

*The Fairways  
Only*

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Alice K. Martin  
Judge of Probate  
Calhoun County, Alabama

This instrument prepared by, and upon recording, should be returned to

Adam J. Sigman, Esq.  
Maynard, Cooper & Gale, P.C.  
1901 6th Avenue North  
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Birmingham, AL 35203-2618

**THE FAIRWAYS AT CIDER RIDGE, A TOWNHOME COMMUNITY  
DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS  
AND RESTRICTIONS**

**THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS** (this "Declaration") is made as of October 14, 2009, by TS FAIRWAYS, LLC, an Alabama limited liability company (the "Declarant").

**RECITALS:**

Declarant desires to develop, construct, improve and sell single-family residential townhomes on the real property owned by the Declarant located in the City of Oxford, Calhoun County, Alabama, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property"), subject to certain easements, covenants, conditions, restrictions, requirements and obligations deemed necessary in order to protect the value and desirability of the Development (as defined below) and to have a method for the administration and maintenance of the Development. Capitalized terms not further defined herein shall have the meaning assigned in Article I of this Declaration.

**NOW, THEREFORE,** Declarant does hereby declare that all of the Property be held, developed, improved, transferred, sold, conveyed, leased, occupied and used subject to the following easements, covenants, conditions, restrictions, charges, liens and regulations, 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 in addition to and as a supplement of those easements, covenants, conditions, restrictions, charges, liens and regulations set forth in that certain Declaration of Protective Covenants for the Cider Ridge Subdivision recorded in the Probate Office (hereinafter defined) at Book 3019, Page 115, as amended by that certain First Amendment recorded in said Probate Office at Book 3111, Page 388, and further amended by that certain Second Amendment recorded in said Probate Office at Book 3118, Page 142.

**ARTICLE I.  
DEFINITIONS**

The following terms shall have the meanings set forth below which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

"**Articles of Incorporation**" shall mean and refer to the Articles of Incorporation of the Association and all amendments thereto.

"Assessments" shall mean and refer to, collectively, Common Expense Assessments, Individual Assessments and Special Assessments and any other charges assessed against an Owner by the Association pursuant to this Declaration.

"Association" shall mean The Fairways at Cider Ridge Owner's Association, Inc., an Alabama nonprofit corporation to be incorporated after the filing of this Declaration.

"Board or Board of Directors" shall mean and refer to the Board of Directors of the Association.

"Bylaws" shall mean and refer to bylaws of the Association, maintained on file at the Association's offices, as the same may be amended from time to time.

"Common Areas" shall mean and refer to all real and personal property now or hereafter on the Property other than the Lots, for the common use and enjoyment of the Owners. The Common Areas shall include (a) all private roadways or easements upon which private roadways exist providing ingress and egress to and from the Development excluding the private driveways on the Lots; (b) all signage, street lights, lighting, walkways, sidewalks, Improvements, landscaping and landscaped or other areas that are part of the Development but that are not located on a Lot; (c) water features, storm drains and sewers, drainage and/or watershed protection or retention ponds, green-space areas, basins or other areas and facilities located within the Development but that are not located on a Lot; (d) all utility lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which are located in or serve any portion of the Common Areas; and (e) any other areas or Improvements on or within the Development (other than the Lots) which are designated as Common Areas by Declarant or the Association from time to time. The legal description via any Plat (hereinafter defined) of the Common Areas as a subdivided lot shall not change its designation hereunder from Common Areas to a Lot. The designation of any part of the Development as a Common Area 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.

"Common Expenses" shall mean and refer to those expenditures made or incurred by or on behalf of the Association as set forth in Section 7.04 below which are payable by all Owners in accordance with this Declaration.

"Common Expense Assessments" shall mean and refer to the assessments levied by the Board each year pursuant to Section 7.04 below to pay Common Expenses for such year.

"Declaration" shall mean and refer to this Declaration of Easements, Covenants, Conditions and Restrictions, and all amendments hereto made pursuant to the terms hereof.

"Declarant" shall mean TS Fairways, LLC, an Alabama limited liability company, its successors and assigns from the express assignment and assumption of the rights and obligations of the Declarant hereunder. An Owner shall not be deemed to have the rights and obligations of the Declarant hereunder by virtue of the conveyance of a Lot to the Owner by Declarant.

"Declarant Control Period" shall mean and refer to the period of time commencing with the filing of record of this Declaration and ending on the earlier of (i) the fifth (5<sup>th</sup>)

anniversary hereof and (ii) the date on which Declarant no longer owns any portion of the Property encumbered hereby (having sold all Lots to Owners and, or conveyed all Common Areas to the Association and, or withdrawn any remaining portions of the Property from this Declaration in accordance with Section 2.04).

**"Development"** shall mean and refer to the Property and all Improvements thereon as a single-family residential townhome neighborhood with Dwellings restricted to those generally shown on the Phase I Plat (defined below).

**"Dwelling"** shall mean and refer to the townhome Improvements constructed on a Lot which shall be in substantial accordance with the townhomes shown on the Phase I Plat (defined below).

**"Governmental Authority"** shall mean 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 Development.

**"Individual Assessments"** shall mean and refer to assessments levied by the Association against certain individual Owners as set forth in Section 7.06 for expenses of the Association incurred or suffered by such Owner's acts or omissions or breaches or failure to comply with the terms and provisions of this Declaration.

**"Improvements"** shall mean and refer to all structures or devices constructed, erected or placed upon any Lot or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, 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.

**"Institutional Mortgagee"** shall mean and refer to any federal or state chartered bank, trust company, life insurance company or federal or state savings and loan association, real estate investment trust or other recognized lending institution which normally and customarily engages in the business of making Mortgage loans and shall include any institutional or governmental purchaser of mortgage loans in the secondary market, such as Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, which holds a first Mortgage on any Lot which has been duly and properly recorded in the Probate Office.

**"Lot"** shall mean and refer, initially, to those ten (10) lots for which it is intended that a Dwelling be constructed thereon reflected on the Phase I Plat (defined below), exclusive of Common Areas and portions of the Property owned by Declarant that are not subdivided for the construction of townhomes pursuant to this Declaration. The definition of Lot shall include and incorporate any Dwelling once constructed thereon. The initial ten (10) lots shown on the Phase I Plat comprise Phase I of the Development; additional portions of the Property owned by Declarant may be further developed by Declarant, in its sole discretion, pursuant to the Special Declarant Rights (hereinafter defined). In the event any portion of the Property is re-subdivided by Declarant, the re-subdivided Lots shall constitute the number of Lots which remain after such division or combination of Lots.

**"Lot Owner"** shall mean and refer to the Owner of a Lot that is subdivided for a Dwelling (constructed or to be constructed).

**"Mortgage"** shall mean and refer to any mortgage, deed of trust or other security device encumbering a Lot or any interest therein and shall have been duly and properly recorded in the Probate Office.

**"Mortgagee"** shall mean and refer to the holder of any Mortgage and shall include any Institutional Mortgagee.

**"Occupant"** shall mean and include any Owner, the family members, guests, tenants, agents, servants, employees and invitees of any Owner and their respective family members, guests, tenants, agents, servants, employees, invitees and any other person who occupies or uses any Dwelling. All actions or omissions of any Occupant of a Lot are and shall be deemed the actions or omissions of the Owner of such Lot.

**"Owner"** shall mean and refer to the record owner, including Declarant, 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 unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot at the foreclosure sale held with respect to the foreclosure of such Mortgage 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.

**"Permitted Exceptions"** shall mean all matters of record affecting the Property and any matter that would be reflected by an accurate ALTA/ACSM survey of the Property.

**"Plat"** shall mean that certain subdivision plat of a portion of the Property called the Plat of The Fairways at Cider Ridge, Phase I, recorded in the Probate Office at Plat Book HH, Page 25, (the "Phase I Plat") and further any subdivision plat of the Property executed and filed in accordance with this Declaration. The Declarant has reserved certain Special Declarant Rights in Article II to subdivide any portion of the Property it owns without any consent of any other Owner nor any Mortgagee required. All other Owners are restricted from subdividing a Lot in accordance with Section 2.07 below.

**"Probate Office"** shall mean the Office of the Judge of Probate of Calhoun County, Alabama.

**"Rules and Regulations"** shall mean the Rules and Regulations of the Association which shall be maintained on file at the Association's offices, as the same may be amended from time to time by the Board in accordance with this Declaration.

**"Special Assessments"** shall mean assessments levied by the Association against all Owners to cover unanticipated expenses or expenses in excess of those budgeted, as described in Section 7.05.

**ARTICLE II.**  
**PROPERTY SUBJECT TO THE DECLARATION**

**2.01. General Declaration.** Declarant declares that the Development is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration. The Development, and each and every part thereof (including, without limitation, each Lot and the Common Areas) 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 the Property and shall be binding upon and inure to the benefit of Declarant and upon all Owners.

**2.02. Mutuality of Benefit and Obligation.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot and the Common Areas and are intended to create mutual, equitable servitudes upon and in favor of each Lot and the Common Areas; (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners; (c) to create certain rights and obligations between the Declarant, the Owners and the Association; and (d) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

**2.03. Development of Property.** Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot, to make improvements and changes to all Common Areas and to all Lots owned by the Declarant, including without limitation (i) installation and maintenance of any Improvements in or to the Common Areas, (ii) changes in the location of the boundaries of any Lots owned by Declarant or of the Common Areas, (iii) installation and maintenance of any water, sewer and any other utility systems and facilities within the Common Areas, and (iv) installation of security and trash and refuse facilities.

