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**DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS
FOR
MIDTOWNE ON THE PARK
SUBDIVISION**

Prepared by:

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SPECIAL NOTE TO CLOSING ATTORNEYS

**PURSUANT TO ARTICLE IV, SECTION 8, ON PAGE 8 OF THE DECLARATION,
PRORATED GENERAL ASSESSMENTS ARE TO BE COLLECTED AT CLOSING, UNLESS
THE EXCEPTION FOR A TRANSFER TO A BUILDER APPLIES.**

DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
MIDTOWNE ON THE PARK
SUBDIVISION

THIS DECLARATION is made on the date hereinafter set forth by Street Side Communities, Inc., an Alabama corporation, (hereinafter sometimes called "Declarant").

**BACKGROUND
STATEMENT**

Declarant, along with Mark Harris Homes, LLC ("Harris"), are the owners of the real property described in Article II, Section 1, of this Declaration.

Declarant desires to subject the real property described in Article II, Section I, hereof to the provisions of this Declaration to create a residential community and to provide the mechanism for the subjecting of other real property to the provisions of this Declaration.

Declarant intends by this Declaration to impose mutually beneficial restrictions under a general plan of improvement for the benefit of all owners of property subject to, or hereinafter subject to these protective covenants. Declarant desires to establish a method for the maintenance, preservation, use, and enjoyment of the property that is now or hereafter subjected to this Declaration.

Declarant intends to divide the property submitted herein into (1) Lots (as defined below) on which either single-family town house units or single family detached dwellings will be constructed and (2) Common Areas (as hereinafter defined). Declarant may subsequently impose a condominium regime on a portion of the Property by the recording of a Declaration of Condominium and other associated documentation.

Declarant hereby declares that the real property described in Article II, Section 1, of this Declaration, including the improvements constructed or to be constructed thereon, is hereby subjected to the provisions of this Declaration and shall be held, sold, transferred, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to the covenants, conditions, restrictions, easements, assessments, and liens, hereinafter set forth, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real property hereby or hereafter made subject hereto, and shall be binding on all persons having any right, title, or interest in all or any portion of the real property now or hereafter made subject hereto, their respective heirs, legal

representatives, successors, successors-in-title, and assigns and shall inure to the benefit of each and every owner and occupant of all or any portion thereof.

The Declarant has heretofore caused the Association, as defined below, to be formed as an Alabama non profit corporation for the purpose of facilitating the development of the Community, exercising the rights of Declarant, making the Assessments, as defined below, and otherwise taking all action which the Association is authorized to take.

Harris, along with its lender, Regions Bank, and Declarant's lender, First Commercial Bank of Huntsville, desire to ratify and affirm this Declaration to give it full force and effect, as indicated by their signatures at the foot of this document.

ARTICLE I **Definitions**

Unless the context shall prohibit, certain words used in this Declaration shall have the definition meaning set forth in Exhibit "A", attached hereto and by reference made a part hereof.

ARTICLE II **Property Subject to This Declaration**

Section 1. Property Hereby Subjected To This Declaration. The real property which is, by the recording of this Declaration, subject to the covenants and restrictions hereinafter set forth and which, by virtue of the recording of this Declaration, shall be held, transferred, sold, conveyed, used, occupied, and mortgaged or otherwise encumbered subject to this Declaration is the real property described in Exhibit "B", attached hereto and by reference made a part hereof.

Section 2. Other Property. Only real property described in Section 1 of this Article II is hereby made subject to this Declaration; provided, however, by one (1) or more Supplementary Declarations, Declarant has the right, but not the obligation, to subject real property to this Declaration, as hereinafter provided in Article X.

Section 3. Mutuality of Benefit and Obligation. The provisions of these Covenants are made (a) for the mutual and reciprocal benefit of each Lot and Common Area within the Community and are intended to create mutual, equitable servitudes upon and in favor of each Lot, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot within the Community, and (c) to create a privity of contract and estate between the Owners, their respective heirs, successors and assigns.

ARTICLE III
Association Membership and Voting Rights

Section 1. Membership. Every Owner shall be a Member of the Association. There shall be only one membership per Lot. If a Lot is owned by more than one person, all co-Owners shall share the privileges of such membership, subject to reasonable Board regulation and the restrictions on voting set forth in this Declaration and in the By-Laws, and all such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners. The membership rights of an Owner which is not a natural person may be exercised by any officer, director, partner or trustee, or by any individual designated from time to time by the Owner in a written instrument delivered to the secretary of the Association. Membership shall be appurtenant to and may not be separated from ownership. Those Owners of property, if any, which are exempt from assessments as provided in Article IV, Section 11, hereof are Members of the Association and are subject to the provisions of this Declaration, but are not Owners of Residences and shall not, therefore, be entitled to vote.

Section 2. Voting. The Association shall have two classes of membership, Class "A" and Class "B."

(a) Class "A". Class "A" Members shall be all Owners except the Class "B" Member, if any. Class "A" Members shall have one equal vote for each Lot in which they hold the interest required for membership under Section 1; provided, however, there shall be only one vote per Lot. Notwithstanding the above, the Owner of two contiguous Lots, as shown on the final subdivision plat recorded in the Public Records, on which one residential dwelling is constructed which crosses the boundary line separating Lots, shall have only one vote for such Lots. All Class "A" votes shall be cast as provided below.

(b) Class "B". The sole Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve, or withhold approval of, actions proposed under this Declaration, the By-Laws and the Articles, are specified in the relevant sections of this Declaration, the By-Laws and the Articles. The Class "B" Member may appoint all or a Majority of the members of the Board of Directors, as determined in the By-Laws, during the "Class 'B' Control Period," which shall continue until the first to occur of the following:

(i) when Declarant no longer owns any land (including Common Area) in the Community and the unilateral right of the Class "B" Member to annex any additional land as provided in Article X has expired;

(ii) twenty years from the date of execution of this Declaration; or

(iii) when, in its discretion, the Class "B" Member so determines and voluntarily relinquishes such right.

(c) Post Control Period Rights. Declarant shall have no control rights after the termination of the Class "B" Control Period in this Community. For purposes of correlating provisions of the Governing Document, the Class "B" membership shall terminate upon the earlier of:

- (i) expiration of the Class "B" Control Period; or
- (ii) when, in its discretion, the Declarant so determines and declares in a recorded instrument.

Upon termination of the Class "B" membership (the "Turnover Date"), the Declarant shall be a Class "A" Member entitled to Class "A" votes for each Lot which it owns, if any.

The Declarant may, by Supplemental Declaration, create additional classes of membership for the owners of Lots within any Additional Property made subject to this Declaration pursuant to Article X, with such rights, privileges and obligations as may be specified in such Supplemental Declaration, in recognition of the different character and intended use of the property subject to such Supplemental Declaration.

Any Owner of a Residence not occupied by the Owner may, in the lease or other written instrument, assign the Owner's voting right appurtenant to that Residence to the Occupant, provided that a copy of such instrument is furnished to the Secretary within the time period prescribed by the Secretary. In the event of such assignment, the Occupant may vote the Owner's vote on all issues upon which the Owner would be entitled to vote.

An Owner's right to vote may be suspended as provided in Article XII, Section 2, of this Declaration.

ARTICLE IV Assessments

Section 1. Purpose of Assessment. The assessments provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefits, and enjoyment of the Owners and Occupants in the Community, including the maintenance of real and personal property, all as may be more specifically authorized from time to time by the Board of Directors. AN OWNER WHO OWNS MORE THAN ONE LOT SHALL PAY DUES FOR EACH LOT, WHETHER OR NOT THE LOT IS RESUBDIVIDED WITH THE CITY OF HUNTSVILLE UNLESS SPECIFICALLY WAIVED BY RECORDED INSTRUMENT AFTER APPROVAL BY THE BOARD.

Section 2. Type of Assessments. Each Owner of any Residence, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, covenants and agrees to pay to the Association: (a) General Assessments; (b) Special assessments, such assessments to be established and collected as hereinafter provided in Article IV, Section 5; (c) Service Assessments; and (d) Specific assessments against any particular Residence and/or Lot which are established pursuant to the terms of this Declaration, including, but not limited to, those assessments established by Article IV, Section 10, and Article V, Section 2, hereof and reasonable fines as may be imposed in accordance with the terms of the Declaration and By-Laws. General Assessments shall be levied for Association Expenses determined by the Board to benefit all Owners and Occupants. General Assessments shall be allocated among all Lots in the Community.

Section 3. Creation of Lien and Personal Obligation for Assessments. All assessments, together with late charges, interest at a rate equal to the lesser of fifteen (15%) percent or the maximum lawful rate, costs, and reasonable attorney's fees actually incurred shall be a charge on the land and shall be a continuing lien upon the Lot against which each assessment is made. Each such assessment, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, shall also be the personal obligations of the Person who was the Owner of such Lot at the time the assessment fell due. Each such Owner shall be personally liable for his or her portion of each assessment coming due while he or she is the Owner of a Lot, and his or her grantee shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance; provided, however, the liability of a grantee for the unpaid assessments of its grantor shall not apply to any first Mortgage holder, who meets the definition of Mortgagee, taking title through foreclosure proceedings or deed in lieu of foreclosure.

General Assessments and other assessments, unless otherwise provided by the Board, shall be paid in annual, semi-annual, or quarterly installments as the Board determines.

Section 4. Budget.

a. It shall be the duty of the Board to prepare a budget covering the estimated costs of operating the Association during the coming year, which may include a capital contribution or reserve.

b. The Board should make reasonable efforts to distribute the budget and the assessments to be levied against each Lot for the following year to be delivered to each Lot Owner at least thirty (30) days prior to the end of the current fiscal year. Alternatively, the Board may post the Budget and the amount of the general assessments and other assessments on an internet web site that is accessible by all Members. The Board may not, without the consent of Declarant (so long as Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof) and the vote or written assent of at least a Majority of the total Association vote entitled to vote thereon, impose a General Assessment per Lot which is more than one hundred

twenty (120%) percent of the General Assessment for the immediately preceding fiscal year (except as set forth in Section 8).

c. The failure or delay of the Board to prepare or adopt a budget for any fiscal year shall not constitute a waiver or release in any manner of an Owner's obligation to pay the allocable share of the Common Expenses as herein provided whenever the same shall be determined and, in the absence of any annual budget or adjusted budget, each Owner shall continue to pay Assessments at the rate established for the previous fiscal year until notified of the new payment which is due on the first day of the next payment period which begins more than thirty days after such new annual or adjusted budget is adopted and the Owner receives notice.

Section 5. Special Assessments. In addition to the other assessments authorized herein, the Board may levy special assessments in any year. So long as the total amount of special assessments allocable to each Lot does not exceed the amount of the current General Assessment in any one (1) fiscal year, the Board may impose the special assessment. Any special assessment which would cause the amount of special assessments allocable to any Lot to exceed this limitation shall be effective only if approved by a majority of the total Association vote entitled to vote thereon and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of Declarant. Special assessments shall be paid as determined by the Board, and the Board may permit special assessments to be paid in installments extending beyond the fiscal year in which the special assessment is imposed.

Section 6. Lien for Assessments. All sums assessed against any property subject to this Declaration pursuant to this Declaration, together with late charges, interest, costs, and reasonable attorney's fees actually incurred, as provided herein, shall be secured by a lien on such property in favor of the Association. Such lien shall attach as of the date each respective assessment becomes due and payable and shall be superior to all other liens and encumbrances on such property, except for (a) liens of ad valorem taxes; and (b) liens for all sums unpaid on a first Mortgage.

All other Persons acquiring liens or encumbrances on any property subject to this Declaration after this Declaration shall have been recorded in the records of the Office of the Judge of Probate, Madison County, Alabama shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for assessments, as provided herein, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances.

DUES ARE PAYABLE REGARDLESS OF WHETHER OR NOT AN OWNER RECEIVES AN INVOICE FROM THE ASSOCIATION. INVOICES ARE A COURTESY REMINDER AND NOT A CONDITION PRECEDENT TO PAYMENT.

