Condominium will likewise be reduced by dividing the approximate square footage of the Unit by the square footage of all Units then-existing. The square footage of the Unit to be used for each Unit is the square footage calculated from the architectural plans by a computer program measuring from the interior surface of the exterior boundary walls of the Unit. Upon adjustment of the Allocated Interests, the Limited Common Expense liability shall likewise be adjusted.

Upon addition of any portion of the Additional Property, the votes for each additional Unit shall be the comparable number of votes assigned to Units previously existing in the Condominium of a comparable size.

**EXHIBIT G**

**EASEMENTS AND RESTRICTIONS OF RECORD**