**2.04. Special Declarant Rights.**

a. **Subdivision Plat.** For so long as Declarant owns any Lot or any other portion of the Property during the Declarant Control Period, Declarant reserves the unilateral right to modify and amend the Plat of such property, or execute and file an additional plat of such property as the Declarant may deem necessary in its sole discretion, which may effectuate the creation of or changes to, without limitation, the locations and dimensions of all Lots owned by the Declarant, Common Areas, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, retention ponds and drainage basins and further which may create additional Lots in the Development, without any consents required from any other Owner or Mortgagee. Any such actions shall be binding on the portions of the Property indicated thereon as if it were specifically incorporated into this Declaration as of the date hereof.

b. **Use for Sales and Other Purposes.** Declarant expressly reserves for itself, and its successors and assigns, the right to use one or more Lots and Dwellings owned by Declarant and any portion of the Common Areas for the operation of management, sales and construction or rental offices. Such management, sales, construction and rental offices may be maintained in such number and size as may be determined by Declarant, in its sole discretion, and may be

located and relocated on Lots and/or in any Improvements on the Common Areas as may be determined by Declarant. Declarant further reserves the right to maintain, on the Common Areas, advertising signs in any location or locations and from time to time to relocate and/or remove the same, all in the sole discretion of Declarant. Declarant reserves the rights set forth in this Section 2.04(b) until the end of the Declarant Control Period.

c. **Appointment of Officers and Directors.** Declarant reserves the right to unilaterally appoint or remove any officer of the Association and the members of the Board during the Declarant Control Period.

d. **Additional Dwellings.** The Development will initially consist of ten (10) Lots and ten (10) Dwellings together with the Common Areas. The Phase I Plat for the Development reflects additional phases, which may or may not be built according to Declarant's sole discretion.

e. **Other Special Declarant Rights.** In addition to the rights reserved in Sections 2.04 a, b, c and d above, for so long as Declarant owns a Lot, Declarant reserves the right, until the tenth (10th) anniversary of the recordation of this Declaration, without the consent of any Lot Owner or Mortgagee, to:

(i) Use the easements through the Common Areas described in Article III for the purpose of making Improvements within the Development;

(ii) Withdraw from the Development any of the real estate described on Exhibit A, which shall automatically redefine the Property;

(iii) Add real estate, Dwellings or Lots to the Development;

(iv) Develop the Development in multiple phases; and

(v) Change the overall nature of the Development (to include detached garden homes or the like, in addition to or in place of existing Lots and Dwellings) in connection with the portions of the Property owned by Declarant, provided the same does not have a material adverse impact on the Lots owned by Lot Owners other than Declarant.

f. **Permanent Access and Utility Easement.** Declarant reserves unto itself, its successors and assigns, and its subsidiaries and their successors and assigns, a permanent, perpetual and non-exclusive blanket easement over, across, through, upon and under the Common Areas for (i) access to the Development, which may be conveyed to future Lot Owners as an easement appurtenant to Lots created by Declarant, and for the construction, operation and maintenance, repair and replacement thereon of utility lines (including connection rights to any existing utility lines situated on the Property), and (ii) access to the Property including any portion which may be withdrawn from this Declaration by Declarant.

g. **Voting; the Association.** During the Declarant Control Period, Declarant shall be entitled to veto or override any vote of the Association by written notice of the Declarant.

**h. Exercise of Special Declarant Rights.** The rights established and reserved pursuant to this Section 2.04 are collectively referred to as the "Special Declarant Rights" and may be exercised at any time and from time to time by Declarant and its successors and assigns, subject to the limitations set forth above. To the extent Declarant exercises any of the Special Declarant Rights which result in a change in the number of Lots, different types of Dwellings, a change in the Common Areas, or a change in the Development, then Declarant shall have the right to unilaterally amend this Declaration to reflect any of the foregoing without any requirement that the consent or approval of any Lot Owner or Mortgagee be obtained. Any and all costs and expenses of amending the Declaration pursuant to the terms and provisions of this Section 2.04 shall be paid for by Declarant.

**2.05. Phases.** The Development may consist of multiple phases as determined by the Declarant. The initial phase of the Development comprised of ten (10) Lots and ten (10) Dwellings and certain Common Areas as shown on the Phase I Plat, is the only portion of the Development that the Declarant commits to create and construct.

**2.06. Transfer of Common Areas.** Declarant shall have the right, but not the obligation, to transfer its ownership of any Common Areas to the Association without the approval or consent of any Owner, Occupant or Mortgagee.

**2.07. Subdivision of Lots.** Except for the rights of the Declarant as permitted hereunder this Declaration, no Lot may be subdivided into two (2) or more Lots by any Owner nor may any Lots be combined without approval by the Board in its sole and absolute discretion. To the extent any Owner, with the approval of the Board, elects to subdivide such Owner's Lot, then this Declaration shall be amended, without any requirement that the consent or approval of any other Lot Owner or Mortgagee be obtained to correctly refer to the subdivided Lots. Any and all costs and expenses of amending the Declaration shall be paid for by the Owner who has subdivided his or her Lot pursuant to the terms and provisions of this Section 2.07.

### **ARTICLE III. EASEMENTS**

**3.01. Grant of Access Easement to Owners.** Subject to the terms and conditions of this Declaration and the rules, regulations, fees and charges from time to time established by the Board, Declarant does hereby grant to each Owner and Occupant a permanent, perpetual and nonexclusive easement for access to and the use and enjoyment of the Common Areas in common with Declarant and all other Owners and Occupants. In order to provide a secure and safe environment in the Development, ingress to and egress from the Development may be controlled, restricted and limited to exclude the general public from accessing the Development and the Owners acknowledge that, upon the implementation of any such restricted access, the easement rights granted hereby will be subject to certain limitations and controls provided, however, that subject to the terms and provisions of the Declaration, reasonable vehicular and pedestrian access to and from all Lots shall be provided at all times. The easements, rights and privileges granted herein this Section 3.01 shall pass with each Lot as an appurtenance thereto and may not be severed, transferred, assigned or otherwise alienated separate or apart from Lot.

**3.02. Grant of Easement to Governmental Authorities.** Subject to the provisions of this Declaration, Declarant does hereby grant to each branch, bureau, department and agency of the Governmental Authorities and their respective agents, employees and representatives, a permanent, perpetual and nonexclusive easement over, across, through and upon all of the private roadways forming a part of the Common Areas for the purposes of performing such duties and activities related to law enforcement, fire protection, trash and refuse collection, building inspection services, mail and package delivery, medical and emergency services and any other functions or duties to be performed by the Governmental Authorities as shall be required or appropriate from time to time. For purposes of this Section, the definition of Governmental Authority will also extend to any private corporation or corporations that are licensed by the appropriate Governmental Authority to perform any of the services related in this paragraph including but not limited to trash and refuse collection, mail and package delivery, medical and emergency services. The easements, rights and privileges granted herein this Section 3.02 shall pass with each Lot as an appurtenance thereto and may not be severed, transferred, assigned or otherwise alienated separate or apart from Lot.

**3.03. Power of Attorney.** Notwithstanding anything provided to the contrary in this Declaration, Declarant (i) does hereby establish and reserve the right, in its sole and absolute discretion at any time and from time to time, to dedicate any of the private roadways within the Development as public roadways to any Governmental Authority designated by Declarant without requirement that the approval or consent of any Owner, Occupant or Mortgagee be obtained and (ii) shall be and hereby is authorized and entitled to execute any and all agreements, documents, instruments and subdivision plats pursuant to which any of the private roadways within the Development are submitted for dedication as public roadways. Each Owner, by acceptance of any deed to a Lot, and each Mortgagee by the acceptance of any Mortgage on any Lot shall be deemed to and each does hereby irrevocably appoint the Declarant as its respective agent and attorney-in-fact for the purpose of executing, signing, acknowledging, swearing to and recording any and all instruments, certificates, documents, agreements and subdivision plats relating to the dedication of the private roadways within the Development to any Governmental Authority as public roadways for and in the name of any such Owner and Mortgagee in their name, place and stead. The power and authority granted herein is hereby declared to be irrevocable and a power coupled with an interest shall survive the death or dissolution of any Owner or Mortgagee and be binding on all Owners and Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns and anyone having any interest in any Lot, Common Areas or in any of the easement rights created or granted in this Declaration. The rights reserved by Declarant pursuant to this Section may be assigned to the Association which, upon such assignment, shall have the same rights reserved herein to Declarant.

**3.04. Reservation of General Access Easement.** Declarant does hereby establish and reserve for itself, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, through and upon each Lot for (a) inspecting each Lot in order to determine compliance with the provision of this Declaration and (b) the exercise of the respective rights and duties of Declarant and the Association hereunder; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement



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.

**3.05. Reservation of Easements With Respect to Common Areas.** Declarant does hereby establish and reserve, for itself, its subsidiaries, 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 Dwellings and other Improvements in and to any Lots (ii) installing, maintaining, repairing and replacing any other Improvements to the Common Areas, (iii) doing all other things reasonably necessary and proper in connection therewith, and (iv) access, including vehicular ingress and egress over roads, drives and paths on Common Areas, for any portion of the Property including portions that may be withdrawn herefrom in accordance with Section 2.04; provided, however, that in no event shall Declarant have any obligation to undertake any of the foregoing construction. In addition to the other rights and easements established and reserved herein and regardless of whether Declarant continues to own a Lot within the Development, Declarant hereby establishes and reserves for itself and its successors and assigns, a permanent and perpetual, nonexclusive easement to have access, ingress to and egress from and the rights and privileges to use and enjoy the Common Areas and all Improvements thereon for such purposes as Declarant deems appropriate; provided, however, that Declarant should not exercise such rights so as to unreasonably interfere with the rights of the Owners to use the Common Areas.

**3.06. Reservation of Easement for Utilities.** Declarant does hereby establish and reserve for itself and the Association and their respective successors and assigns a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all portions of the Common Areas and all Lots as reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master television and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Development, including without limitation publicly or privately owned and operated electrical, gas, telephone, water and sewer services, storm drains and sewers, drainage systems, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Development. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same. Notwithstanding anything provided in this Section to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section shall not unreasonably interfere with the use or occupancy of any Dwelling and (ii) Declarant shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein.

**3.07. Reservation of Maintenance Easement.** Subject to the terms and provisions of this Declaration, Declarant does hereby establish and reserve for the Association and its agents,

employees, successors and assigns, a permanent and perpetual right and easement to enter upon any Lot for the purpose of 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 Development; provided, however, that such easement shall not impose any duty or obligation upon Declarant or the Association to perform any of the foregoing actions.