Section 7. Effect of Nonpayment of Assessments; Remedies of the Association. Any assessments which are not paid in full by the date specified by the Board, ("due date"), shall be

delinquent. Any assessment delinquent shall incur a one time handling charge of one hundred and no/100 (\$100.00) dollars, or such other amount as the Board may from time to time determine. If the Owner's payment of dues (along with the initial handling fee and any attorneys' fees) is not received by the Association within 60 days from the due date, in addition to the initial handling fee, the Owner shall be charged monthly for the collection fee which is then being charged by the Association until all amounts are paid in full, including the handling fee and all collection fees. The amount of such collection fee may be changed from time to time by the Association without notice to any Owner. The initial amount of the collection fee shall be fifty and no/100 (\$50.00) dollars. Such collection fee shall be due and payable immediately and shall be for the purpose of helping to pay the extra cost to the Association for handing and collecting delinquent payments. If the assessment is not paid when due, the lien shall also include the handling charge, interest on the principal amount due, and all collection fees (which may also be referred to from time to time as "collection charges") from the date first due and payable, all costs of collection, reasonable attorney's fees actually incurred, and any other amounts provided or permitted by law. In the event that the assessment remains unpaid after ninety (90) days, the Association may, as the Board shall determine, institute suit to collect such amounts and/or to foreclose its lien. Each Owner, by acceptance of a deed or as a party to any other type of a conveyance, vests in the Association and its agents the right and power to bring all actions against him or her, personally, for the collection of such charges as a debt or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The lien provided for in this Article shall be in favor of the Association and shall be for the benefit of all other Owners. The Association, acting through the Board and on behalf of the Owners, shall have the power to bid at any foreclosure sale or to acquire, hold, lease, mortgage, or convey foreclosed property. No Owner may waive or otherwise exempt himself from liability for the assessments provided for herein, including, by way of illustration, but not limitation, by non-use of Common Property, or abandonment of the Lot. No diminution or abatement of assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Association or Board to take some action or perform some function required to be taken or performed by the Association or Board under this Declaration or the By-Laws, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay assessments being a separate and independent covenant on the part of each Owner.

All payments shall be applied first to costs and attorney's fees, then to collection charges, then to interest and then to delinquent assessments.

Section 8. Date of Commencement of Assessments. The General Assessments and Service Assessments, if any, provided for herein in this Article shall commence as to each Lot subject to this Declaration on the first day of the month following the date of conveyance of the Lot by Declarant to an Owner. An Assessment shall be adjusted according to the number of months remaining in the fiscal year during which the Lot became subject to assessment. At no time shall any Lot owned by

the Declarant be subject to the payment of any assessments due hereunder until title to the subject Lot has been sold and conveyed to a third party. Furthermore, in the event that a Lot is sold to a Builder for the purpose of resale, the Lot will not be subject to General Assessments until such time as it is sold as a Residence or until one year has passed from the date of the conveyance by Declarant to Builder.

THE INITIAL GENERAL ASSESSMENT FOR THE ASSOCIATION IS SIX HUNDRED DOLLARS (\$600.00) PER YEAR. THE DUE DATE FOR GENERAL ASSESSMENTS SHALL BE JANUARY 1 OF EACH YEAR, except for prorated payments which SHALL BE DUE AT THE TIME OF CLOSING, EXCEPT AS PROVIDED OTHERWISE HEREIN.

Section 9. Loans from Declarant. The Declarant may, but shall in no way be required, loan money to the Association and/or advance funds to pay for insurance premiums, taxes, maintenance, and other expenses of the Association. The Association shall account for such loans/advances on an annual basis. At that time, the Association's officers shall execute a note in favor of Declarant with interest to accrue at Wachovia Bank's Prime Rate. The principal and interest shall be payable over up to a ten year period commencing once two-thirds (2/3) of the Lots are obligated to pay dues to the Association. Loan payments to Declarant should have priority over discretionary capital improvements. Any excess funds received above the operating budget should be utilized to prepay any loans from Declarant.

Section 10. Specific Assessments. The Board shall have the power to specifically assess pursuant to this Section as, in its discretion, it shall deem appropriate. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses, including an expense for which the Board has not previously exercised its authority under this Section. The Board may specifically assess Lots for the following expenses, except for expenses incurred for maintenance and repair of items which are the maintenance responsibility of the Association as provided herein:

(a) Expenses of the Association which benefit less than all of the Lots may be specifically assessed equitably among all of the Lots which are benefitted according to the benefit received.

(b) Expenses of the Association which benefit all Lots, but which do not provide an equal benefit to all Lots, may be specifically assessed equitably among all Lots according to the benefit received.

Service Assessments may include a portion, in the Board's discretion, a portion of the Association's overhead, as determined by the Board, to allocate for staff efforts of the Association (or Declarant) in addressing the needs of specific neighborhoods.

Section 11. Exempt Property. The following property shall be exempt from General Assessments and special and specific assessments:

(a) all property dedicated to and accepted by any governmental authority or public utility, if any, including, without limitation, public schools, public streets, public parks, conservation areas, roads, rights-of-way, streets and easements; and

(b) all property owned by non-profit organizations qualifying for tax exempt status under Section 501 (c) of the Internal Revenue Code so long as such Persons own property subject to this Declaration for purposes listed in 501 (c) and the availability of the exemption for such non-profit organizations is approved by the Board.

Section 12. Transfer Fees. Intentionally omitted.

Section 13. Service Assessments. In addition to the other assessments authorized herein, the Board may levy assessments for lawn maintenance, pest control, cable service, fire suppression service, lawn irrigation, telephone service, and/or internet connection, so long as the Association is providing, or offering to provide such services to one or more sections of the Community. Refusal to accept such services DOES NOT relieve the Owner from the responsibility to pay said assessment. Alternatively, the Board may elect to include the Service Assessment as a part of the General Assessment; provided, however, that such service giving rise to the Service Assessment is available to all Members. Service Assessments may be increased from time to time based upon the actual expenses incurred by the Association in providing this service as determined by the Board.

Services may be limited to certain subdivisions and/or condominium projects within the Community and not be made available to all of the Lots. As an example, the Association will not provide fire suppression or irrigation services to SFD Units and the Board will determine whether or not to provide lawn maintenance service to SFD Units. However, these services will be supplied and/or offered to Town Home Units (and any Condominium Units) and such Service Assessments shall be assessed against the Lots which are entitled to receive such services.

ARTICLE V

Maintenance: Conveyance of Common Property by Declarant to Association

Section 1. Association's Maintenance Responsibility. The Association shall maintain and keep in good repair the Common Property. In the event the Association ceases to exist, or otherwise fails to perform as specified herein, each Owner shall be liable for their pro rata share of said maintenance based upon the ratio of Lots they own divided by all Lots in the Community. This maintenance shall include, without limitation, maintenance, repair, and replacement, subject to any insurance then in effect, of all landscaping and improvements situated on the Common Property and

all Roadways. In addition, if the following property exists in the Community, the Association may, as determined by the Board, maintain part or all of such property, regardless of whether it is Common Property: Community fences; Community hiking and biking trails; Community dock areas; grass and other landscaping along Roadways, dedicated rights-of-way or ingress-egress easements; sedimentation ponds; Community entrance features; and lakes and dams.

The Association shall also have the right, but not the obligation, to maintain and provide services for other property not owned by the Association, whether located within or without the boundaries of the Community, and to enter into leases, easements and covenants and to share costs agreements regarding such property (and any other property) where the Board has determined that this would benefit Owners.

The Association shall be responsible for providing lawn irrigation to the front portion of each Town Home Unit and for providing a fire suppression system (i.e. sprinklers) throughout each Cluster. The Association shall, unless otherwise decided by a majority of 75% of the Board and a Majority of the Town Home Owners (and Condominium Units if applicable), maintain and repair all Water Systems within the Community and pay the annual expense of testing the fire suppression system. The costs and expenses associated with such services shall be paid by a Service Assessment upon all Town Home and Condominium Units. Notwithstanding any provisions to the contrary in this Declaration, there shall be no limit on Special Assessments, which shall apply to all Town Home Units or Condominium Units, as applicable, for funds necessary to pay for repairs and/or replacements of the Water Systems that are not repaired/replaced by an Owner's individual insurance policy.

The foregoing maintenance costs shall be assessed as a part of the General Assessment or specific assessments, as determined by the Board, in accordance with this Declaration.

Section 2. Owner's Maintenance Responsibility. Each Owner shall maintain or cause to be maintained in a safe, clean and attractive condition all property subject to this Declaration which is owned directly or indirectly by such Owner in a manner consistent with the Community-Wide Standard, this Declaration and the Rules and Regulations. Such maintenance obligation shall include, without limitation and to the extent not provided by the Association pursuant to Section 1 above, the following: Prompt removal of all litter, trash, refuse, and waste; lawn mowing on a regular basis; tree and shrub pruning; watering landscaped areas; keeping improvements, exterior lighting, and maintenance facilities in good repair and working order; keeping lawn and garden areas alive, free of weeds, and attractive; keeping driveways in good repair; complying with all governmental health and police requirements; keeping the roof in good repair, painting the exterior (excluding brick unless approved by the ARC), and repair of other exterior damages to improvements. Lake Lot Owners shall, in addition, be responsible to maintain as described above all property located between the Lake elevation and such Owner's side and/or rear Lot line; provided, however, that such Lake Lot Owners

shall not be responsible for maintaining any such portion of the Common Property that extends more than 15' beyond their respective Lot line(s).

In the event that the Board determines that (a) any Owner or designee of the Owner, as designee is defined below, has failed or refused to discharge properly his obligations with regard to the maintenance, repair or replacement of items for which he is responsible hereunder; or (b) that the need for maintenance, repair, or replacement, which is the responsibility of the Association hereunder, is caused through the willful or negligent act of an Owner, his or her family, guests, lessees, invitees, or designee then, the Association may perform the repair, replacement or maintenance and shall, except in the event of any emergency situation, give the Owner or designee written notice of the Association's intent to provide such necessary maintenance, repair, or replacement, at the Owner's or the Owner's designee's sole cost and expense. The notice shall set forth with reasonable particularity the maintenance, repairs, or replacement deemed necessary. The Owner or his designee shall have ten (10) days within which to complete such maintenance, repair, or replacement, or, in the event that such maintenance, repair, or replacement is not capable of completion within a ten (10) day period, to commence such work which shall be completed within a reasonable time. If any Owner does not comply with the provisions hereof, the Association may provide any such maintenance, repair, or replacement at Owner's sole cost and expense, and all costs shall be treated as a specific assessment against the Owner and the property owned by the Owner.

The foregoing maintenance shall be performed consistent with the Community-Wide Standard and shall conform to any applicable municipal ordinances and regulations and the Rules and Regulations, if any.

Section 3. Party Walls and Party Fences.

(a) General Rules of Law to Apply. Each wall, fence, driveway or similar structure built as a part of the original construction on the Lots which serves and/or separates any two adjoining Lots shall constitute a party structure. To the extent not inconsistent with the provisions of this Section, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto. This shall not apply to fences constructed along a Lot boundary by a single owner unless the adjoining owner has made use of the fence to enclose all or a portion of his own property. If any portion of any structure originally constructed by Declarant, or its affiliate, including any party wall, any extension of a party wall, or any common fence protrudes over an adjoining Lot, or into the Common Area, such structure, wall or fence shall be deemed to be a permitted encroachment upon the adjoining Lot or Common Area, and the Owners and the Association shall neither maintain any action for the removal of the encroaching structure, wall or fence, nor any action for damages. If there is a protrusion as described in the immediately preceding sentence, it shall be deemed that the affected Owners or the Association have granted perpetual easement to the adjoining Owner or Owners for continuing maintenance and use of the encroaching

structure, wall or fence. The foregoing provision also shall apply to any replacements in conformance with the original structure, wall or fence constructed by Declarant and/or the original Builder.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party structure shall be shared equally by the Owners who make use of the party structure. Provided, however, that any staining of a fence shall not be considered a maintenance item. The staining (after the initial required stain is applied) of a fence shall be the sole expense of the party wishing to stain or repair).

(c) Damage and Destruction. If a party structure is destroyed or damaged by fire or other casualty, then to the extent that such damage is not covered by insurance and repaired out of the proceeds of insurance, any Owner who has used the structure may restore it. If other Owners thereafter use the structure, they shall contribute to the restoration cost in equal proportions. However, such contribution will not prejudice the right to call for a larger contribution from the other users under any rule of law regarding liability for negligent or willful acts or omissions.

(d) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors-in-title. The provisions of this section shall be perpetual in duration and shall not be affected by the amendment of the Declaration.

Section 4. Conveyance of Common Property by Declarant to Association. The Declarant may transfer or convey to the Association any personal property and any improved or unimproved real property, leasehold, easement, or other property interest which is or may be subjected to the terms of this Declaration. Such conveyance shall be accepted by the Association, and the property shall thereafter be Common Property to be maintained by the Association. Declarant shall have the right, without limitation, to include Roadways, Lakes and Dams in the property that may be conveyed by Declarant and which shall be accepted by the Association. As long as any property is predominantly utilized as Common Property, then the Association shall incur all expenses of maintenance, payment of property taxes and the procurement of property and casualty and liability insurance for the same. Declarant may withdraw any real property delineated as Common Property until such time as it is deeded to the Association. Common Property may be deeded at the discretion of the Class "B" Member. Any Common Property not withdrawn by the Developer will be conveyed to the Association after the termination of the Class "B" Membership provided that all loans to the Association from Declarant have been repaid. All conveyances shall be "AS-IS, WHERE IS" without any representations or warranties.