**3.08. Reservation of Environmental Easement.** Declarant does hereby establish and reserve for itself, and the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across and upon all Common Areas for the purpose of taking any action necessary to effect compliance any watershed, soil erosion or environmental rules, regulations and procedures from time to time promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control, slope control, 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 Board or any Governmental Authorities. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Declarant or the Association of the rights reserved in this Section 3.08 shall not unreasonably interfere with the use or occupancy of any Dwelling.

**3.09. Reservation of Easement for Encroachments.** If any Improvement of the Common Areas encroaches upon any Lot, or if any Dwelling or Improvement of a Lot encroaches upon any portion of another Lot or the Common Areas, then, in each case, Declarant does hereby establish and reserve reciprocal appurtenant easements for such encroachments (limited to the areas of such existing minor encroachments) between each Lot and adjacent Lot and, or Common Area, which easements shall be permanent, perpetual and reciprocal; provided however no encroachment shall be permitted to exceed 3". Furthermore, following the reconstruction of any Dwelling upon the occurrence of any fire or other casualty or any taking by act of eminent domain, similar minor encroachments resulting from such reconstruction, are permitted and permanent and perpetual easements for such encroachments are hereby granted and established in the same manner as aforesaid.

**3.10. No Party Wall.** Pursuant to Section 5.02 below, the only permitted Dwellings for the Development are semi-attached townhomes in substantial accordance with those Improvements reflected on the Phase I Plat, which Improvement plans serve as the initial Architectural Standards for the Development. In further clarification of the permitted Dwellings and Architectural Standards, it established here that the semi-attached Dwellings permitted for the Development do not have party walls connecting the interior walls and property lines. There exists, and shall be required to exist for all Dwellings, 1" of air space between each interior wall that traverses the property line of a Lot. In addition, in accordance with the Architectural Standards, each Dwelling shall contain separate roofs and separate foundations. Notwithstanding the foregoing, it is understood and established by Declarant that each Dwelling in a townhome building is connected to another Dwelling (from the exterior, and aesthetically, the foundations, facades, and roofs are connected, respectively, by concrete, brick or other facade materials and roof shingles). In addition to the encroachment easements provided in Section 3.09 above, Declarant does hereby reserve and establish a connection easement to allow the

exterior attachments of the foundations, roofs and facades, to the extent necessary to allow for the construction of the townhome buildings in accordance with the Architectural Standard.

**3.11. Grant of Easements to Association.** Declarant does hereby grant to the Association, its agents, employees, successors and assigns, a permanent and perpetual non-exclusive easement over, across, through and upon all portions of the Development, including all Lots and the Common Areas, for the purposes of carrying out and performing any of its duties and obligations set forth in this Declaration.

**3.12. Right of Association to Grant Additional Easements.** The Association, acting through the Board of Directors, shall have the sole and exclusive right, power and authority to grant rights and easements in and to the Common Areas as the Board may, in its sole discretion, determine to be necessary or desirable.

**3.13. Permitted Exceptions.** The Development is subject to all of the Permitted Exceptions as well as any easements, restrictions, reservations, rights-of-way and other matters of record which may arise at any time after the date of this Declaration by virtue of actions of the Association and/or the Declarant. The Development is further subject to and governed by all applicable laws and ordinances including the zoning ordinance of the City of Oxford, Alabama. The Property is currently zoned PR (Planned Residential) in accordance with the City of Oxford's zoning ordinance.

#### **ARTICLE IV.** **ASSOCIATION**

##### **4.01. Membership.**

a. Each Lot Owner shall be a member of the Association for so long as such Lot Owner owns a Lot; provided, however, that a Lot Owner shall continue to be deemed a member of the Association until such time as a deed or other instrument transferring fee title to said Owner's Lot is recorded in the Probate Office and a copy thereof is provided to the Association, in which event all membership rights of the prior Owner in the Association shall thereby be terminated. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot.

b. The Lot Owners shall be entitled to vote on all of those matters upon which the Owners are entitled to vote on pursuant to the terms and provisions of this Declaration, the Articles of Incorporation and the Bylaws. Subject to the Special Declarant Rights, the voting rights of the Lot Owners are specified in the Bylaws, it being expressly understood that the voting rights of any Lot Owner not in good standing (with the Association or otherwise in breach of any obligation herein) may be suspended by the Board.

c. No Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an owner by virtue of foreclosure of its Mortgage and title to such encumbered Lot is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot (other than by a Mortgage as security for the payment of an obligation) shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot transferred and conveyed, notwithstanding any failure of the

transferor to endorse to his transferee any certificates, assignments or other evidence of such membership. Membership or the rights and benefits in the Association may not be transferred, assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a Lot. Each member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws and the Rules and Regulations. The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws.

**4.02. Duties and Powers of Association.** In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Articles of Incorporation and Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. In the event of any conflict, ambiguity or inconsistency between the Code of Alabama, this Declaration, the Articles of Incorporation, the Bylaws or the Rules and Regulations adopted from time to time by the Association, then the provisions of the Code of Alabama, the Articles of Incorporation, the Bylaws, this Declaration or the Rules and Regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed to or other conveyance of a Lot, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity or inconsistency. The powers of the Association shall include, but not be limited to, (i) the power to purchase one or more Lots and any other real or personal property, whether tangible or intangible, and to hold, lease, mortgage, sell and otherwise convey the same; (ii) subject to the provisions of this Section, the right to borrow money for the purpose of acquiring additional Common Areas or any portion thereof or for providing any of the services authorized herein; (iii) subject to the provisions of this Section, the right to give mortgages or other security instruments encumbering all or any part of the Common Areas as security for any loan obtained by the Association; provided, however, that the lien and encumbrance of any such Mortgage shall be subject and subordinate to all of the rights, interests, privileges, easements, licenses, and options reserved or established herein for the benefit of Declarant, the Association and all Owners and Occupants; (iv) the right to grant and accept easements; (v) the right to dedicate or transfer fee simple title to all or any portion of the Common Areas to any Governmental Authority; and (vi) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, for the furnishing of trash collection, water, sewer and/or security services for the Common Areas and/or the Lots. For so long as Declarant shall own any Lot, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage, encumber, sell or otherwise convey any interest it may have in the Common Areas. Except as otherwise specifically provided to the contrary herein, in the Articles of Incorporation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

**4.03. Agreements.** Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Development. In performing its

responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Development, whether such personnel are furnished or employed directly by the Association. All costs and expenses incurred incident to the employment of a manager of the Development or any of the Common Areas shall be a Common Expense. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by the Declaration, the Articles of Incorporation or the Bylaws. Such manager may be an individual, corporation or other legal entity and may be bonded in such manner as the Board may require, with the costs of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for and the Board may hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of the Development, or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws or Rules and Regulations.

**4.04. Management by Declarant or its Affiliates.** Declarant or an affiliate thereof may be employed as the manager of the Association and the Development for so long as Declarant owns any Lot, at such compensation and on such terms as would be usual, customary and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size, quality and nature of the Development. Each Owner, by acceptance of a deed to or other conveyance of a Lot, shall be deemed to ratify the provisions of this Section and specifically be deemed to have approved any such management agreement entered into by the Association and Declarant or any affiliate thereof.

**4.05. Rules and Regulations.** Each Lot Owner shall also abide by and comply in all respects with the Rules and Regulations. The Rules and Regulations may be amended at any time and from time to time by the Board of Directors in accordance with the By-laws of the Association. The Rules and Regulations shall be binding upon all Owners and Occupants until and unless such Rules and Regulations are specifically overruled, cancelled or modified by the Board or by the majority vote of the total votes of the Association at any regular or special meeting of the Association.

## **ARTICLE V.**

### **USE AND DEVELOPMENT RESTRICTIONS**

**5.01. Initial Construction of Dwellings.** In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the Development and to preserve a harmonious design for the Development, all Dwellings and other Improvements initially constructed on the Lots shall be performed by a contractor selected by the Declarant.

**5.02. Architectural Standards.** The only permitted Dwellings are semi-attached townhomes in substantial accordance with those Improvements reflected on the Phase I Plat. The plans and specifications for the initial construction of the Dwellings shall establish the general architectural standards for the Development (the "Architectural Standards"). The Association is hereby authorized to promulgate and amend or modify from time to time written Architectural Standards governing policies, guidelines and minimum requirements to be satisfied with respect to the modification, reconstruction, landscaping and design of all Dwellings and other Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction or modification of any Dwelling or other Improvements on a Lot are to be submitted to and approved by the Association and any other matters affecting construction, repair or maintenance of any Dwelling or other Improvements on any Lot. The Architectural Standards adopted by the Association shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

**5.03. Uses and Restrictions.**

(a) Each Lot shall be used for single-family residential, semi-attached townhomes purposes only in accordance with this Declaration and the Rules and Regulations as a planned development of townhomes as generally shown on the Phase I Plat. The use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client, or employee traffic. The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this covenant so long as the lease (a) is not for less than the entire Dwelling, (b) is for a term of at least six (6) months and (c) is otherwise in compliance with the Rules and Regulations promulgated and published from time to time by the Association. No Lot shall be sold or owned under any time-sharing, time-interval, or similar right-to-use programs without the approval of the Association.

(b) All utility lines, pipes, conduits, and wiring for electrical, gas, telephone, water, sewer, cable television, security, and any other utility service for any portion of the Property shall be installed and maintained below ground to the extent feasible.

(c) No more than a single family unit shall occupy any Dwelling. Detached auxiliary buildings are not permitted. All Improvements must be built within the building lines approved by the Association.

(d) All unimproved areas of any Lot must be landscaped in a manner consistent with other landscaping in the Development, as determined by the Association and in accordance with the Rules and Regulations.

(e) No bird baths, fountains, reflectors, flag poles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses or other similar fixtures and accessories shall be placed or installed within the front, side or back yards of any Lot or any terrace of any Dwelling, except as specifically approved by the Association.

(f) All roofing materials used in the replacement of any roof on any Dwelling must be approved in advance by the Association. The modification of the location of any plumbing or

heating vents, stacks and other projections of any nature from the roof of a Dwelling shall be in locations as approved by the Association and (i) be painted the same color as the roofing material used for such Dwelling and (ii) to the extent practicable not be visible from any street. Unless included in part of the initial construction of the Dwelling, no projections of any type shall be placed or permitted to remain above the roof of any Dwelling except for approved chimneys and vent stacks or except as otherwise approved by the Association.

(g) All satellite dishes, outside radio and television antennae and similar electronic equipment and all wires connecting to such equipment shall be installed by a professional installer in such a way as not to be visible from the street from any angle and shall be placed on the backside of the chimney or roof. The Association shall have the right to approve the use of any such device and its location on the Lot and, or on any Improvement.

(h) No solar or other energy collection panel, equipment or device shall be installed or maintained on any Lot, including, without limitation, the roof of any Dwelling, if the same would be visible from any street.

(i) Except as approved in connection with the initial construction of the Dwelling, no mailboxes, decks, patios, awnings, walls, fences, exterior lighting or other outbuildings shall be installed on any Lot unless otherwise approved by the Association.

(j) No modification to any exterior materials or finishes of any Dwelling (including, without limitation, painting or staining) may be made without the prior written approval of the Association.

(k) Reflective glass shall not be permitted on the exterior of any Dwelling. No foil or other reflective material shall be installed on any windows or used for sun screens, blinds, shades or other purposes. Burglar bars or doors (including wrought iron doors) shall not be permitted unless approved in advance by the Association. Appropriate window treatments shall be used on all windows and shall be either of the following colors (and no other color): white or off-white. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments.

(l) Unless expressly approved by the Association, all electrical, gas, telephone, and cable television meters shall not be relocated following the initial installation of same during the construction of the Dwellings. All exterior heating, ventilating, and air conditioning compressor units and equipment shall be located, to the extent practicable, at the rear of a Dwelling and, if the same are visible from the street, such compressor units and equipment shall be screened from public view by either walls or landscaping to be approved by the Association. No window mounted heating or air conditioning units or window fans shall be permitted.

(m) Any furniture placed, kept, installed, maintained or located on the terrace of a Dwelling shall, to the greatest extent practicable, be located so that the same shall not be visible from any street.

(n) Wood piles shall be located only at the rear of a Dwelling and shall be screened by appropriate landscaping from view from streets, and to the extent practicable, from adjacent Lots.

(o) Children's toys, swing sets, jungle gyms, and other outdoor and recreational equipment and appurtenances shall only be temporary in nature and shall be allowed only at the rear or behind a Dwelling and shall, to the extent practicable, be located so that the same are not visible from any street. Free-standing playhouses, tree houses and basketball goals shall not be permitted unless approved by the Association.

(p) Outside clothes lines or other outside facilities for drying or airing clothes shall be prohibited in the Development, including, without limitation, on the terrace of any Dwelling. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall.

(q) 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 the street.

(r) Bird feeders, wood carvings, plaques, and other types of home crafts shall not be permitted in the front or side yards of any Lot, nor shall any of the foregoing items be attached to the front or side of any Dwelling or on the terrace of any Dwelling. No such item shall be visible from any street.

(s) No animals, livestock or poultry of any kind or description, except no more than two (2) recognized household pets, each less than 36" in height (to the top of the head in a standing position), shall be kept on any Lot; provided, however, that no household pet may be kept on any Lot for breeding or commercial purposes; provided, further, that any household pets must be kept on a leash when permitted to be outside or in any Common Areas. Owners shall be held responsible for the actions of their pets. No such pet permitted hereunder shall be allowed to be a danger to others or to become a nuisance. No structure for the care, housing or confinement of any such pet shall be maintained on any Lot if same is visible from any other Lot. Upon the written request of any Owner, the Association shall conclusively determine, in its sole and absolute discretion, whether, for the purposes of this paragraph (i) an animal is a recognized household pet; (ii) a household pet is a nuisance, or (iii) whether any household pet exceeds the size limitations herein.

(t) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Development, 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 other Owners and Occupants. 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 un-kept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Development or be in violation of any law, statute, ordinance, rule, regulation or requirement of any Governmental Authority. 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 by appropriate landscaping or fencing, approved by the Association; provided, however, that trash cans and



containers can be moved to the side or front yard of any Dwelling on trash collection days for such Lot, as required by the licensed trash collector.

(u) No exterior speakers, horns, whistles, bells or other sound devices, other than security and fire alarm devices used exclusively for such purposes, shall be located, used or placed upon any Lot or other portion of the Development.

(v) Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, bicycles, motorized carts and all-terrain vehicles, lawn mowers, tractors, tools, construction machinery, and equipment of any nature, golf carts, boats, and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery, or equipment, shall not be permitted stored or allowed to remain on any Lot, unless the same is placed, stored and maintained in the garage of a Dwelling. The Common Areas shall not, unless expressly permitted by the Association, be utilized for the parking and storage of any of the foregoing vehicles, recreational vehicles, machinery or equipment.

(w) No signs or advertising posters of any kind (including, without limitation, for sale or for lease signs, political campaign signs and name and address signs) shall be maintained or permitted within any windows or on the exterior of any Lot or elsewhere on any portion of the Property, without the express written permission of the Association. Notwithstanding the foregoing, (a) the restrictions set forth in this Section shall not be applicable to Declarant or its affiliates, and (b) Declarant and the Association have the right, but not the obligation, to erect and maintain reasonable and appropriate signs on any portions of the Common Areas and within those easement areas established herein.

**5.04. Modifications to Dwellings.** In order to preserve the architectural and aesthetic appearance and the natural setting and beauty of the Development and to preserve a harmonious design for the Development, no modification to the exterior (or any portion of the interior, if visible from the exterior) of any Improvement or Lot may be made without the prior written consent of the Association which may be granted or withheld in its sole discretion. Neither the Association, nor the Board, nor any architect, nor any agent thereof, shall be responsible in any way for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications. It is specifically agreed that the scope of review by the Association shall be limited to appearance only and shall not include any responsibility or authority to review for structural soundness, compliance with building or zoning codes or standards, or any other similar or dissimilar factors. Furthermore, no Owner shall make any structural addition or any alteration or improvements within a Dwelling or which could impair the structural integrity of the Dwelling nor any other Dwelling.

**5.05. Traffic Regulations.** All vehicular traffic on the private streets and roads in the Development shall be subject to the applicable provisions of the laws of the State of Alabama and any other city or county having jurisdiction thereof concerning operation of motor vehicles on public streets. The Board is hereby authorized to promulgate, administer and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including adopting reasonable safety measures and speed limits for any of the private roads within any portion of the Development. The Board shall be entitled to enforce such rules and regulations by establishing

such enforcement procedures as it deems appropriate, including levying 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 rules and regulations of the Association shall govern. All vehicles of any kind and nature which are operated on the streets in the Development shall be operated in consideration for the rights of all residents of the Development.

**5.06. 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.

## **ARTICLE VI.**

### **MAINTENANCE RESPONSIBILITIES**

#### **6.01. Responsibilities of Owners.**

(a) Unless specifically identified here as being the responsibility of the Association, the maintenance and repair of all Lots and all Improvements situated thereon or therein, shall be the responsibility of the Owner of such Lot. Each Owner shall be responsible for maintaining his Lot in a neat, clean, and sanitary condition, both inside and outside of any Dwellings or Improvements thereto. Such responsibilities shall include, but not be limited to, maintaining at all times finishes on all Dwellings and other Improvements, re-roofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner, keeping all interior glass surfaces and windows of such Dwelling clean and in good repair, providing general housekeeping and cleaning for such Dwelling, providing pest control services for such Dwelling and the maintenance, repair and replacement, if necessary, of all of the following:

(i) All of the space and floors/ground located within the Lot boundaries of the Lot and its yard, if applicable;

(ii) All interior and exterior doors, door locks and hinges for all interior and exterior doors to the Dwelling;

(iii) All windows, window screens, if any, for all windows of the Dwelling;

(iv) All alterations, additions and improvements made to a Dwelling by the Owner or Occupant thereof, including, without limitation, walls, doors, ceilings, wall coverings, carpeting and floor coverings for such Dwelling;

(v) All utility lines situated in within a Lot which serve only that Lot; all equipment, furnaces, compressors, condensing units, ducts, vents, thermostats and other appurtenances for heating and air conditioning of the Dwelling located within the boundaries of such Lot (or which may be located within any of the Common Areas to the extent the same serve only that Owner's Lot), any additional heating, ventilation and air conditioning systems or equipment serving that Dwelling which may be added to the original heating, ventilating and air conditioning systems for such Dwelling (with the prior written approval of the Association), whether located within or outside of the boundaries of such Lot; fixtures and equipment in such Lot, including, without limitation,

drains, plumbing fixtures and connections, sinks and plumbing lines and pipes within such Owner's Lot which serve that Lot only; and electrical panels, wiring, outlets and electrical fixtures within such Lot which serve that Lot only; and

(vi) All personal property, equipment, machinery, fixtures, furnishings, additions and betterments made to such Lot by any Owner or Occupant which the Owner or Occupant acknowledges and agrees shall be placed in the Lot at such Owner's or Occupant's sole risk.

(b) All unimproved portions of any Lot shall at all times be maintained by the Owner in a fully and well-kept landscaped condition utilizing ground cover and/or shrubbery and trees. This maintenance obligations shall apply to all portions of a Lot up to the edge of the boundary line of such Lot and shall be binding on the Owner of each Lot at all times after the initial construction of the Dwelling on the Lot.

(c) Each Owner shall have the responsibility to maintain the sewer equipment located on its property and necessary for the proper flow of sewage from said area, including any pumping equipment, if needed. Said equipment shall be kept in working condition as to not affect the integrity of the system to which it is attached, nor shall any condition be allowed to occur that shall cause it to malfunction or not be in proper working order at all times.

(d) Further, each Owner covenants and agrees as follows:

(i) To promptly perform in a good and workmanlike manner, all maintenance, repairs and replacements that are the obligations of the Lot Owners under this Declaration.