Section 5. Additional Improvements. Declarant shall not be required to make any improvements whatsoever to property to be conveyed and accepted pursuant to this Section including, without limitation, dredging or otherwise removing silt from any lake that may be conveyed.

Section 6. Agreements. Subject to the conditions, restrictions and other provisions of these Covenants, all agreements, actions and determinations lawfully authorized by the Board with respect to the Property shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Community. 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 hereunder 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 Community, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. During the term of any such management agreement entered into by the Association with a third party, such manager may exercise all of the duties of the Association hereunder, excepting any such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by these Covenants, 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 Community, or the enforcement of these Covenants, the Articles of Incorporation, the Bylaws, or any Rules and Regulations of the Association.

Section 7. Management by Declarant or its Affiliates. In addition to the rights and authority granted to the Association in Section 6 of this Article, Declarant or one of its affiliates or members, may, but shall not be obligated to, be employed as the manager of the Association and the Community for so long as Declarant owns any Lot in the Community, or until such earlier date as Declarant elects, in Declarant's sole discretion, to relinquish such right, 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 Community. Each Owner, by acceptance of a deed to or other conveyance of a Lot shall be deemed to ratify the provisions of this Section 7 and specifically be deemed to have approved any management agreement entered into by the Association or Declarant.

Section 8. Governmental Interests. For so long as the Declarant owns any property which is subject to this Declaration or which may be unilaterally subjected to this Declaration by the Declarant, the Declarant may designate sites within the Community for fire, police, and utility facilities, public schools and parks, streets, and other public or quasi-public facilities. The sites may include Common Areas, in which case the Association shall take whatever action is required with respect to such site to permit such use, including conveyance of the site, if so directed by Declarant. The sites may include other property not owned by Declarant provided the owner consents.

Section 9. Dedication of Common Area. The Association may dedicate portions of the Common Area to the City of Huntsville, Madison County, Alabama, or to any other local, state, or federal governmental or quasi-governmental entity.

Section 10. No Dedication to Public. This Declaration does not dedicate the easements herein declared for the benefit of any Person not herein expressly made a beneficiary thereof. Declarant expressly disclaims the creation of any right in or for the benefit of the general public.

ARTICLE VI Use Restrictions and Rules

Section 1. General. This Article sets out certain use restrictions which must be complied with by all Owners and Occupants. These use restrictions may only be amended in the manner provided in Article XIII, Section 4 and in Article XIV, hereof regarding amendment of this Declaration. In addition, the Board, by a two-thirds (2/3) vote, may, with Declarant's consent (until the Turnover Date, without consent of the Members, promulgate, modify, or delete Rules and Regulations applicable to the Community. This authority shall include, but shall not be limited to, the right to limit the type and size of vehicles within the Community and to set the maximum and minimum speeds of vehicles on Roadways within the Community and to impose all other necessary traffic and parking regulations and to restrict the maximum noise levels of vehicles in the Community. The Board may also restrict certain portions of the recreational facilities administered by the Association to adults only. Such use restrictions and/or Rules and Regulations shall be distributed to all Owners and Occupants prior to the date that they are to become effective and shall thereafter be binding upon all Owners and Occupants until and unless overruled, canceled, or modified in a regular or special meeting by a Majority of the total Association vote entitled to vote thereon and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of Declarant.

Except as otherwise additionally approved or required by the Architectural Review Committee as noted in The Architectural Review Committee guidelines with respect to any particular Lot, each Lot and the Dwellings and other Improvements thereon shall be constructed and maintained in accordance with the following requirements and standards and the policies, guidelines, standards and requirements of the Architectural Review Committee.

- A. The exterior finish of each dwelling shall be brick, stone, composite siding, or a combination thereof.
- B. Intentionally omitted.
- C. No individual water supply system shall be permitted on any Lot.
- D. No garage shall be enclosed and finished or used as living area.
- E. No open carports shall be allowed on any Lot.
- F. No individual sewage disposal system shall be permitted on any Lot.
- G. All driveways shall be concrete and broom finished. Two concrete "ribbons" with sod between them shall be allowable.

H. No window or through-wall unit air-conditioning, heating, fan or other ventilation shall be placed on any Lot. No outside air-conditioning unit shall be located in the front yard of any Lot. Any units located on the side of yard adjacent to any street on corner lots will be screened by landscaping.

I. No solar or other energy collection device or equipment shall be maintained on any Lot or Dwelling. No projections of any type shall be allowed above the roof of any Dwelling except for chimneys, satellite dishes and vent stacks approved by the Architectural Review Committee.

J. All utility services shall be underground, including those installed by Huntsville Utilities, unless waived by Declarant. No utility poles or above-ground wires shall be permitted except during the construction phase of a Dwelling and except for street lights installed by the Declarant or as approved by the Architectural Review Committee. No above-ground tanks or similar facilities shall be located on any Lot subject to the approval of the Architectural Review Committee.

K. Upon the completion of a Dwelling (excluding a Condominium Unit), all front and side yards must be landscaped with sod and other landscaping approved by the Architectural Review Committee. If the rear yard is deeper than 20 feet from the rear of the Dwelling, the first 15 feet shall be sod and the remainder shall be hayed and seeded (provided that it shall always be acceptable to sod the entire Lot).

J. No Owner shall dam any creek or any drainage water which flows through the Community nor shall any Owner change the flow of any creek, drainage water, or any wet weather stream in the Community.

As a practical matter, certain provisions of the Governing Documents and the Rules and Regulations will be inherently different in regard to the types of Dwellings located in different parts of the Community. In addition to the authority reserved/given to the Declarant, the ARC and/or the Board (the "Association Authorities"), the Governing Documents and Rules and Regulations may be interpreted by the Association Authorities to allow for differing treatment between Condominium Units, Town Home Units and SFD Units.

Section 2. Residential Use. All Lots shall be used for single-family residential purposes exclusively. No business or business activity shall be carried on in or upon any Residence at any time except with the written approval of the Board. Leasing of a Residence shall not be considered a business or business activity. However, the Board may permit any Residence to be used for business purposes so long as such business, in the sole discretion of the Board, does not otherwise violate the provisions of the Declaration or By-Laws, and does not create a disturbance. The Board may issue Rules and Regulations regarding permitted business activities.

Section 3. Signs. The location, color, nature, size, design and construction of all signs and/or posters shall be approved in writing by the Architectural Review Committee prior to the installation thereof, including, but not limited to "For Sale" and "For Rent" signs or signs of any agent, broker, contractor, subcontractor or lender. No sign or poster may be maintained or permitted on any window or on the exterior of any improvements on a Lot or on any unimproved portion of property located within the Community without the express written consent of the ARC. All "For Sale" signs used for initial sales from a Builder will be a design provided to the Builders by Declarant. The Association shall have the right to erect reasonable and appropriate signs on any portion of the Common Area in accordance with the architectural design standards adopted by the ARC.

Section 4. Vehicles and Garages. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, dune buggies, ATVs, tractors, scooters, go-carts, trucks, campers, buses, vans, and automobiles and similar vehicles. Unless and except to the extent that the Occupants of a Residence shall have more vehicles than the number of parking areas serving their Residence, all vehicles shall be parked within such parking areas. Where the Residence contains a garage, "parking areas" shall refer to the number of garage parking spaces.

No motor homes, farm equipment, heavy machinery, boats, trailers, moving vans, recreational vehicles, towed vehicle, inoperable vehicles, campers, semi-tractor trucks, buses, taxicabs, or other commercial vehicle of any nature or the like shall be permitted to be kept in the Community except to the extent and circumstances permitted in this Section 4. Commercial vehicles shall be deemed to include cars, vans, SUVs and trucks in styles normally used for private purposes but painted with or carrying commercial advertising, logos, or business names exceeding four square feet per side or containing visible commercial materials, cargo, tools or equipment on the exterior of the vehicle or that extend beyond the length or width of the vehicle. No oversized/commercial vehicle (a vehicle wider than and or longer than a standard parking space, or any vehicle that has more than two axles) may park in the Community. Any such items, other than boats, motor homes and campers, may be temporarily allowed in the Community for reasonable periods of time in order to allow for typical construction/repair activities, servicing for a Residence, and the moving of furniture and appliances.

No vehicle may be left upon any portion of the Community (including public alleys and/or right-of-ways), except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle shall be considered a nuisance and may be removed from the Community.

No inoperable vehicle, towed vehicle, boat, recreational vehicle, motor home, or mobile home may stored in the Community or temporarily kept in the Community , unless it is kept in a garage or other area designated by the Board. If such vehicle(s) remains in the Community for a period longer than twenty-four (24) hours each shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

All Residences (except for Condominium Units) shall contain, as a minimum, a two-car garage. Carports shall not be permitted. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage. Other than an Owner's standard means of transportation, e.g., car, truck, SUV, or van, no vehicle should be in view from the street (they should either be parked in a garage or in the rear yard in an ARC approved parking area and be screened by an ARC approved fence). An Owner with more vehicles than parking spaces in a garage may park the extra

vehicles (or the vehicles of guests, children, domestic employees, etc.) in their driveway. Any detached garage must be specifically approved in the sole discretion of the ARC.

No parking whatsoever is permitted in the front yard, in any alley (as designated on the plat of record or as designated by the Board). Parking on public streets is prohibited except for intermittent visitors, who are only allowed to park on the street for periods of not more than 12 hours within each 48 hour period.

Provided that specific Board approval is obtained, towed vehicles, *i.e.*, boats, trailers and campers and the like, may be permitted in the rear yard of a Residence, provided that it is located on a concrete paved area and such vehicle is screened so as to not be visible from ground level by an ARC approved fence.

Section 5. Leasing. Residences may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and Rules and Regulations of the Association. The Association shall be provided with a copy of each lease within 10 days of its execution. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property. Upon the leasing of any Residence by an Owner to a tenant, the Owner shall contribute and pay to the Association a "Lease Assessment" in the amount of \$500.00 or such greater amount as may be required by the Board, which shall be in addition to all other assessments and not in lieu thereof. This assessment shall be utilized by the Association for the general budget.

Section 6. Occupants Bound. All provisions of the Declaration, By-Laws, and of any Rules and Regulations, use restrictions or Design Guidelines promulgated pursuant thereto which govern the conduct of Owners and which provide for sanctions against Owners shall also apply to all Occupants even though Occupants are not specifically mentioned. Fines may be levied against Owners or Occupants. If a fine is first levied against an Occupant and is not paid timely, the fine may then be additionally levied against the Owner.

Section 7. Animals and Pets. No animals, livestock, or poultry of any kind may be raised, bred, kept, or permitted on any Lot, with the exception of dogs, cats, or other usual and common household pets in reasonable number, as determined by the Board; provided, however, those pets which are permitted to roam free, or in the sole discretion of the Board, endanger health, make objectionable noise, (including, but not limited to barking dogs) or constitute a nuisance or inconvenience to the Association members or Occupants or the owner of any property located adjacent to the Community may be removed by the Board. For purposes of these Restrictions, no form of swine, including, but not limited to, Vietnamese pot bellied pigs, shall be considered usual and common pets and are expressly forbidden. No pets shall be kept, bred or maintained for any commercial purpose. Dogs which are household pets shall at all times whenever they are outside a Residence be on a leash or otherwise confined in a manner acceptable to the Board. Without

prejudice to the Board's right to remove any such household pets, no household pet that has caused damage or injury may be walked in the Community. Animal control authorities shall be permitted to enter the Community to patrol and remove pets. Pets shall be registered, licensed and inoculated as required by law. The Board shall have the right from time to time to promulgate Rules and Regulations governing keeping the pets within the Community, including the right to assess fines for violations of such Rules and Regulations.

Section 8. Nuisance. It shall be the responsibility of each Owner and Occupant to prevent the development of any unclean, unhealthy, unsightly, or unkempt condition on his or her property. No property within the Community shall be used, in whole or in part, for the storage of any property or thing that will cause such Lot to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance, thing, or material be kept that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or serenity of the occupants of surrounding property. No noxious or offensive activity shall be carried on within the Community, nor shall anything be done tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any property within the Community. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of the Community.

Section 9. Unsightly or Unkempt Conditions. The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing, the assembly and disassembly of motor vehicles and other mechanical devices, which might tend to cause disorderly, unsightly, or unkempt conditions, shall not be pursued or undertaken in any part of the Community.

Section 10. Architectural Standards.

(a) Approval of Improvements. No exterior construction, alteration, addition, or erection of any nature whatsoever shall be commenced or placed upon any part of the Community, except such as is installed by the Declarant, or as is approved in accordance with this Section, or as is otherwise expressly permitted herein. No exterior construction, addition erection, or alteration shall be made unless and until plans and specifications showing at least the nature, kind, shape, height, materials, and location shall have been submitted in writing to and approved by the Architectural Review Committee ("ARC") established by the Declarant. The following items, without limitation, will be submitted to the Architectural Review Committee for new home construction: house plans, site plans, landscaping plans, and exterior color and material schedule.