(ii) To obtain, post all necessary deposits and promptly pay (A) for all utility services used within the Dwelling or which are used on the exterior of a Dwelling provided, however, that each Lot Owner acknowledges and agrees that water and sanitary sewer services are provided to the Dwellings and that the costs of water and sanitary sewer services shall be billed to the Association and shall constitute Common Expenses, (B) for all cleaning and janitorial services for such Lot Owner's Dwelling, and (C) all taxes levied against the Lot of such Lot Owner.

(iii) Not to make, or cause to be made, any repairs to any utility lines or any electrical, plumbing, heating, ventilation or air conditioning systems located either inside or outside the Dwelling of such Lot Owner which are required to be maintained by the Lot Owner pursuant to the terms and provisions of this Declaration except to the extent that such repairs are made by licensed plumbers or electricians authorized and approved by the Association to do such work.

(iv) Not to make any additions or alterations to a Dwelling or to any of the Common Areas or do any act which would impair the structural soundness of such Owner's Dwelling without the express prior written consent of the Board.

(v) To allow the Association, its agents, employees and representatives, to at all times enter upon any Lot for the purpose of maintaining, inspecting, repairing or

replacing any Common Areas therein or thereto or to determine compliance with the provisions of this Declaration.

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

(vii) To reimburse the Association for any repairs or replacements to any portion of the Development which the Association determines are necessary or made necessary because of abuse or neglect by such Lot Owner or such Owner's Occupants or their respective contractors and invitees.

(viii) To promptly pay when due all Common Expenses and Assessments payable by such Lot Owner.

(ix) To comply with all applicable ordinances, laws and regulations affecting the Lots and to comply with all obligations of a Lot Owner as provided by this Declaration.

#### **6.02. Responsibilities of Association.**

(a) Except as may be otherwise provided herein to the contrary, the Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain and keep in commercially reasonable repair and condition, all portions of the Common Areas, which responsibility shall include the maintenance, repair and replacement of (i) all private streets and roads within the Development, walkways and other improvements made by Declarant or the Association within any of the Common Areas or within any of the easements encumbering the Lots (ii) such entrance gates, and utility lines, pipes, plumbing, wires, conduits and related systems, appurtenances, equipment and machinery, which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility, or other person, (iii) all lawns, trees, shrubs, hedges, grass, and other landscaping within or upon the Common Areas, and (iv) all retention ponds and other water areas and facilities constructed by Declarant or the Association, including, without limitation, implementing and maintaining siltation, soil erosion and sedimentation programs. The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, acts of God, or any Owner, or other person, (2) resulting from any surface or subsurface conditions, which may at any time affect any portion of the Property, caused by rain or subsurface conditions which may at any time affect any portion of the Property caused by rain or other surface water which may leak or flow from any portion of the Common Area onto a Lot, or (3) resulting from theft, burglary, or other illegal entry into the Development. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by, or performed by, the Association hereunder, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

(b) The Association may, at any time, as to any Common Area conveyed, leased, or transferred to it, or otherwise placed under its jurisdiction, in the discretion of the Board, without

any approval of the Owners being required: (i) reconstruct, repair, or refinish any improvement or portion thereof upon such area (to the extent that such work is not done by a governmental entity, if any, responsible for the maintenance and upkeep of such area); (ii) construct, reconstruct, repair, replace, or refinish any road, improvement, or surface upon any portion of such area used as a road, street, walk, driveway, or parking area; (iii) replace injured and diseased trees or other cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes; (iv) place and maintain upon any such area such signs as the Board may deem appropriate for the proper identification, use and regulation thereof; and (v) do all such other acts which the Board deems necessary to preserve and protect the Development and the beauty thereof, in accordance with the general purposes specified in the Declaration. The Board shall be the sole judge as to the appropriate maintenance of all grounds within the Common Area.

(c) The Board shall have the right to provide services, the cost of which shall be paid out of the charges provided for in Article VII, and adopt rules, regulations, procedures and policies with respect to: (i) garbage and trash collection and removal; (ii) motor vehicle operation for security purposes; (iii) parking of motor vehicles on streets or roads in Common Areas; (iv) maintenance and furnishing of guard or security guard services; (v) fire protection and fire prevention and extinguishment of fires; (vi) the locking and securing of gates or points of access, and the issuance and distribution of keys, codes or other devices to operate locks or gates; and (vii) such other matters which involve use of Common Areas.

(d) Notwithstanding anything provided in this Section 6.02 to the contrary, the costs of any maintenance, repair or replacement incurred or undertaken by the Association caused by the willful or negligent acts of any Owner (or any Owner's Occupants) may be assessed against such Owner as an Individual Assessment in the manner set forth in Section 7.06 hereof. Any such Individual Assessment shall be a lien against the Lot in the same manner as other Assessments and the Association may enforce collection of same in the same manner as provided elsewhere in this Declaration.

(e) Further, notwithstanding anything provided in this Section 6.02 to the contrary, provided it has received sufficient sums from Owners through Assessments and unless and until the Board elects otherwise, the Association shall maintain all of the following items and Improvements on each Lot to take advantage of the economies of scale of a larger contract to do so and to provide a harmonious and consistent look to the neighborhood: (i) brick; (ii) trim; (iii) roof; (iv) outside painted and, or stained finishes; (v) shutters; (vi) lights; (vii) patios; (viii) porches; (ix) dividers; (x) landscaping; and (xi) lawn care.

(f) The Association shall have a right and permanent easement to enter upon any and all Lots for the purposes of such maintenance and repair hereinabove mentioned.

**6.03. Enforcement and Remedies.** In the event that the Board determines that (i) any Owner has failed or refused to discharge properly its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he or it is responsible, pursuant to this Declaration, or (ii) any maintenance, cleaning, repair or replacement for which the Association is responsible, pursuant to this Declaration, is caused by the willful or negligent act of an Owner or Occupant, and the costs of such maintenance, cleaning, repair or replacement are not paid in full

from insurance proceeds, if any, received by the Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, or in the event the deficiency involves improper maintenance of any part of the sewer equipment located on said Lots, the Association shall have the right to act immediately without first giving notice, and without any waiting period, as hereinafter set out, and shall still have the same right of recourse. Otherwise, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair or replacement, and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations, or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner and shall constitute an Individual Assessment to such Owner and shall be subject to the lien and foreclosure rights granted herein.

#### **ARTICLE VII. ASSESSMENTS**

**7.01. Assessments and Creation of Lien.** Each Owner, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association: (a) Common Expense Assessments, as established and to be collected as provided in Section 7.04 below, (b) Special Assessments, to be established and collected as provided in Section 7.05 below, and (c) Individual Assessments against any particular Lot which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot in accordance with the provisions of this Declaration. All Assessments, together with late charges and interest as provided in Section 7.09 below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments shall be an equitable charge and a continuing and forecloseable lien upon each Lot for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 7.09 below. Each Owner shall be personally liable for the payment of all Assessments coming due while it is the Owner of a Lot and his or her grantees shall take title to such Lot subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from its grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 7.09, court costs and attorney's fees incurred with respect thereto by the Association shall also be a personal obligation of the person who was the Owner of the Lot at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot, all of the co-Owners shall be jointly and severally liable for the entire amount of the Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board. All Assessments shall be payable in all events without offset, diminution or abatement by reason of (i) fire or other casualty or any taking as a result of, in lieu of or in

anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Common Area or any other portion of the Development, (ii) any claim by any Owner of abandonment, non-use or waiver of the use or enjoyment of a Lot or any part of the Common Areas, (iii) inconvenience or discomfort arising from the making of any repairs or improvements, (iv) any alleged failure of Declarant, the Association, or the Board to take some action or perform some function required by the terms of this Declaration; and (v) for any other cause or reason of any nature.

**7.02. Purpose of Assessments.** The Common Expense Assessments and Special Assessments provided for herein shall be used for Common Expenses and otherwise for the general purposes of promoting the recreational, health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Development, and otherwise for the general upkeep and maintenance of the Development, including, specifically, the Common Areas and any Improvements, thereto, all as may be more specifically authorized from time to time by the Board.

**7.03. Uniform Rate of Assessments.** Both Common Expense Assessments and Special Assessments, as described in Sections 7.04 and 7.05 below, shall be assessed against each Lot in the Development at a uniform rate, with the Owner of each Lot being required to pay his pro rata portion of such Common Expense Assessments and/or Special Assessments, as determined by a fraction, the numerator of which shall be the total Lots owned by such Owner, and the denominator of which shall be the total number of Lots in the Development at the time such Common Expense Assessments and/or Special Assessments is levied. Each Lot shall be subject to equal Common Expense Assessments and Special Assessments.

**7.04. Common Expense Assessments.**

(a) All Owners shall be responsible for and shall pay their respective share of all Common Expenses as set forth herein by way of Common Expenses Assessments. As used herein, the term "Common Expenses" shall mean and include, but shall not be limited to, the following: (i) salaries, fringe benefits, and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, members of the Board, and any third party contractors; (ii) utility charges for any utilities serving any of the Common Areas, and charges for other common services for the Development, including, without limitation, trash collection and security services; (iii) the costs of any insurance policies, purchased for the benefit of the Association, as required or permitted by this Declaration, including, without limitation, fire, flood, and other hazardous coverage, public liability coverage, and such other insurance coverage as the Board determines to be in the best interest of the Association, including errors and omissions insurance, directors and officers coverage for the benefit of the Association, the members of the Board, any officers, employees, agents, or representatives of the Association; (iv) the expenses of maintaining, operating, repairing, and replacing any portions of the Common Areas for which the Association is responsible; (v) ad valorem real and personal property taxes assessed and levied upon any of the Common Areas; (vi) all other fees, costs and expenses incurred by the Association in accordance with the terms and provisions of this Declaration, or which the Board, in its sole discretion, determines to be appropriate to be paid by the Association, including, without limitation, taxes and governmental charges not separately assessed against Lots; and (vii) the establishment and maintenance of a reasonable reserve fund

or funds: (A) for inspections, maintenance, repair and replacement of any portions of the Common Areas, for which the Association is responsible to inspect, maintain, repair or replace on a periodic basis, (B) to cover emergencies and repairs, required as a result of casualties, which are not funded by insurance proceeds, and (C) to cover unforeseen operating contingencies or deficiencies, arising from unpaid Assessments, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board.