(b) Selection of Members. Prior to the Turnover Date, the Declarant shall have the sole and exclusive right to appoint and remove, with or without cause, at any time and from time to time, all members of the Architectural Review Committee, the number of members of which shall be determined solely by the Declarant. Following the occurrence of the Turnover Date, the Board shall have the sole and exclusive right to appoint and remove, with or without cause, at any time and from time to time, five members of the Architectural Review Committee.

(c) Delegation of Authority. All individuals serving on the Architectural Review Committee shall be deemed to be agents and representatives of the Association (only, however, to the extent of addressing the matters for which the ARC was established) and may, but shall not be required to be, members of the Association or Owners. The Architectural Review Committee shall have the right from time to time to adopt and establish such rules and regulations as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of business of the Architectural Review Committee, including, without limitation, the right, to the extent the Architectural Review Committee consists of more than one (1) member, to designate one (1) individual on the Architectural Review Committee to act on behalf of the entire Architectural Review Committee in all matters in which the Architectural Review Committee is granted the right to act under the terms and provisions of this Declaration.

(d) Professionals. The Architectural Review Committee may from time to time hire or engage architects, engineers, land planners, attorneys and other professionals to provide services with respect to or for the benefit of the Architectural Review Committee, including designating any such professionals as members of the Architectural Review Committee. Any such professionals may be paid reasonable compensation for all services rendered to, on behalf of or for the Architectural Review Committee. Any such compensation payable to such professionals shall be paid first from any design review fees paid by applicants to the Declarant and the deficit, if any, shall constitute common expenses.

(e) Additional Rules and Regulations. The Architectural Review Committee may, from time to time and at any time, adopt additional rules, guidelines, regulations, and requirements relating to the design review and approval process and the construction of any Improvements to any Lot within the Community, including, without limitation, regulations for architects and builders, adoption of specific forms which must be completed and submitted to the Architectural Design Committee and the requirement that specific information be provided as part of the design review process, requirements establishing that each Builder deposit security deposits with the Architectural Review Committee and any other matters as may be determined from time to time to the Architectural Review Committee, which rules, regulations and requirements (the "Design Guidelines") shall constitute part of the Rules and Regulations.

(f) Modifications. Once a plan is approved, any modification to that plan must also be reviewed and approved in writing by the Architectural Review Committee. No construction of any Lot shall be commenced and no Lot shall be modified except in accordance with a plan approved in writing by the Architectural Review Committee. Any modifications to plans previously approved by the Architectural Review Committee, any additions to be made during construction and any alterations or changes to any existing Improvements on a Lot are subject to review and written approval by the Architectural Review Committee, specifically including, but not limited to, the following:

(i) painting of the exterior of a Residence (including doors, windows, and trim) other than with originally approved materials and colors;

(ii) replacement of roof or other parts of the Residence other than with duplicates of the original material approved by the Architectural Review Committee and any other alteration of a Building;

(iii) installation of satellite dishes or receivers or other devices which are visible from outside the Lot;

(iv) construction of fountains, swimming pools, whirlpools or other exterior pools or water features;

(v) construction of privacy walls, fences and gates, as well as limitations thereon and the types of materials to be used;

(vi) addition of awnings, flower boxes, shelves, statues, or other outdoor ornamentation; and

(vii) significant new landscaping and any removal or substantial pruning of existing trees or plants.

The listing of a category does not imply that such construction is permitted; the Declarant and the Rules and Regulations may, for example, prohibit all solar panels, antennas, satellite dishes or receivers or require that, to the greatest extent practicable, the same not be visible from any Roadway in the Community or public right of way outside the Community.

(g) Exceptions. Interior construction and modifications not affecting the external structure or appearance of any Building are not subject to review. However, floor plans are required as part of the review process to assist in the overall comprehension of the design, and minimum interior ceiling heights may be required, as may be provided in the Architectural Review Committee.

(h) Application. The plans to be submitted to the Architectural Review Committee for approval shall be submitted on such forms which the Architectural Review Committee may require and shall include (i) the construction plans and specifications, including all materials and colors, (ii) elevations of all proposed Improvements, (iii) proposed clearing, grading and landscaping plans, and (iv) all other items required by the Architectural Review Committee.

(i) Basis for Decision. Applications shall be approved or denied based upon compliance with the Rules and Regulation and/or the guidelines and provisions of the Architectural Review Committee and overall quality of design. The Architectural Review Committee may also consider other factors, including purely aesthetic considerations, which, in the sole opinion of the Architectural Review Committee, will affect the desirability or suitability of the proposed Dwelling. The Architectural Review Committee shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the applicant shall be obligated to comply and must be incorporated into the plans and specifications submitted by such applicant. Approval of plans and specifications by the Architectural Review Committee for Improvements or other matters with

respect to one particular Lot shall not be deemed an approval or otherwise obligate the Architectural Review Committee to approve similar plans and specifications for any other Lot. The Architectural Review Committee shall be deemed to have approved plans and specifications only if and to the extent their approval is set forth in writing. Verbal or oral approvals are not binding on the Architectural Review Committee. The Architectural Review Committee, with the consent of Declarant (prior to Turnover Date), may grant variances from the Declaration based on existing topographical or landscape conditions, existing trees, or architectural merit. Any such variances must be in writing.

(j) Time Period. In the event that the Architectural Review Committee fails to approve or to disapprove complete and properly submitted plans and specifications within thirty (30) days after the plans and specifications have been submitted to it, approval will not be required, and this Section will be deemed to have been fully complied with. As a condition of approval under this Section, an Owner, on behalf of himself and his successors-in-interest, shall assume all responsibilities for maintenance, repair, replacement, and insurance to and on any change, modification, addition, or alteration. In the discretion of the Architectural Review Committee, an Owner may be made to verify such condition of approval by a recordable written instrument acknowledged by such Owner on behalf of himself and his successors-in-interest. The Architectural Review Committee shall be the sole arbiter of such plans and may withhold approval for any reason, including purely aesthetic considerations, and it shall be entitled to stop any construction in violation of these restrictions. Any member of the Board or its representatives shall have the right, during reasonable hours and after reasonable notice, to enter upon any property to inspect for the purpose of ascertaining whether or not the Covenants have been or are being complied with. Such Person or Persons shall not be deemed guilty of trespass by reason of such entry. In addition to any other remedies available to the Association, in the event of noncompliance with this Section, the Board may, as provided in Article XIII, Section 1, hereof, record in the appropriate land records a notice of violation naming the violating Owner.

(k) Release of Liability. Plans and specifications are not approved for engineering or structural design or quality of materials, and by approving such plans and specifications neither the Architectural Review Committee, the members thereof, nor the Association assumes liability or responsibility therefore, nor for any defect in any structure constructed from such plans and specifications. Neither Declarant, the Association, the Architectural Review Committee, the Board, nor the officers, directors, members, employees, and agents of any of them shall be liable in damages to anyone submitting plans and specifications to any of them for approval, or to any Owner of property affected by these restrictions by reason of mistake in judgment, negligence, or nonfeasance arising out of or in connection with the approval or disapproval or failure to approve or disapprove any such plans or specifications. Every Person who submits plans or specifications and every Owner agrees that he will not bring any action or suit against Declarant, the Association, the Architectural Review Committee, the Board, or the officers, directors, members, employees, and agents of any of them to recover any such damages and hereby releases, remises, quit-claims, and covenants not to sue for all claims, demands, and causes of action arising out of or in connection with any judgment, negligence, or nonfeasance and hereby waives the provisions of any law which provides that a general

release does not extend to claims, demands, and causes of action not known at the time the release is given.

(l) Scope of Review. THE SCOPE OF REVIEW BY THE ARCHITECTURAL REVIEW COMMITTEE IS LIMITED TO APPEARANCE ONLY AND DOES NOT INCLUDE ANY RESPONSIBILITY OR AUTHORITY TO REVIEW FOR STRUCTURAL SOUNDNESS, COMPLIANCE WITH BUILDING OR ZONING CODES OR STANDARDS, OR ANY OTHER SIMILAR OR DISSIMILAR FACTORS.

(m) Variations. The Architectural Review Committee shall have the right, in its sole and absolute discretion, to grant any variances from any of the restrictions contained its policies, guidelines, standards and requirements upon written application to the Architectural Review Committee requesting a variance; provided, however, that the grant of a variance to one party shall not vest in any other party a right to receive the same or a similar variance. All approvals of requests for variances shall be in writing and shall be signed by any member of the Architectural Review Committee.

(n) Condition of Property. The Real Estate may be located in an area which includes underground mines, tunnels, sinkholes and subsurface conditions ("Property Conditions"). The approval of an application or a Development Plan by the Architectural Review Committee shall not be construed in any respect as a representation or warranty by the Architectural Review Committee, the director, officer, employee or agent of any of them, to any Owner or any other person that the surface or subsurface conditions of any Lot or any other portion of the Real Estate are suitable for the construction of a Dwelling or other Improvement thereon. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and the subsurface conditions of his or her Lot. None of the entities or persons referred to in this Section 10 shall be liable or responsible for any damage or injury suffered or incurred by a Lot, Dwelling, Improvement, Owner or any other person as a result of surface or subsurface condition affecting a Lot or any portion thereof, including, without limitation, any surface or subsurface drainage or underground mines, tunnels, sinkholes or other conditions or types of ground subsidence occurring on or under any Lot.

(o) Declarant's Exemption. Declarant and any Lot or other portion of the Subject Property owned by Declarant and/or the initial Builder, which is an affiliate of Declarant, shall be exempt from the covenants and other requirements of this Article.

Section 11. Antennas. No exterior antennas of any kind shall be placed, allowed, or maintained upon any portion of the Community, including any Lot without the prior written consent of the Board or its designee. No free standing antennas whatsoever shall be placed on any Lot. The Board or its designee may approve the installation of radio antennas which do not protrude above the roof line of the Residence at its highest point and are not visible from the street in front of the Residence. Each Owner and Occupant acknowledges that this provision benefits all Owners and Occupants and each Owner and Occupant agrees to comply with this provision despite the fact that the erection of an outdoor antenna or similar device would be the most cost-effective way to transmit or receive the signals sought to be transmitted or received. The erection of a single small satellite dish

may be permitted, however, the size and location must be approved by the Architectural Review Committee. Dishes are specifically prohibited from the roofs of Units.

Section 12. Tree Removal. No trees shall be removed without the express consent of the Board or its designee, except for (a) diseased or dead trees; (b) trees less than six (6) inches in diameter; (c) trees needing to be removed for safety reasons (as determined by either the City of Huntsville or the ARC); or (d) trees in the immediate location of building approved by the Architectural Review Committee.

Section 13. Drainage. Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions or debris shall be placed in these areas. No Owner or Occupant may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains except with the permission of the Architectural Review Committee or the Board. Declarant hereby reserves a perpetual easement in favor of Declarant, its successors and assigns, across all Community property for the purpose of altering drainage and water flow. Provided, however, the Declarant shall have no duty to do so. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. This reserved easement shall automatically be transferred to the Association on the Turnover Date.

Section 14. Site Distance at Intersections. All property located at street intersections shall be landscaped so as to permit safe sight across the street corners. No fence, wall, hedge, or shrub planting shall be placed or permitted to remain where this would create a traffic or sight problem.

Section 15. Clotheslines, Garbage Cans, Woodpiles, Etc. All clotheslines, garbage cans, woodpiles, swimming pool pumps, filters and related equipment, air conditioning compressors and other similar items shall be located or screened so as to be concealed from view of neighboring streets and property. All rubbish, trash, and garbage shall be regularly removed and shall not be allowed to accumulate. Declarant, however, hereby expressly reserves the right to dump and bury rocks on property within the Community as needed for efficient construction and to allow developers and builders within the Community to bury rocks removed from a building site on such building site. Trash, garbage, debris, or other waste matter of any kind may not be burned within the Community, except when done during the normal construction of a residence or by Declarant. During Construction all trash must be contained on the Lot in a roll-off container located within 100 feet of the home under construction. Each construction site must be maintained in a safe, clean and orderly condition and shall include a portable toilet until such facilities are available in the home for construction workers.

Section 16. Subdivision of Lot. No Lot shall be subdivided or its boundary lines changed except with the prior written approval of the Declarant or its designee. Declarant, however, hereby expressly reserves the right to replat any Lot owned by Declarant during the time in which declarant may annex property. Any such division, boundary line change, or replatting shall not be in violation of the applicable subdivision and zoning regulations. After the Turnover Date, the Board shall be

vested with the right to approve any subdivision or change in boundaries. Absent proper Declarant/Association approval, the resubdivision of two Lots into one lot shall not eliminate the obligation to pay Assessments for each original Lot, but only one transfer fee shall be required upon each sale of the newly created Lot and each subsequent resale.