(b) Commencing with the fiscal year of the Association, which begins on **January 1, 2010, (i.e., January 1, 2010, through December 31, 2010)**, which period is hereinafter referred to as the "Base Year", and annually thereafter, the Board shall determine and approve annually an annual budget covering the estimated Common Expenses for the Development for the upcoming year, such budget to include a capital contribution or reserve account, if necessary, for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of Common Expense Assessments for the then applicable year, and each Owner shall pay his pro rata share of the amount, as provided in Section 7.03 above. A copy of the budget, setting forth the amount of Common Expense Assessments to be levied against the Lots for the following year, shall be delivered to each Owner.

(c) In the event the budget for any year after the Base Year results in the Owners being liable for the payment of Common Expense Assessments, with an increase in amount which exceeds (without regard to proration or adjustment, as provided in Section 7.08 below), the greater of either (i) ten percent (10%) of the Common Expense Assessments payable for the entire immediately preceding calendar year, or (ii) the percentage increase in the United States Consumer Price Index, All Urban Consumers, United States City Average, All Items, (1982-1984=100), or any successor index thereto for January of the current year over the index for January of the Base Year (i.e., January, 2007), then the budget and the amount of the Common Expense Assessments shall be presented for approval of the Owners at the annual meeting of the Association and must be approved by the vote of a majority of the Owners who are voting in person or by proxy at such meeting. In the event the amount of the Common Expense Assessments does not exceed the limitations set forth above, or until such time as a majority of the Owners have approved such increase in the amount of the Common Expense Assessments, then the budget approved by the Board for the then current fiscal year shall be implemented, subject to the restrictions and limitations set forth above on the amount of increase in Common Expense Assessments.

(d) If any budget or the amount of Common Expense Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board may call a meeting of the Association for the purpose of approving Special Assessments, as provided in Section 7.05 below. If the actual amount of Common Expense Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

**7.05. Special Assessments.** The Board may also levy in any year additional assessments for unbudgeted Common Expenses or any extraordinary costs including, without limitation, costs, which are or will be incurred for capital improvements which are not paid for from the Common Expense Assessments; provided, however, that any such Special Assessments



(other than Special Assessments levied, pursuant to Sections 8.01(b) and 8.03(a) below) shall be approved by a majority of the votes of the members of the Association entitled to vote thereon. The Board may make such Special Assessments, payable in one lump sum, or in installments over a period of time which may, in the Board's discretion, extend beyond the then fiscal year in which said Special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 7.03 above.

**7.06. Individual Assessments.** The Association may, at any time and from time to time, levy and assess against any Lot Owner individual assessments ("Individual Assessments") for any of the following:

(a) Any repairs or replacements to any portion of the Development and any improvements thereto which the Association determines are necessary or made necessary because of abuse or neglect by such Lot Owner or his or her Occupants or their respective contractors and invitees;

(b) Any costs or expenses, including, without limitation, collection costs, attorneys' fees and expenses and court costs, late charges, interest at the determined rate and any administrative costs and expenses incurred by or on behalf of the Association as a result of the failure of any Owner, Occupant or any of their respective invitees and contractors to at all times observe and perform their respective duties and obligations under this Declaration;

(c) Reasonable monetary fines which may be established and revised from time to time by the Board as a result of the violation or breach of any of the terms and provisions of this Declaration or the Rules and Regulations by any Owner, Occupant or any of their respective invitees and contractors; and

(d) Any fees associated with the limited use of certain portions of the Development as may be approved by the Association and permitted by the Declaration, including, but not limited to a roof usage fee.

Any Individual Assessments levied pursuant to the terms and provisions of this Section 7.06 shall be levied by the Board and the amount and due date of such Individual Assessments shall be specified by the Board in a written notice to such Owner. Notwithstanding anything provided in this Section 7.06 to the contrary, prior Lot Owner shall be provided with written notice of the possible levy of an Individual Assessment as well as the opportunity for such Lot Owner to appear before the Board and be heard, all as more particularly provided in the Bylaws.

**7.07. Notice of Meetings and Quorum.**

(a) Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized in this Article VII, shall be sent to all Owners not less than ten (10) days, nor more than fifty (50) days in advance of such meetings. With respect to annual meetings, the presence, in person or by proxy, of Owners entitled to cast over 50% of all of the votes of the Association at such time shall constitute a quorum. If the required quorum is not present, another meeting may be called, subject to the same notice requirement, but the required quorum at the subsequent meeting shall be the presence, in person or by proxy, of Owners entitled to cast at least one-third (1/3) of the total votes of the

Association entitled to vote thereon. At such time as a quorum is obtained, the vote of a majority of the Owners who are voting, in person or by proxy at such meeting, shall be required to approve any matter in which all of the members of the Association are entitled to vote, including any increase in the amount of Common Expense Assessments in excess of the limitations specified in Section 7.04 above.

(b) With respect to all other meetings of the members of the Association, including, specifically, meetings, pursuant to which Assessments are to be levied upon each Lot, pursuant to Section 7.05 above, there shall be no specific requirement establishing a quorum, and the vote of a majority of the members of the Association entitled to a vote who are voting in person, or by proxy at such special meeting, shall be binding on all of the members of the Association.

**7.08. Date of Commencement of Assessments.** The Common Expense Assessments provided for herein shall commence, as to each Lot, on the day on which such Lot is conveyed to a person other than Declarant, and shall be due and payable in such manner, and on such schedule, as may be established from time to time by the Board. Common Expense Assessments and any outstanding Special Assessments shall be adjusted for each Lot, according to the number of months then remaining in the fiscal year of the Association, and the number of days then remaining in the month in which such Lot is conveyed. Notwithstanding anything provided herein to the contrary, Declarant shall not be responsible for the payment of annual or Special Assessments on any Lots which it or its affiliates own in the Development. Declarant shall have no obligation of any nature to pay any Assessments or otherwise fund any deficits relating to the Common Expenses or the Common Areas.

**7.09. Effect of Non-Payment; Remedies of the Association.**

(a) Each Owner is, and shall be, deemed to covenant and agree to pay to the Association all Assessments provided for herein. In the event any Assessments, or any portion thereof, are not paid when due, the same shall be subject to a late charge in an amount determined and uniformly applied by the Board from time to time, and the Owner of such Lot shall be deemed in default herewith. In the event any Assessments, or any portion thereof, are not paid within thirty (30) days after the due date of the same, then the unpaid portion of the Assessment shall accrue simple interest at the lesser of eighteen percent (18%) per annum, or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from, and after, the thirtieth (30<sup>th</sup>) day from the due date, until the same is paid in full. In the event the Association employs an attorney, or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorney's fees, court costs, and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot for Assessments, as provided above, shall also include all late charges, interest at the Applicable Rate, and all attorneys' fees, court costs, and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments, or other amounts due to the Association, are not paid by any Owner when the same comes due, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board, or through any of its officers or authorized representatives, may undertake any or all of the following remedies: (i) the Association may commence and maintain a suit at law against an Owner to enforce such charges

and obligations for Assessments, and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate together with attorneys' fees, court costs, and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or (ii) the Association may enforce the lien created hereunder in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot, with power of sale, which secures the payment to the Association of any and all Assessments levied against, or upon, such Lot, all late charges and interest at the Applicable Rate and all attorneys' fees, court costs, and all other expenses, paid or incurred by the Association in collecting any Assessments. If any Assessments remain unpaid for more than sixty (60) days, then the Association, through its Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot of such delinquent Owner, which claim shall be executed by any member of the Board or any officer of the Association, and contain the following information and be recorded in the Probate Office: (i) the name of the delinquent Owner; (ii) the legal description and street address of the Lot upon which the lien claim is made; (iii) the total amount claimed to be due, including late charges, interest at the Applicable Rate, collection costs and attorneys' fees incurred to date, and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and (iv) a statement that the claim of lien is made by the Association, pursuant to this Declaration, and is claimed against such Lot in an amount equal to that stated thereon.

The lien provided for herein shall be in favor of the Association, shall be for the benefit of all other Owners (other than those Owners in default), and may be foreclosed in the same manner as a foreclosure of a mortgage on real property under the laws of the State of Alabama, as the same may be modified or amended from time to time. The Association shall have the right and power to bid at any such foreclosure sale and to purchase, acquire, hold, lease, mortgage, convey, and sell any such Lot. Each Owner, by acceptance of a deed to any Lot, shall be deemed to (1) grant to and vest in the Association, and/or its agents, the right and power to exercise the power of sale granted herein, and foreclose the lien created herein, (2) grant to and vest in the Association, and/or its agents, the right and power to bring all actions against such Owner personally for the collection of all amounts due from such Owner, (3) expressly waive any objection to the enforcement and foreclosure of the lien created herein, and (4) expressly waive the defense of the statute of limitations which may be applicable to the commencement of any such suit or action for foreclosure.

**7.10. Subordination of Lien.** Notwithstanding anything provided herein to the contrary, the lien for Assessments, and other charges authorized here with respect to any Lot, is and shall be subordinate to the lien of any Mortgage held by an Institutional Mortgagee, but only to the extent that the Mortgage held by any such Institutional Mortgagee is recorded in the Probate Office, prior to the filing of a claim of lien by the Association. When an Institutional Mortgagee exercises its foreclosure rights provided in its Mortgage, and acquires title to, or sells

to a third party, its interest in any Lot, then such Institutional Mortgagee, or its purchaser or transferee at such foreclosure sale, shall (a) not be liable for any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure, so long as the Mortgage held by such Institutional Mortgagee was recorded in the Probate Office, prior to the filing of a claim of lien by the Association, but (b) be liable for all Assessments and other charges levied, assessed, or incurred with respect to such Lot from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner, whose Lot has been foreclosed, from the personal obligation to pay all Assessments, and any other charges levied, assessed or incurred by the Association, and the Association shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by an Institutional Mortgagee on such Owner's Lot.