Section 17. Guns. The use of firearms in the Community is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and firearms of all types.

Section 18. Fencing. All fencing must be approved by the ARC. Any fence installed by a Builder as part of the original construction that is destroyed and damaged, for any reason, must be rebuilt in the same manner, of like materials and quality, unless otherwise specifically approved by the ARC.

Section 19. Lakes. This Section, Article XII, Sections 15 and 16 of this Declaration, and the Rules and Regulations issued by the Board or its designee shall govern the use of such lakes and/or ponds ("Lakes") as may exist in the Community or such Lakes as are made available for the use of all Owners and Occupants in the Community and activities related thereto. Fishing shall be permitted so long as a license is obtained from the appropriate governmental authority. Swimming, ice skating and water skiing shall not be permitted, except as specifically approved by the Board. Unless approved by the Board or its designee, no Owner may construct a dock. Retaining walls and similar structures shall not be installed without the prior written approval of the Board or its designee. Except as may be approved by the Board or its designee, boats shall not be permitted on the Lakes.

Section 20. Utility Lines. No overhead utility lines, including lines for cable television, shall be permitted within the Community, except for temporary lines as required during construction and lines installed by or at the request of Declarant.

Section 21. Air-Conditioning Units. Except as may be permitted by the Board or its designee, no window air conditioning/heating units, etc., may be installed.

Section 22. Lighting. Except for approved lighting as originally installed on a Residence, exterior lighting visible from the street shall not be permitted, except for (a) two (2) decorative post lights; (b) a street light in conformity with an established street lighting program for the Community; (c) seasonal decorative lights at Christmas (limited to 30 days before and after December 25 of each year); or (d) front house illumination of model homes. Ground level landscape lighting may be permitted as approved by the Architectural Review Committee. No floodlights will be permitted.

Section 23. Artificial Vegetation, Exterior Sculpture, and Similar Items. No artificial vegetation shall be permitted on the exterior of any property. Exterior sculpture, fountains, flags, and similar items must be approved by the ARC or its designee.

Section 24. Energy Conservation Equipment. No solar energy collector panels or attendant hardware or other energy conservation equipment shall be constructed or installed unless they are an

integral and harmonious part of the architectural design of a structure, as determined in the sole discretion of the ARC.

Section 25. Above-Ground Swimming Pools. Except as may be permitted by the ARC or its designee, above ground swimming pools shall not be erected.

Section 26. Driveways. Driveways must be maintained in the same manner as originally constructed by Builder, reasonable wear and tear excepted.

Section 27. Exterior Colors and Painting Requirements. Except as may be permitted by the ARC or its designee, the exterior of all improvements including, without limitation, Residences must be repainted in a color used in the original construction of Residences within the Community. EACH OWNER MUST REPAINT ALL PAINTED PORTIONS OF THEIR EXTERIOR NOT LESS THAN EVERY 5 YEARS UNLESS SUCH TIME PERIOD IS EXTENDED IN WRITING BY THE BOARD.

Section 28. Windows, Window Treatments and Doors.

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

(b) The ARC may adopt guidelines for the types of windows and materials from which windows may be allowed on any dwelling. Burglar bars or doors (including wrought iron doors) shall not be permitted. Screen doors shall not be used on the front or side of any dwelling. No aluminum or metal doors with glass fronts (e.g., storm doors) shall be allowed on the front of any dwelling. Windows are required to be simulated divided light windows. Blind/plantation shutter colors must be white, off-white, neutral or an approved natural color. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments. The portion of all window coverings visible from the exterior of any Residence shall be white or off-white or neutral, unless otherwise approved by the ARC.

Section 29. Lake and Park Lot Restrictions. Notwithstanding any other subdivision restrictions, Lots that abut either one of the Community's Lakes or a designated Common Area shall not be allowed to have a detached garage. This provision may be specifically exempted by the Architectural Control Committee.

Section 30. Roof Access Prohibited. Owners (excluding SFD Units) shall be prohibited from accessing their roof except in cases of emergency and when specifically authorized by the Association.

Section 31. Mailboxes. Only approved mailboxes can be installed in the Community. Each mailbox must be the designated model of the ARC. Each mailbox shall have a black finish.

Section 32. Landscaping. The purpose of this restriction is to promote landscape development of single family residential lots that will preserve and appreciate the value of the development by promoting a high quality, cohesive level of landscaping. These requirements may be altered or amended at the discretion of the Architectural Review Committee.

(a) Guideline for Landscaping Planning:

(i) Existing vegetation and trees should be preserved whenever possible to provide screening and lend an established feeling to the Community.

(ii) Shrubs should be well distributed, but not necessarily evenly spaced. Shrubs may be used for screening and to minimize the visual impact of driveways and parking areas.

(iii) Unified mulched planting beds edged in materials such as brick or stone are preferred as they look neat longer and their shape is preserved. Plastic, wood, landscape timbers and green metal edging borders are prohibited.

(iv) Exterior building material colors should be considered when selecting flowering trees and shrubs so that colors will not compete with or negate each other.

(b) General Landscape Requirements:

A landscape plan shall be included as part of the lot development package submittal. This plan will include the entire lot. Each Owner shall be responsible for replanting any grass, trees and/or bushes that are part of the original landscape plan that subsequently become diseased or die and/or removed. Any variation must be approved, in writing, by the ARC. Any removal of trees must be limited to safety issues, as determined by any appropriate Governmental Entity, or due to disease or partial destruction by Acts of God.

Section 33. Screening of Heating and Cooling Units. All exterior heat and air conditioning compressors or air handlers must be screened from view. This can be accomplished with either vegetation, brick and/or stone or may be behind a fence, as approved by the Architectural Review Committee. If vegetation is used it must create a walled off effect. The screening is encouraged on all sides of the equipment but is required on the front and side of the equipment.

Section 34. Storage Tanks. Any storage tank must be approved by the Architectural Review Committee and, if approved, must be buried, or, if they are less than fifty-gallon capacity, may, with the Architectural Review Committee's approval, be installed above ground, if properly screened.

Section 35. Home Size, Number of Buildings, etc.

(a) Size. Intentionally omitted.

(b) Number of Buildings on Lot. On a single family Lot, no structure will be constructed other than one (1) detached, single family Dwelling and one (1) accessory building, which may include a detached private garage or pool house, provided such Dwelling or accessory building does not overcrowd the Lot and is not used for any activity normally conducted as a business. Such accessory building may not be constructed prior to the construction of the main building. Said building may not be rented or leased except as part of the entire premises including the main Dwelling.

(c) Completion of Improvements. The construction of any dwelling and other structures constructed upon any Lot must be completed within 24 months after the construction of same shall have commenced.

Section 36. Basketball Goals. No basketball goals may be erected, placed or constructed on the front of any Lot (being defined as all portions of the Lot between the street (including side streets) and the rear most corner of the Dwelling). Only Board approved basketball goals may be erected or constructed on the rear portion of any Lot. No basketball goal may be erected over a garage or attached to a Dwelling.

Section 37. Exterior Requirements. All dwellings and permitted accessory buildings constructed on the lots of said subdivision shall have an exterior consisting of brick, rock and/or Hardi-Plank or equivalent, except as may otherwise be provided in this Declaration. Provided, that these requirements can be modified if, in the sole discretion of the Architectural Review Committee, the style and exterior of the Dwelling shall be deemed to architecturally enhance the Community. No vinyl or aluminum siding is allowed. With approval of the ARC, vinyl soffit and aluminum fascia covering may be permitted. Visible unpainted red or yellow "sewer brick" will not be allowed. No Residence exterior shall be constructed of untreated wood. Any wood exteriors must be specifically approved by the Architectural Review Committee. See Section 27 for other exterior requirements.

Section 38. Roof Pitch and Shingles. Intentionally omitted.

Section 39. Foundations. All Dwellings must be built upon a crawl space. Except that slab foundations are permitted for patio homes, town homes and condominiums, provided that all such slab foundations must be a minimum of 12 inches above grade with a minimum of one step from the finished floor to ground level in the front of the dwelling. All foundations must be brick or stone with no exposed concrete or masonry block.

Section 40. Specific Subdivision Restrictions on Minimum Square Footage. Square footage shall be determined by the area of the Dwelling that is heated and cooled.

Section 41. Zoning and Similar Restriction. This Declaration shall not be construed to permit any action or thing prohibited by applicable zoning laws, rules or regulations of any governmental authority, or by specific restriction imposed by any deed or other conveyance. In the event of any conflict, the most restrictive provision shall govern.

Section 42. Maintenance. Each Town Home Unit Owner and Condominium Unit Owner shall perform promptly all maintenance and repair work within his Dwelling Unit which, if permitted, would affect any other portion of the Property either in its entirety or in a part belonging to other Owner(s), and each Owner is expressly responsible for damages and liability which result from his failure to promptly perform such maintenance and repair work. Unless otherwise provided in other Articles of this Declaration, each Owner shall be responsible for the costs of performing all such maintenance and repair work. Maintenance and repairs needed outside the living area of a particular Town Home Unit shall be the responsibility of and at the expense of that Dwelling Unit's Owner which includes painting, roofing, grounds, parking areas, fences, and all other outside repairs and maintenance needs, whether by normal usage, weather related, preventive or incidental repairs, unless the Association shall have agreed to make such repairs and maintenance as a common expense. Maintenance of Condominium Units shall be separately addressed in the Declaration of Condominium, if any.

Section 43. Decks, Playground Equipment, etc. The type, design and location of decks and storm shelters constructed with the initial construction of a Residence must be approved by the Architectural Review Committee. Decks, playground equipment and storm shelters erected after the initial construction of a residence is completed, must be in accordance with the Design Guidelines and may not be erected, placed, allowed or maintained on any lot without the prior written consent of the ARC or its designee. Any exterior storm shelter must be buried underground.

Section 44. Variances. The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances and exceptions with respect to the provisions of this Declaration with respect to any Lot. Any request for a variance or exception submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written document executed by either the chairman or vice chairman of the ARC. **No exception granted by the ARC shall constitute a waiver of the restriction in any manner unless the exception is explicitly made on a Community wide basis or made, by resolution, to affect one or more particular subdivision(s) within the Community.**

Section 45. Garbage Cans. Garbage cans will be allowed in front of dwellings only on days scheduled for garbage pick-up by City of Huntsville.

Section 46. Termite Protection. In the event that the Association does not elect to provide Termite Protection to all Town Home Units, annual Termite Bonds/Protection Contracts are to be kept in force by each Town Home Owner with a pest control company of their choice. Such Owners shall annually provide a certificate evidencing same to the Secretary of the Association. This is to insure that no termite damage will occur between Units within a Cluster.

Section 46. Involvement of Board. The Board may, but shall not be required, to take any formal action to abate any nuisances or to take any action with regard to a violation of the Declaration, particularly when the violations are deemed minor or involve pets, or when complaints appear to be based primarily on personal differences between Owners. Nothing in this provision shall

prohibit an Owner from either taking action or filing suit against another Owner in order to protect his/her/its rights under this Declaration.

ARTICLE VII
Prohibition of Timesharing

Timesharing shall be prohibited in the Community. The term "timesharing" shall include, without limitation, timeshare estate, timeshare use, and timeshare interval programs.

ARTICLE VIII
Insurance and Casualty Losses

Section 1. Insurance. The Association's Board of Directors or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Property.

The Board shall obtain a public liability policy applicable to the Common Property insuring the Association and its members for all damage or injury caused by the negligence of the Association or any of its members or agents. The public liability policy shall have a combined single limit of at least One Million (\$1,000,000.00) Dollars or a greater amount if directed by Declarant during time specified in Article X. If available at reasonable cost, as determined in the sole discretion of the Board, the Board shall also obtain directors' and officers' liability insurance.

All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, as trustee, for the respective benefitted parties, as further identified in subparagraph (b), below. Such insurance shall be governed by the provisions hereinafter set forth:

(a) All policies shall be written with a company licensed to do business in Alabama and holding a rating of B or better as established by A. M. Best Company, Inc., if available, or, if not available, the most nearly equivalent rating.

(b) Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

(c) In no event shall the insurance coverage obtained and maintained by the Association's Board of Directors hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their Mortgagees, and the insurance carried by the Association shall be primary.

(d) All insurance policies shall be reviewed annually by one or more qualified persons.

(e) The Association's Board of Directors shall be required to make every reasonable effort to secure insurance policies that will provide for the following:

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

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

(iii) that no policy may be canceled, invalidated, or suspended on account of any one or more individual Owners;

(iv) that no policy may be canceled, invalidated, or suspended on account of any defect or the conduct of any director, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect or to cease the conduct and the allowance of a reasonable time thereafter within which a cure may be effected by the Association, its manager, any Owner or Mortgagee;

(v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and

(vi) that no policy may be canceled or substantially modified without at least thirty (30) days' prior written notice to the Association.

Section 2. Property Insured By Association: Damage and Destruction. Immediately after the damage or destruction by fire or other casualty to all or any portion of any improvement covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the same condition and location that existed prior to the fire or other casualty.

Any damage or destruction shall be repaired or reconstructed unless, within sixty (60) days after the casualty, at least sixty-six (66%) percent of the total Association vote entitled to vote thereon, the Owner(s) of the damaged property, if any, and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the Declarant, otherwise agree. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within such period, then the period shall be extended until such information shall be made available; provided, however such extension shall not exceed one hundred and twenty (120) days. No Mortgagee shall have the right to participate in the determination of whether damage or destruction shall be repaired or reconstructed.

If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Association's Members, levy a special assessment against all Owners. Additional assessments may be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the costs or repair or reconstruction or if the improvements are not repaired or reconstructed, such excess shall be deposited to the benefit of the Association.

In the event that it should be determined by the Association in the manner described above that the damage or destruction shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event the property shall be restored to its natural state and maintained as an undeveloped portion of the Community in a neat and attractive condition.

Section 3. Property Insured By Owners: Damage and Destruction. By virtue of taking title to property within the Community, each Owner covenants and agrees with all other Owners and with the Association that in the event that the Association does not carry insurance on the Owner's property, each individual Owner shall carry liability and casualty insurance or cause such insurance to be carried by another entity, such as a condominium association or special homeowners association. Each individual Owner further covenants and agrees that in the event of a loss of damage and destruction, whether partial or total destruction, the individual Owner shall proceed promptly to repair or to reconstruct the damaged structure in a manner consistent with the original construction unless a variance is granted by the ARC. **Each Town Home Unit Owner and Condominium Unit Owner shall be responsible for insuring the portion of the Water Systems contained within the boundaries of their Lot/Unit.**

Section 4. Insurance Deductible. The deductible for any casualty insurance policy carried by the Association shall, in the event of damage or destruction, be allocated among the Persons who are responsible hereunder, or under any declaration or contract requiring the Association to obtain such insurance, for maintenance of the damaged or destroyed property.

ARTICLE IX Condemnation

Whenever all or any part of the Common Property (including any improvements installed be either Declarant or the Association that are located in an easement area) shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners subject to the taking, if any) by any authority having the power of condemnation or eminent domain, the Association shall represent the Owners, to the extent that they have a claim to the proceeds. The award made for such taking shall be payable to the Association. The provisions of Article VIII, Section 2, above, applicable to Common Property improvements damage or destruction, shall govern replacement or restoration and the actions to be taken in the event that the improvements are not restored or replaced.

ARTICLE X
Annexation of Additional Property

Section 1. Unilateral Annexation by Declarant. As the owner thereof or, if not the owner, with the consent of the owner thereof, Declarant shall have the unilateral right, privilege, and option from time to time at any time until fifteen (15) years after the recording of this Declaration to subject all or any portion of the real property described in Exhibit "C", attached hereto and by reference made a part hereof, (sometimes the "Additional Property") and as it may be amended from time to time, to the provisions of this Declaration and the jurisdiction of the Association by filing for record a Supplementary Declaration in respect to the property being annexed. Any such annexation shall be effective upon the filing for record of such Supplementary Declaration unless otherwise provided therein.

The rights reserved unto Declarant to subject additional land to the Declaration shall not and shall not be implied or construed so as to impose any obligation upon Declarant to subject any of such additional land to this Declaration or to the jurisdiction of the Association. Declarant's reserved rights shall not impose any obligation on Declarant to impose any covenants and restrictions similar to those contained herein upon such additional land nor shall such rights in any manner limit or restrict the use to which such additional land may be put by Declarant or any subsequent owner thereof, whether such uses are consistent with the covenants and restrictions imposed hereby or not.

Section 2. Exhibit "C": Real Property Amendment. Subject to the consent of the owner or owners thereof and, so long as the Declarant has the right to subject additional real property as described in Exhibit "C" (as it may be amended from time to time as herein provided) to this Declaration as provided above, with the consent of the Declarant, upon the affirmative vote of at least a majority of the Board of the Association, in person or by proxy, at a meeting duly called for such purpose, the Association may amend Exhibit "C" real property to include such additional real property as may meet the above described requirements by filing for record a Supplementary Declaration with respect to the property being annexed included by amendment to Exhibit "C" Real Property. Any such Supplementary Declaration shall be signed by the President and Secretary of the Association, and any such annexation amendment shall be effective upon the filing for record of such Supplementary Declaration, unless otherwise provided therein.

Section 3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex Additional Property pursuant to this Article for the purpose of removing any portion of the properties from the coverage of this Declaration. Such amendment shall not require the consent of any Person other than the Owner of the Property to be withdrawn, if not the Declarant. If the property is Common Area that has been deeded to the Association, the Association must consent to such withdrawal.

ARTICLE XI
Mortgagee Provisions

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

Section 1. Notices of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the Lot number, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

(a) any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Lot of any obligation under the Declaration or By-Laws of the Association which is not cured within sixty (60) days;

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

(d) any proposed action which would require the consent of a specified percentage of eligible holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first Mortgagees or at least two-thirds (2/3) of the total Association vote entitled to vote thereon consent, the Association shall not:

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

(b) change the method of determining the obligations, assessments, dues, or other charges which may be levied against an Owner of a Lot (A decision, including contracts, by the Board or provisions of any Supplementary Declaration regarding assessments for Parcels or other similar areas shall not be subject to this provision where such decision or Supplementary Declaration is otherwise authorized by this Declaration.);

(c) by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Residences and of the Common Property (The issuance and amendment of Design Guidelines, architectural standards, procedures, Rules and Regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision.);

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

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

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

Section 3. No Priority. No provision of this Declaration or the By-Laws gives or shall be construed as giving any Owner or other party priority over any rights of the first Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Property.

Section 4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such Owner's Lot.

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

Section 6. Veterans Administration Approval. Intentionally Omitted.

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

Section 8. Failure of Mortgagee to Respond. Any Mortgagee (or insurer or guarantor of a Mortgage) who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request.

ARTICLE XII Easements

Section 1. Easements for Encroachment and Overhang. There shall be reciprocal appurtenant easements for encroachment and overhang as between each Lot and such portion or portions of the Common Property adjacent thereto or as between adjacent Lots due to the placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of this Declaration) to a distance of not more than five (5) feet, as measured from any point on the common boundary between each Lot and the adjacent portion of the Common Property or as between adjacent Lots, as the case may be, along a line perpendicular to such boundary at such point; provided, however, in no event shall an easement for encroachment exist if such encroachment occurred due to willful conduct on the part of an Owner, Occupant, or the Association.

Section 2. Easements for Use and Enjoyment of Common Property. Subject to Section 8 of this Article, every Member shall have a right and easement of ingress and egress, use and enjoyment in and to the Common Property, including the Roadways, which shall be appurtenant to and shall pass with the title to his property, subject to the following provisions:

(a) the right of the Board to charge reasonable admission and other fees for the use of any portion of the Common Property, including, without limitation, swimming pools, to limit the number of guests who may use the Common Property, to allow Persons who are not Members of the Association, such as Persons living or working in the vicinity of the Community, to use the Common Property on a regular or temporary basis and to charge or not charge a user fee therefor, and to provide for the exclusive use and enjoyment of specific portions thereof at certain designated times by an Owner, his family, tenants, guests, Occupants, and invitees;

(b) the right of the Board to suspend the voting rights of an Owner and Occupant and the right of an Owner and Occupant to use the Common Property recreational facilities in the Community, if any, for any period during which any assessment which is hereby provided for remains unpaid; and, for a reasonable period of time for an infraction of the Declaration, By-Laws, use restrictions, Rules and Regulations or Design Guidelines;

(c) the right of the Board to borrow money for the purpose of improving the Common Property, or any portion thereof, or for construction, repairing or improving any facilities located or to be located thereon, and give as security for the payment of any such loan a Mortgage conveying all or any portion of the Common Property; provided, however, the lien and encumbrance of any such Mortgage given shall be subject and subordinate to any rights, interests, options, easements and privileges herein reserved or established for the benefit of Declarant, or any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community (Any provision in this Declaration or in any such Mortgage given by the Board to the contrary notwithstanding, the exercise of any rights therein by the holder thereof in the event of a default thereunder shall not cancel or terminate any rights, easements or privileges herein reserved or established for the benefit of

Declarant, or any Lot or Owner, or the holder of any Mortgage, irrespective of when executed, given by Declarant or any Owner encumbering any Lot or other property located within the Community.); and

(d) the right of the Board to dedicate or transfer all or any portion of the Common Property subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been approved by at least a Majority of the Association, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the votes cast in a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, by the Declarant.

An Owner's right of use and enjoyment in and to the Common Property and facilities locate thereon shall extend to the members of his family and guests. An Owner shall be deemed to have made a delegation of all such rights (except for the right of ingress and egress to the Owner's property) to the Occupants of any leased Residence.

Upon the affirmative vote of the Majority of the Association vote present, in person or by proxy, at a meeting duly called for such purpose (or, if a meeting is not called, upon the affirmative vote of at least a Majority of the votes cast in a referendum on the issue) and, so long as the Declarant has an option unilaterally to subject additional Property to this Declaration as provided in Article X hereof, the consent of Declarant, the Board may alter the use of any Common Property. For example, and by way of illustration and not limitation, the Board may convert tennis courts into a basketball court or vice versa.

An Owner's right of use and enjoyment in and to the Common Property and facilities located thereon shall not give any Owner the right of ingress or egress across any Lot to obtain access to such Common Property.

Section 3. Reserved Easements for the Provision of Services to the Community. There is hereby reserved to the Declarant, its successors and assigns, blanket easements upon, across, above and under all property within the Community for access, ingress, egress, installation, repairing, replacing, and maintaining: rights-of-way, drainage facilities, flood way easements, Units (as prescribed in Article V), and all utilities serving the Community, or any portion thereof, including, but not limited to, gas, water, sanitary sewer, telephone, cable, and electricity, and any other similar service such as, but not limited to, a master television antenna system, cable television system, video system, Water Systems, lawn irrigation system, fire suppression system, and/or security system which the Declarant might decide to have installed to serve the Community or any portion thereof. It shall be expressly permissible for the Declarant and its successors and assigns to install, repair, replace, maintain, and remove or to authorize the installation, repair, replacement, maintenance, or removal of such wires, conduits, cables and other equipment related to the providing of any such utility or service. Declarant and its successors and assigns shall have full rights of ingress and egress at all times over all portions of the Community for the installation, operation, maintenance, repair, or removal of any of the foregoing utilities or services and shall have the right to remove any

unauthorized obstruction placed (all ARC approved Improvements would, by definition, would not be violative of the Easement established by this Section 3) in or on any of the foregoing easements that would, in the sole discretion of Declarant or its successors and assigns, interfere with the use of the above installation of the foregoing utilities or services. In no event shall the foregoing prohibit paving or landscaping within such easements. Declarant shall have the right to assign and convey, in whole or in part, the easements reserved by it hereunder to one or more utility companies, quasi-public service companies, or relevant governmental authorities. All utilities except drainage installed within the above described easements shall be installed underground. This reserved easement, along with all other easements reserved under this Declaration to the Declarant, may be assigned by Declarant, in whole or in part, by written instrument to the Association, and the Association shall accept such assignment upon such terms and conditions as are acceptable to Declarant. Rights exercised pursuant to such reserved easements shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 4. Reservation of General Access Easement. Declarant does hereby establish and reserve for itself, the ARC, and the Association, their respective agents, employees, representative, invitees, successors and assigns, a permanent and perpetual nonexclusive easement over, across, through and upon each Lot for the purpose of providing ingress to and egress from each Lot for (a) inspecting each Lot and any Improvements thereon in order to determine compliance with the provisions of these Covenants, and (b) the performance of the respective duties of Declarant, the ARC, and the Association hereunder, including, without limitation taking any action required or permitted to be taken by Declarant, the ARC or the Association pursuant to any of the terms or provisions of these Covenants; provided, however, that upon completion and occupancy of any Lot, 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.

Section 5. Specific Easement for Lawn and Fire Sprinkler Equipment. In addition to other general easements set forth in the Declaration, the Declarant does hereby establish and reserve, for the Association, and its agents, employees, representatives, successors and assigns, a permanent and perpetual nonexclusive easement to utilize all Water Systems within the Community as either the Huntsville Fire Department and/or the Association deem necessary to provide fire suppression services in accordance with the Governmental Regulations and irrigation services for lawns in accordance with Board policy, including the right to (i) maintain, repair and replace any Water Systems in the Community or the Common Areas, and (ii) doing all other things reasonably necessary and proper in connection therewith.