**7.11. Certificates.** The Association, or any officer or authorized representative thereof, shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any Owner a certificate in writing, setting forth whether the Assessments, for which such Owner is responsible, have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

**7.12. Working Capital Fund.** The Association shall have a working capital fund for the improvement, renovation, repair or replacement of any of the Common Areas. The initial working capital fund shall be equal to two (2) months of the estimated Common Expense Assessment applicable to each Lot and shall be collected by the Association at the time of the first sale of a Lot by Declarant to any third party. The amounts to be paid into the working capital fund shall be paid by each subsequent purchaser of each Lot and shall be a binding obligation and treated as an Individual Assessment payable by each subsequent purchaser of a Lot. The amounts paid into the working capital fund shall not be deemed an advance payment of Common Expenses or any Assessments. The working capital fund shall be deposited by the Association into segregated accounts maintained by the Association for Common Expenses and may not be used except for improvements, renovations, repairs or replacements of any of the Common Areas. To the extent Declarant has paid any amount into the working capital fund as a result of its ownership of any Lot, then it may require reimbursement from the purchaser at the time of the sale of such Lot.

## ARTICLE VIII.

### CASUALTY, CONDEMNATION AND INSURANCE

#### **8.01. Damage or Destruction to Common Areas.**

(a) In the event of any damage or destruction to any of the Common Areas by fire or other casualty, then, subject to the terms and provisions of this Article VIII, the Association shall promptly repair, replace and restore the damaged portions of the Common Areas to the condition to which they existed immediately prior to such fire or other casualty.

(b) Notwithstanding the foregoing, in the event the amount of insurance proceeds, if any recovered as a result of such damage or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be apportioned

from a reserve fund as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the members of the Association approving or disapproving the same, which such Special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty. Such Special Assessments shall be levied against each Owner equally, as provided in Section 7.03 above. Further Special Assessments may be made by the Board, without the necessity of a vote of the members of the Association approving or disapproving the same, at any time during or upon completion of any such repair, replacement or restoration of the Common Areas, if funds are insufficient to cover the costs of such repair or restoration. Any and all insurance proceeds, received by the Association on account of any damage to or destruction of any of the Common Areas, or any sums paid to the Association under or by virtue of such Special Assessments, shall be held by and for the benefit of the Association, and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Board. In no event shall the Owner or Mortgagee of any Lot be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

**8.02. Damage or Destruction to Lots.** In the event of any fire or other casualty, which damages or destroys any portion of any Lot, then the Owner of such damaged Lot shall promptly repair and otherwise restore such Lot to the condition to which the same existed immediately prior to such fire or other casualty. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty.

**8.03. Condemnation of Common Areas.**

(a) In the event of the taking of all, or any portion, of any of the Common Areas as result of, in lieu of, or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu thereof, then the award from such taking or sale, in lieu thereof, shall be paid to the Association, and shall be disbursed or held as follows: (i) to the extent the Common Areas, subject to such taking can either be restored or replaced, then, to the Association is hereby empowered, authorized and directed to take such action, including the purchase of any remaining lands with the Development, or the utilization of any other Common Areas within the Development, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement, and such deficiency cannot be appropriated from a reserve fund, as may have been established for such purpose, then the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the members of the Association approving or disapproving the same, which such Special Assessments shall be in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction. Such Special Assessments shall be levied against each Owner as provided in Section 7.03 above. Further Special Assessments may be made by the Board without the necessity of a vote of the members of the Association approving or disapproving the same at any time during or upon the completion of any such repair, replacement or restoration of the Common Areas, if the award received as a result of such taking is insufficient to pay the costs of such repair or restoration; and (ii) to the extent the Common Areas, subject to such taking, cannot be restored or replaced or additional lands within the Development cannot be purchased by the Association in order to

repair, replace or restore the Common Areas so taken, or if the Board shall determine that the portions of the Common Areas so taken should not be replaced or restored, then in any such event, the net award from such taking shall be retained by and for the benefit of the Association.

(b) If any Portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Association, without any claim thereto by any Owner. Except as specifically provided in Section 8.03(c) below, no Owner or Mortgagee shall be entitled to any portion of the award made to the Association as a result of the taking of any portion of the Common Areas.

(c) If any such taking or sale in lieu thereof includes all, or any part, of a Lot and also includes any part of the Common Areas, then the award from such taking shall be equitably apportioned in accordance with the decision of a court of competent jurisdiction, and such award shall be disbursed separately to the Association and to the Owners so affected by such taking; provided, however, that the Owners of any Lot, which is subject to any such taking, and the Board may mutually agree on the amount of such apportionment, which mutual agreement shall be binding on all Owners.

**8.04. Condemnation of Lots.** In the event that all, or any portion of a Lot is taken as a result of, in lieu of, or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot as nearly as practicable to the condition to which the same existed immediately prior to such taking. In the event the restoration of such Lot is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements, damaged or destroyed by such taking, and shall leave such Lot, and any remaining Improvements thereon, in a clean, orderly, safe and sightly condition.

**8.05. Insurance - Association.**

(a) The Board shall have the authority to obtain and maintain at all times adequate property and casualty insurance in such form as the Board deems appropriate for the benefit of the Association, insuring all insurable Improvements, in and to 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 Board, in its sole discretion, may determine.

(b) The Board shall have the authority to obtain and maintain in effect at all times such public liability insurance coverage, covering all of the Common Areas and any damage or injury caused by negligence of the Association, its Board, and all members, officers, agents, and employees thereof, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may deem necessary or desirable.

(c) The Board shall have the right and authority to obtain workman's compensation insurance, employer's liability insurance, and all other types of insurance required by law, including, without limitation, errors and omissions and directors and officers liability insurance coverage, in such amounts, with such insurance carriers, at such costs and with such deductibles as the Board, in its sole discretion, may determine.

(d) All insurance coverage authorized hereunder shall be written in the name of the Association, and all costs thereof shall be a Common Expense. 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 Declarant, the Association, the members of the Board and all officers, agents and employees of the Association, including the manager for the Development and the Association, the Owners and the family members, servants, agents, tenants, and guests of the Owners, and shall also name Declarant as an additional insured.

(e) The Association shall not be liable or responsible for either any damage resulting from any fire or other casualty to or the replacement of any furniture, fixtures, furnishings and personal property of any Owner or Occupant situated on a Lot or within a Dwelling or any improvements or betterments installed by any Owner or Occupant in or upon any other portion of the Development (which improvements or betterments may not be installed outside of any Dwelling unless the same are approved by the Board). Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot, does hereby further waive and release Declarant, the Association and their respective agents, employees, representatives, partners, shareholders, members, managers, officers, and directors, from any and all liabilities or damage covered by (or which should be covered by) fire and casualty (e.g., homeowner's and/or builder's risk) insurance and general liability insurance which any Owner maintains, even if such loss or damage has been caused by the fault or negligence of any of the foregoing persons or parties.

**8.06 Insurance – Owners.** Each Lot Owner shall keep or cause to be kept his or her Lot and Dwelling insured against loss or damage by flood (if the Lot is located in a flood-prone area) fire, windstorm, extended coverage perils, vandalism, malicious mischief and such other hazards, casualties and other contingencies, all with such companies and in such amounts as the Board may designate from time to time as the minimum required insurance for the Development. All such policies shall be subject to the Board's approval but shall be procured and maintained at each individual Lot Owner's expense. Each Lot Owner shall cause duplicate originals of such insurance policies (or, at the Board's option, certificates satisfactory to the Board) to be deposited with the Association. If requested by the Board, a Lot Owner shall furnish to the Board satisfactory evidence of the payment of the premiums for such policies. Each Lot Owner shall cause each insurer under each of the policies to agree (either by endorsement upon such policy or by letter addressed to the Association) to give the Association at least 10 business days' prior written notice of the cancellation of such policies in whole or in part or the lapse of any coverage thereunder. Lot Owners shall not take any action or fail to take any action that would result in the invalidation of any insurance policy required hereunder. The minimum initial insurance coverages for Lot Owners required are: fire, hazard and extended or all-risk property insurance coverage in an amount not less than the fair market value or full replacement value of the Dwelling on each Lot with the final coverage amounts subject to the reasonable approval of the Association.

**ARTICLE IX.**  
**TERMS AND AMENDMENTS**

**9.01. Term.** The terms, covenants, conditions, and restrictions, set forth in this Declaration, shall run with and bind all of the Development, shall inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, personal representatives, administrators, successors and assigns, and shall be and remain in effect for a period of fifty (50) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after fifty (50) years from the date hereof, an agreement, executed by the Owners of at least two-thirds (2/3) or more of the Lots, agreeing to terminate or modify this Declaration, has been recorded in the Probate Office; provided, however, that the rights of way and easements established, granted, and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

**9.02. Amendment by Declarant.** For so long as Declarant owns any Lot, Declarant may amend this Declaration by a written instrument filed and recorded in the Probate Office without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in Section 9.04 below, in the event any such proposed amendment by Declarant would materially and adversely affect the title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees affected thereby. Any amendment made pursuant to Section 9.02 shall be certified by Declarant and shall be effective upon recording of the same in the Probate Office. Each Owner, by acceptance of a deed, or other conveyance to a Lot, and each Mortgagee, by acceptance of a Mortgage on any Lot, agrees to be bound by all amendments permitted by this Section 9.02, and further agrees that, if requested to do so by Declarant, such Owner and Mortgagee will consent to the amendment of this Declaration, or any other instrument relating to the Development, if such amendment is (i) necessary to bring any law, ordinance, statute, rule, or regulation of any applicable Governmental Authority, or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots, (iii) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage Loan on any Lot, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots.