Section 6. Intentionally omitted.

Section 7. Reservation of Easements With Respect to Common Areas.

(a) Easement Upon Common Areas. Declarant does hereby establish and reserve, for itself, the ARC, the Association, and their respective agents, employees, representatives, invitees,

successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing, installing, repairing and replacing any Improvements to the Community or to the Common Areas, and (ii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that nothing in this sentence shall obligate Declarant to undertake any of the foregoing. In addition to the other rights and easements established and reserved herein and regardless of whether Declarant continues to own any portion of the Property, Declarant hereby establishes and reserves for itself and its successor and assigns, a permanent and perpetual, nonexclusive easement to have access, ingress to and egress from and the right and privilege 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.

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

Section 8. Reservation of Maintenance Easement. Subject to the terms and provisions of Article V, Section 2, Declarant does hereby establish and reserve for the Association, and each of their respective 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 Community; provided, however, that such easement shall not impose any duty or obligation upon Declarant or the Association to perform any of the foregoing actions.

Section 9. Landscaping by Owners on Easement Areas. The Declarant, the Association, any Governmental Authority, any utility company, and each of their respective successors and assigns, shall not be liable to any Owner, Occupant or any other party for and on account of damage to any landscaping or plantings placed on any easement area, Roadway or public road right-of-way within the Community by any Owner, Occupant or any other party.

Section 10. Easement for Special Events. Declarant hereby reserves for itself, its successors, assigns and designees a perpetual, non-exclusive easement over the Common Area for the purpose of conducting educational, cultural, entertainment, or sporting events, as well as activities of general community interest at such locations and times as Declarant, in its sole discretion, deems appropriate. Declarant may also hold events on Common Area to promote the Development of the Community. Each Owner, by accepting a deed or other instrument conveying any interest in a Lot, acknowledges and agrees that the exercise of this easement may result in a temporary increase in traffic, noise, gathering of crowds, and related inconveniences, and each Owner agrees on behalf

of itself and the occupants of its Lot to take no action, legal or otherwise, which would interfere with the exercise of such easement or to recover damages for or as the result of any such activities.

Section 11. Surface Water and Stormwater Management System. The Association shall have the right to maintain and cause all Owners to maintain proper drainage within the Community in accordance with the stormwater drainage plan approved by the applicable Governmental Authorities having jurisdiction over the Community, as the same may be amended from time to time. In the exercise of this right, the Association shall have a blanket easement, less and except the footprint of the Dwelling erected on any Lot, and right on, over, across, under and through all portions of the Community to maintain and to correct drainage of surface water; provided, however, that each Owner shall be solely responsible for providing and maintaining adequate soil erosion measures and drainage facilities on such Owner's Lot and neither the Association nor the Declarant shall, by virtue of the reservation of the foregoing easement, be under any obligation to provide or connect any stormwater or surface drainage improvements or facilities on any Lot. The foregoing easement includes the right to cut any trees, bushes or shrubbery, grade soil, or to take any other action reasonably necessary for health or safety or to comply with Governmental Regulations; provided, however, that neither the Declarant nor the Association shall be obligated to undertake any of the foregoing actions. Notwithstanding the foregoing, each Owner shall provide and maintain on his or her Lot adequate soil erosion measures and drainage facilities to accommodate any stormwater runoff from and coming onto such Owner's Lot or resulting from any Improvements being or having been constructed on such Owner's Lot. Each Owner shall also insure that his or her Lot and any Improvements thereto are at all times in strict compliance with (a) all soil erosion protection requirements of all applicable Governmental Authorities, (b) all stormwater drainage and runoff requirements and regulations of all applicable Governmental Authorities and (c) all other Governmental Regulations. Each Owner, by acceptance of a deed to his or her Lot, shall and does hereby indemnify, defend and agree to hold the Declarant, the Architectural Review Committee, the Association, and their respective agents, employees, officers, directors, shareholders, members, managers and representatives, harmless from and against any and all fines, penalties, costs and expenses, including court costs and reasonable attorneys' fees, and any and all other amounts suffered, paid or incurred by any of them in connection with any action, suit or proceeding (including the settlement of any suit or proceeding) to which any such person may be made a party by reason of breach by such Owner (or any breach by such Owner's Occupants, contractors, subcontractors, guests, agents, employees, or invitees) of any of the terms and provisions of this Section.

Section 12. Easements for Pest Inspections, Treatments and Prevention. There shall be an easement to the Association and reciprocal appurtenant easements between adjacent Lots to allow the Association and/or each Owner to have a licensed pest control company to conduct inspections for wood destroying insects, treat for any infestations of the same, and to install preventative bait systems at such distances as shall be required to effectively prevent termite infestation. All such inspections, treatments and installation of preventative measures shall be conducted on week days during normal business hours. The Association has the primary right, but not the obligation, to provide termite prevention/treatment services for all Town Home Units and/or Condominium Units as a Common Expense to be shared among the respective Owners as a Service Assessment. In the event that the

Association does elect to provide these services in order to obtain cost advantages and uniform treatment, the Association must provide written notice to each Owner 30 days before discontinuing such services.

Section 13. Easement for Utility Encroachments. Each Lot is subject to a permanent easement in favor of both the Association and the City of Huntsville, d/b/a Huntsville Utilities, along with their respective successors and assigns, over, under and upon the portion of each Lot that lies in the front of the Unit, for the installation and maintenance of service lines to other Units in the Subdivision. The purpose of this easement is to allow the Developer and/or Huntsville Utilities to install and maintain utility service lines across any particular Lot in order to provide service to adjacent Lots.

Section 14. Townhouse Easements. Declarant intends for its Affiliate to construct a townhouse on each Lot, and construction of such Dwellings may require that certain eaves, roof overhangs, brick veneers, siding and other architectural features and building materials encroach upon or hang over contiguous Lots. Accordingly, there is hereby created, granted and reserved as an appurtenance to each Lot, a perpetual easement over and across each Lot, contiguous thereto for all such encroachments and overhangs, as well as for all encroachments and overhangs resulting from any natural movement or settling of any such Dwelling. In addition, there is hereby created, granted and reserved to the Owner or Owners of each Lot a license and right of entry across contiguous Lots as may be reasonably needed to maintain and repair such encroaching or overhanging structures. If any dwelling shall be damaged or destroyed, the Owner or Owners thereof shall be permitted to repair and reconstruct such Dwelling with encroachments and overhangs not more intrusive than those existing at the time of such damage or destruction and thereafter said license and right of entry shall continue in effect. In addition, should Declarant or any affiliate thereof develop additional residential subdivisions in the future on property adjacent to Community, there is hereby reserved to Declarant and its affiliates an easement for ingress and egress over and across the Community as may be necessary for the construction and development of the adjoining property.

Section 15. Easement for Lake Maintenance. Declarant hereby expressly reserves a perpetual easement for the benefit of Declarant and its successors and assigns, across such portions of the Community, determined in the sole discretion of Declarant (or its successors and assigns), as are necessary to allow for the maintenance of a lake(s), lakebed(s) and shoreline(s), if any, which are within the Community or which are made available for the use and enjoyment of Owners and Occupants within the Community. Such maintenance shall be performed with a minimum of interference to the quiet enjoyment of property adjacent to the lake(s), reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense. In order to allow the exercise of the rights created pursuant to this easement, no tree or structure may be placed within fifteen (15) feet of the line formed by the highest normal pool elevation of any lake without the prior written approval of the Board or its designee.

Section 16. Easement for Property Maintenance Along Lake. Every Lake Lot Owner shall have a right and easement of access to that property located between a lake and the property line of such Lake Lot Owner as needed to perform the maintenance required under Article V.

ARTICLE XIII
General Provisions

Section 1. Enforcement and Waiver. Each Owner and every Occupant shall comply strictly with the By-Laws, the Rules and Regulations, the use restrictions and with the Design Guidelines, all as may be amended or modified from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration, as may be amended from time to time, and in the deed to his or her property within the Community, if any. The Board may impose fines or other sanctions, which shall be collected as provided herein for the collection of assessments. Failure to comply with this Declaration, the By-Laws, the Rules and Regulations, use restrictions, or Design Guidelines shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Board, on behalf of the Association, or, in a proper case, by an aggrieved Owner or Occupant. Furthermore, the Board shall be entitled to recover costs and reasonable attorney's fees from the Owner and/or Occupant upon being the substantially successful party in any litigation resulting from an Owner and/or Occupant failing to comply with this Declaration in any material respect. Failure by the Board or any Owner or Occupant to enforce any of the foregoing shall in no event be deemed a waiver of the right to do so thereafter. The Board shall have the right to record in the appropriate land records a notice of violation of the Declaration, By-Laws, and to assess the cost of recording and removing such notice against the Owner who is responsible (or whose Occupants are responsible) for violating the foregoing. The Board shall have the further right to contact any real estate agent and/or broker that has a published listing and/or posted sign for the sale of a Lot of any pending violations without any liability to the Board, the Association, the Declarant and/or their respective officers, directors, shareholders, members, attorneys, agents, employees or contractors.

In addition to any means of enforcement provided elsewhere in the Governing Documents, the Association shall have the authority to assess violation charges against an Owner for violations of the Governing Document and Rules and Regulations by such Owner or such Owner's tenants, guests, invitees, agents and employees. Such charges shall be collectible as any other Assessment, including, but not limited to, constituting a lien against such Owner's Lot and being the personal obligation of such Owner. Violation charges may not be assessed in addition to the Collection Charges for the non-payment of Assessments. No violation charges shall be assessed against an Owner until the Association has given such Owner notice of the alleged violation and an opportunity for a hearing pursuant to the Bylaws and any further procedures that may be adopted by the Board. If assessed, violation charges shall not exceed \$100.00 for a single violation or \$50.00 a day, for up to 90 days, for violations of a continuing nature. Violation charges for continuing violations after 90 days may, by Board action, be increased to \$200.00 per day until such violation is abated. The Board may elect, from time to time, to increase the violation charges for inflation by using such inflation index as they deem appropriate. Such increases shall be rounded up to the nearest \$5.00 increment.

IN THE EVENT THAT THE ASSOCIATION SUPPLIES CABLE, INTERNET AND/OR PHONE SERVICE TO ONE OR MORE PORTIONS OF THE COMMUNITY, THE ASSOCIATION MAY ALSO CHOOSE TO DISCONTINUE ANY SUCH PROVIDED SERVICE TO A UNIT UNTIL SUCH TIME AS ASSESSMENTS, PLUS COLLECTION FEES, INTEREST AND ATTORNEY'S FEES ARE PAID CURRENT ON SUCH UNIT.

Suspension of such services does not abate the Owner's responsibility to pay all Assessments, including Service Assessments, during such suspension.

Section 2. Self-Help. In addition to any other remedies provided for herein, the Board or its duly authorized agent shall have the power to enter upon a Lot or any portion of the Community to abate or remove, using such force as may be reasonably necessary, any erection, thing or condition which violates this Declaration, the By-Laws, the Rules and Regulations, the use restrictions, or the Design Guidelines. Except in the case of emergency and/or time sensitive situations and towing, the Board shall give the violating Owner five (5) days' written notice of its intent to exercise self-help. All costs incurred shall be assessed against the violating Owner and shall be collected as provided for herein for the collection of assessments.

Section 3. Term. The terms, covenants, conditions and restrictions set forth in these Covenants shall run with and bind all of the Community, 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 ninety-nine (99) years from and after the date hereof, after which time these Covenants shall be automatically renewed and extended for successive and continuous periods ten (10) years each, unless, at any time after twenty (20) years from the date hereof, an agreement executed by the Owners of at least three-fourths (3/4) or more of the Lots within the Property agreeing to terminate or modify these Covenants has been recorded in the Probate Office of Madison County, Alabama; provided, however, that the rights of way and easements established, granted and reserved in Article XII hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

Notwithstanding anything herein to the contrary, these covenants and restrictions must remain in force and effect so long as Common Property is owned by the Association.

Section 4. Amendment. This Declaration may be amended unilaterally at any time and from time to time by Declarant (a) if such amendment is necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, or regulation or judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any reputable title insurance company to issue title insurance coverage with respect to the Lots subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of Mortgage loans, including, for example, without limitation the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, or a State or National Bank, to enable such lender or purchaser to make or purchase Mortgage loans on the Lots subject to this Declaration; or (d) if such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgage loans on the Lots subject to this Declaration; provided, however, any such amendment shall not adversely affect the title to any Owner's property unless any such Owner shall consent thereto in writing. Further, so long as Declarant has the right unilaterally to subject additional property to this Declaration as provided in Article X hereof, Declarant may unilaterally amend this Declaration for any other purpose; provided, however, any such amendment shall not adversely affect title to the property of any Owner without the consent of the affected Owner or Occupant.