**9.03. Amendments by Association.** Amendments to this Declaration, other than those authorized by Section 9.02 above, shall be proposed and adopted by the Association in the following manner:

(a) At any annual or special meeting of the members of the Association, an amendment to this Declaration may be proposed by either the Board, or by any Owners present in person at such meeting. Any such proposed amendment must be approved by the Owners holding at least two-thirds (2/3) of the total votes in the Association entitled to a vote thereon; provided, however, that (i) any amendment which materially and adversely affects the security, title, or interest of any Institutional Mortgagee must be approved by such Institutional Mortgagee, and (ii) during any period in which Declarant owns a Lot in the Development, then Declarant must approve such proposed amendment.



(b) Any and all amendments, which have been approved in accordance with the provisions of Section 9.03(a) above, shall be executed by all parties who consent to the same as required, including the members of the Association holding at least two-thirds (2/3) of the total votes of the Association entitled to vote thereon; provided, however, that in the alternative, the sworn statement of the President of the Association, or by the Chairman of the Board, stating unequivocally that the agreement of the requisite number of Owners was lawfully obtained, may be attached to and incorporated into such amendment without joinder of any Owners. Any such amendment shall be effective upon recording of same in the Probate Office.

## **ARTICLE X. ENFORCEMENT**

**10.01. Authority and Enforcement.** In addition to the other enforcement authority granted herein, in the event any Owner or Occupant, or their respective agents, contractors or invitees, violates any of the provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws, or any Rules and Regulations adopted by the Board from time to time, the Board shall have the power, in its sole discretion, to (i) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot, and shall be a personal obligation of any such Owner who is guilty of such violation, (ii) suspend an Owner's right to vote in the Association, or (iii) exercise self-help or other legal or equitable rights and remedies available to the Association. Any suspension of rights may be for the duration of the infraction.

**10.02. Procedure.** In the event any of the terms or provisions of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws, or the Rules and Regulations of the Association are violated by any Owner or Occupant, or the respective agents, contractors, or invitees of any Owner or Occupant, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend any other rights, pursuant to Section 10.01 above, unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations, which demand shall specify: (i) the alleged violation; (ii) the action required to abate such violation; and (iii) a time period of not less than ten (10) days, during which the violation may be abated without further sanction, if such violation is a continuing one, or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Architectural Standards, the Articles of Incorporation, the Bylaws, or any of the Rules and Regulations of the Association may result in the imposition of sanctions. The foregoing procedure shall only be applicable to the enforcement rights specified in Section 10.01 above, and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

**10.03. Nonexclusive Remedies.** Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement, and procedural rights set forth in this Article X are in addition to, and shall not be deemed to limit the other rights and remedies set forth in this Declaration, or which the Association, acting through the Board, would have the right to exercise at law or in equity.

**ARTICLE XI.**  
**MISCELLANEOUS PROVISIONS**

**11.01. Control by Declarant.** Pursuant to the terms of the Bylaws, Declarant shall control the votes of the Association and the Board during the Declarant Control Period. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot, agrees that Declarant shall have the authority to appoint and remove members of the Board and officers of the Association. At such time as the Declarant Control Period expires, a special meeting of the Association shall be called within a reasonable time thereafter, at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Declarant shall deliver all books, accounts, and records of the Association, if any, which Declarant has in its possession.

**11.02. Legal Expenses.** In addition to the rights and remedies set forth herein, in the event either the Board, its agents, and representatives, undertake any legal or equitable action, which either of them deem necessary to abate, enjoin, remove, or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by either of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants, or conditions in this Declaration shall be paid for by the Owner, against whom such action was initiated. The Board, its agents, and representatives, are each hereby authorized to take any and all legal or equitable action, as may be necessary under the circumstances to restrain or enjoin any such violation, or breach, or to otherwise seek monetary damages as a result of any expenses incurred by the Association to cure such violation or breach.

**11.03. Severability.** If any provision of this Declaration, or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Declaration, or the application of such provision to persons or circumstances, other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each provision shall be valid and enforceable to the fullest extent permitted by law.

**11.04. Captions and Headings.** The captions and headings contained in this Declaration are for the convenience of reference only, and shall not be used in the construction or interpretation of any provisions of this Declaration. The table of contents, cover page, and any index to this Declaration are for convenience and reference only, and shall not define or limit any of the terms and provisions hereof.

**11.05. Pronouns and Plurals.** All personal pronouns used in this Declaration, whether used in the masculine, feminine, or neuter gender, shall include all other genders. The use of the singular tense shall include the plural, and the use of the plural shall include the singular.

**11.06. Binding Effect.** The terms and provisions of this Declaration shall be binding upon each Owner, Occupant, Mortgagee, and the respective heirs, executors, administrators, personal representatives, successors, and assigns of each Owner, Occupant, and Mortgagee, and shall inure to the benefit of Declarant, the Association, all of the Owners and their respective Mortgagees, and their respective heirs, executors, administrators, personal representatives, successors, and assigns.

**11.07. Conflict or Ambiguity.** In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party, as a result of that party having drafted this Declaration, are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguity shall be resolved in favor, or to the advantage, of one party as opposed to another in interpreting any ambiguity or conflict contained herein.

**11.08. No Reverter.** No restriction or provision hereof is intended to be, or shall be construed as, a condition subsequent or a possibility of reverter in favor of Declarant, nor shall any provision be deemed to vest any reversionary interest in Declarant.

**11.09. Interpretation.** In all cases, the provisions, set forth and provided for in this Declaration, shall be construed together, and given that interpretation or construction which, in the opinion of Declarant or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be date hereof. This Declaration shall be construed under, and in accordance with, the laws of the State of Alabama.

**11.10. Rights of Third Parties.** This Declaration shall be recorded for the benefit of Declarant, the Association, the Owners, and their respective Mortgagees, and by such recording, no other adjoining property owner or third party shall have any right, title, or interest whatsoever in the Development 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.

**11.11. No Trespass.** Whenever the Association, Declarant, 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, the entering thereon and the taking of such action shall not be deemed a trespass.

**11.12. No Partition.** Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Development.

**11.13. Reservation of Rights.** Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance, or other hypothecation of any Lot by Declarant to a third party, shall constitute or be deemed a transfer of any of the rights reserved herein to Declarant, unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Declarant is transferring to any such third party.

**11.14. Standards for Review.** Whenever in this Declaration, Declarant, or the Association has the right to approve, consent to, or require any action be taken, pursuant to the terms hereof, such approval, consent, or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of Declarant or the Association.

**11.15. Oral Statements.** Oral statements, or representations by Declarant, the Association, or any of their respective employees, agents, representatives, successors, or assigns, shall not be binding on Declarant, or the Association.

**11.16. Notices.** Notices required hereunder shall be in writing and shall be delivered by hand, or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association or, if no such address has been so designated, at the address of such Owner's respective Lot within the Development. All notices to the Association shall be delivered or sent in care of Declarant to the following address:

The Fairways at Cider Ridge Owner's Association, Inc.  
 Attention: ERA King Property Management  
 1530 Hillyer Robinson Parkway  
 Anniston, Alabama 36207  
with a copy to:  
 The Fairways at Cider Ridge Owner's Association, Inc.  
 260 East Brown Street, Suite 250  
 Birmingham, MI 48009  
 Attention: Tim Meagher (Cider Ridge)

or to such other address as the Association may from time to time specify in a notice to the Owners. All notices to Declarant shall be sent or delivered to Declarant at the above address, or to such other addresses as Declarant may notify the Association.

**11.17. Assignment.** Subject to the provisions of Section 11.13 above, Declarant shall each have the right to assign any and all of the rights, powers, reservations, and duties contained herein to any person or entity who shall thereupon have the same rights, powers, reservations, and duties as Declarant.

**11.18. Further Assurance.** Each Owner covenants and agrees to execute, sign, and deliver, or cause to be executed, signed and delivered, and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds acts, or things, supplemental, conformity, or otherwise, which may be reasonably requested by Declarant or the Association for the purpose of clarifying, amending or otherwise consummating any of the transactions and matters herein.

**11.19. No Waiver.** All rights, remedies, and privileges granted to Declarant or the Association pursuant to the terms and provisions of this Declaration, shall be deemed to be cumulative, and the exercise of any one or more of such rights, remedies, or privileges 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 time, to enforce any covenant or restriction set forth herein, shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

[Signatures on following page.]

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed as of the day and year first above written

TS FAIRWAYS, LLC,  
an Alabama limited liability company

By: [Signature]  
Gerald C. Timmis, III  
Its: Authorized Agent

STATE OF Michigan  
COUNTY OF Wayne

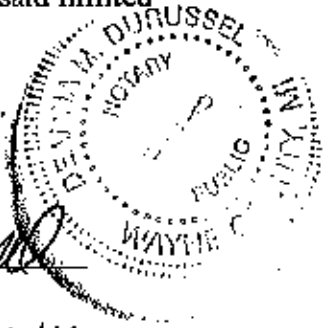
I, the undersigned, a Notary Public in and for said County in said State, hereby certify that Gerald C. Timmis, III, whose name as Authorized Agent of TS Fairways, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he as such officer and with full authority, executed same voluntarily for and as the act of said limited liability company on the day the same bears date.

Given under my hand and official seal this 6<sup>th</sup> day of October, 2009.

[NOTARIAL SEAL]

[Signature]  
Notary Public

My commission expires: 11-14-14



DEANNA M. DURUSSEL  
Notary Public, State of Michigan  
County of Wayne  
My Commission Expires Nov. 14, 2014  
Acting in the County of Oakland

**Exhibit "A"**

**(The Property)**

Lot 1, S.R. (Summer Ranbour), of Cider Ridge Subdivision, Phase I Reassessment Plat, being a resurvey of the Cider Ridge Subdivision, as recorded in Plat Book GG, Pages 92 through 112, inclusive, in the Probate Office of Calhoun County, Alabama,

And also:

The plat of the Fairways at Cider Ridge, Phase I, a division of part of Lot 1, S.R. (Summer Ranbour) and pursuant to that certain First Amendment to Sheet PL-15, Phase I Reassessment Plat of Cider Ridge Subdivision, as recorded in Plat Book HH, Page 25 in the Probate Office of Calhoun County, Alabama..

Mental Health Fee	4.00
Recording Fee	120.00
<b>TOTAL</b>	<b>124.00</b>