Furthermore, so long as Declarant owns any land within the Community or has the unilateral right to annex land into the Community, or until such earlier date as Declarant elects, in Declarant's sole discretion, **Declarant may amend these Covenants by a written instrument filed and recorded in the Probate Office of Madison County, Alabama, without obtaining the approval of any Owner or Mortgagee;** provided, however, (a) in the event any amendment proposed by Declarant materially or adversely affects the title to any Lot, then such amendment shall be valid only upon the written consent thereto by the affected Owner, or, alternatively, by fifty percent (50%) of all of the Owners (including Declarant who shall have the voting rights attributable to any Lots owned by Declarant), or (b) in the event any such proposed amendment by Declarant would materially and adversely affect the title 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 this Section shall be certified by Declarant and shall be effective upon recording of the same in the Probate Office of Madison County, Alabama. 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 and further agrees that, if requested to do so by Declarant, such Owner and Mortgagee will consent to the amendment of these Covenants or any other instruments relating to the Community or the Association if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provision of 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 Lot, (iii) required by any Mortgagee in order to enable such 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 Lot within the Community.

In addition to the above, this Declaration may be amended upon the affirmative vote or written consent, or any combination thereof, of at least a two-thirds (2/3) vote of the total Association vote entitled to vote thereon or three-fourths (3/4) of the Board and, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X hereof, the consent of the Declarant. In the event of a conflict between the Board and the Association, the Board's decision controls. A meeting may be called (but shall not be required to be called) to consider and vote upon any amendment. Amendments to this Declaration shall become effective upon recordation, unless a later effective date is specified therein.

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

Notwithstanding anything contained herein to the contrary, any amendment which affects the maintenance of the Common Property must be approved by the City of Huntsville, Alabama.

Section 5. Partition. The Common Property shall remain undivided, and no Owner nor any other Person shall bring any action for partition or division of the whole or any part thereof without the written consent of all Owners of all portions of the property located within the Community, the written consent of all holders of all Mortgages encumbering any portion of the property located within

respect to any contract or other commitment made by them, in good faith, on behalf of the Association (except to the extent that they may also be Members of the Association), and the Association shall indemnify and forever hold each such officer, director, ARC member or other committee member free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, director, ARC member or other committee member, or former officer, director, ARC member or other committee member, may be entitled under the Articles, By-Laws, contract, or otherwise. The Association shall maintain adequate general liability and officers' and directors' liability insurance to fund this obligation, if such coverage is reasonably available.

Section 11. Construction and Sale Period. Notwithstanding any provisions contained in this Declaration, the By-Laws, Articles of Incorporation, use restrictions, Rules and Regulations, Design Guidelines, and any amendments thereto, until Declarant's right unilaterally to subject property to this Declaration as provided in Article X terminates, it shall be expressly permissible for Declarant and any builder or developer approved by Declarant to maintain and carry on, upon such portion of the Community as Declarant may deem necessary, such facilities and activities as in the sole opinion of Declarant may be required, convenient, or incidental to Declarant's and such builder's or developer's development, construction, and sales activities related to property described on Exhibit "B" and Exhibit "C", as it may be amended from time to time, to this Declaration, including, but without limitation: the right of access, ingress and egress for vehicular and pedestrian traffic over, under, on or in the Community; the right to tie into any portion of the Community with driveways, parking areas and walkways; the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services including, without limitation, electrical, telephone, natural gas, water, sewer and drainage lines and facilities constructed or installed in, on, under and/or over the Community; the right to carry on sales and promotional activities in the Community, including directional and sales signs in the common areas; and the right to construct and operate business offices, signs, banners, flags, construction trailers, sales offices, model residences with fences, gates and walkways, and hold open houses and Parades of Homes for the public. Declarant and any such builder or developer may use Residences or offices owned or leased by Declarant or such builder or developer as model Homes and sales offices. Rights exercised pursuant to such reserved easement shall be exercised with a minimum of interference to the quiet enjoyment of affected property, reasonable steps shall be taken to protect such property, and damage shall be repaired by the Person causing the damage at its sole expense.

Section 12. Books and Records. This Declaration, the By-Laws, the Articles of Incorporation, copies of Rules and Regulations, use restrictions, Design Guidelines, membership register, and minutes of meetings of the Members, or the Board and of committees shall be made available for inspection and copying by any Member of the Association or by his duly appointed representative and by holders, insurers, or guarantors of any first Mortgage at any reasonable time and for a purpose reasonably related to his or her interest as a Member or holder, insurer, or guarantor of a first Mortgage at the office of the Association or at such other reasonable place as the Board shall prescribe.

The Board shall establish reasonable rules with respect to:

- (a) notice to be given to the custodian of the records;
- (b) hours and days of the week when such an inspection may be made; and
- (c) payment of the cost of reproducing copies of documents.

Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make extra copies of documents at the reasonable expense of the Association.

Section 13. Audit. An audit of the accounts of the Association may be made annually in such manner as the Board may decide. Upon written request of any institutional holder of a first Mortgage, such holder, upon payment of the costs associated therewith, shall be entitled to receive a copy of a financial statement within ninety (90) days of the date of the request.

Section 14. Notice of Sale. It is the express obligation of an Owner who sells his or her Lot, to give notice to the Association, in writing, of the name of the purchaser of the Lot and such other information as the Board may reasonably require.

Section 15. Estoppel Certificate. Upon the request of any Member, the Board or its designee shall furnish a written certificate signed by an officer or agent of the Association regarding unpaid assessments levied against that Member's property and any violations of the Declaration, By-Laws, use restrictions, Rules and Regulations, or Design Guidelines by any Owner or Occupant of such property. Such certificate shall bind the Association with respect to the foregoing matters. The Association may require the advance payment of a processing fee not to exceed Twenty-five (\$25.00) Dollars for the issuance of each such certificate.

Section 16. Agreements. Subject to the prior approval of Declarant, so long as the Declarant has an option unilaterally to subject additional property to this Declaration as provided in Article X above, all agreements and determinations, including settlement agreements regarding litigation involving the Association, lawfully authorized by the Board shall be binding upon all Owners, their heirs, legal representatives, successors, assigns, and others having an interest in the Community or the privilege of possession and enjoyment of any part of the Community.

Section 17. Implied Rights. The Association may exercise any right or privilege given to it expressly by the Declaration, the By-Laws, the Articles of Incorporation, any use restriction, Rule or Regulation, the Design Guidelines and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it therein or reasonably necessary to effectuate any such right or privilege.

Section 18. Deviations. The Board or its designee or the Declarant so long as the Declarant has an option to subject additional property to the declaration as provided in Article X above, may, in the exercise of its discretion, permit deviations from the restrictions contained in this Declaration, the By-Laws, the Rules and Regulations, the use restrictions, and the Design Guidelines.

Section 19. Use of Words "MidTowne". No Person shall use the words "MidTowne" in the name of any commercial or residential building or any commercial or residential business or enterprise or in any printed or promotional material without the prior written consent of the Declarant. However, Owners or Occupants may use the term "MidTowne" in printed or promotional matter where such term is used solely to specify that particular property is located within MidTowne.

Section 20. No Reverter. No restrictions herein is intended to be, or shall be construed as, a condition subsequent or as creating the possibility of a reverter.

Section 21. Counsel. The drafter of this Declaration, the Articles and the By-Laws, prepared said instruments on behalf of the Declarant and not for the benefit of future Owners.

Section 22. Consent of Owners. Whenever the consent of the Owners is required with respect to any action described herein, the consent of the Owner or Owners of any Lot shall be deemed given if any record Owner of a Lot (whether one or more) shall evidence such consent in writing.

Section 23. Effect of Violation on Mortgage. No violation of any provision of this Declaration shall defeat or render invalid any mortgage made in good faith and for value upon any portion of the Real Estate; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' or foreclosure sale shall be bound by and subject to this Declaration as fully as any other Owner.

ARTICLE XIV Specific Rights of Declarant

Section 1. Right of Declarant to Modify Restrictions to Land Owned by Declarant. With respect to any land owned by Declarant, Declarant may, by deed, contract or other instruments filed for the record in the manner specified by law, modify the provisions of these Covenants as the same apply to any such Lot, including but not limited to, the withdrawal of any such Lot from the operation and effect of these Covenants. Declarant specifically reserves the right to modify, release, amend, void, transfer or delegate all the rights, reservations, and restrictions herein set forth, or the right to modify, release, amend, void or transfer any one or more of such restrictions on the Lots.

Section 2. Development of Property. Subject to the approval of any Governmental Authority with appropriate jurisdiction, Declarant shall have the right, but not the obligation, for so long as Declarant owns any portion of the Community, or until such earlier date as Declarant elects in its sole discretion to relinquish such right, to make improvements and changes to all Common Areas and to all Lots owned by 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 Lot owned by Declarant or of the Common Areas, (iii) installation of any water, sewer and any other utility systems and facilities within the Common Areas, or (iv) any other change or Improvement to any portion of the Common Areas or to the Lots owned by Declarant.

Section 3. Declarant's Right to Remove Portions of or Add to the Property. Other provisions herein to the contrary notwithstanding, Declarant shall have the right, at any time, in its sole discretion to (i) remove from the provisions of this Declaration, the Articles and the bylaws, any portion or portions of the Community as Declarant might determine, in its sole discretion, provided that, at the time of the removal, the portions of the Property removed are owned by Declarant, or the Owner's consent is obtained and (ii) add to the provisions of this Declaration, the Articles and the Bylaws additional Lots of real property whether presently owned or subsequently acquired by Declarant. Any portions of the Property so removed by Declarant shall no longer be affected or encumbered in any manner by the provisions of this Declaration, the Articles or the Bylaws. Declarant shall have and does hereby reserve unto itself the power and authority to execute and effectuate, without the approval of any other persons or entities, amendments to this Declaration, the Articles and the Bylaws as Declarant shall deem appropriate to amend the legal description of the Property and to carry out and enforce the rights reserved unto itself under this Section.

Section 4. No Development Scheme. The size, configuration, style, location and any other of the characteristics of any particular Lots of Improvements thereto shall not in any manner bind or restrict Declarant with respect to the characteristics of the development of any other portion of the Property. Declarant shall have the right to redesign and relocate the roads, drives and entrances on the Property and to change the size, configuration, style, location and other characteristics of any lots of Lots to be created within the Community in such manner as Declarant deems appropriate.

Section 5. Subdivision Plat. Declarant reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, a subdivision plat setting forth such information as Declarant may deem necessary with regard to the Community, including without limitation, the locations and dimensions of all Lots, Common Areas, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, setback line restrictions, retention ponds and drainage basins. Any such subdivision plats or any amendments thereto shall be binding on the portions of the Community indicated thereon as if such subdivision plat were specifically incorporated into these Covenants. Notwithstanding anything provided to the contrary in these Covenants, Declarant may at any time or from time to time divide and re-divide, combine and re-subdivide any Lots and/or land owned by Declarant and change any easement description or relocate any roads affected thereby, subject to approval of any Governmental Authority having jurisdiction thereof.

Section 6. Board. The Board of Directors shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws and in this Declaration. Declarant hereby retains and shall have the right to appoint or remove members of the Board of Directors, with or without cause, except as otherwise set out in the Bylaws, in Declarant's sole discretion, during the Class B Control Period.

Section 7. Control by Developer. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THESE COVENANTS, THE ARTICLES OF INCORPORATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE COMMUNITY, DECLARANT HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN THE ORIGINAL BYLAWS. 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 in accordance with the foregoing provisions of this Section 5 and the provisions of the original Bylaws. Upon termination of the Class "B" membership, or at such earlier date as Declarant elects, in Declarant's sole discretion, the Class "B" appointed board members shall resign and their positions shall be filled by the remaining Board members until the next annual meeting at which time the Owners shall elect new Board members to fill the positions of those Class "B" appointed board members who have resigned. The new Board shall undertake the responsibilities of the former Board and Declarant shall deliver all books, accounts and records of the Association, if any, which Declarant has in its possession.

Section 8. Standards for Review. Whenever in this Declaration, the Declarant, the Architectural Review Committee, or the Association have the right to approve, consent to, or require any action to be taken pursuant to the terms or provisions 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 the Declarant, the Architectural Review Committee, or the Association, as the case may be.

Section 9. Builder Approval. Subject to the remaining terms and provisions of this Section, only Builders who are authorized and approved by the Declarant and/or the ARC will be allowed to build, renovate, improve or refurbish Dwellings within the Community. Approved Builders must comply with all construction regulations of the Architectural Review Committee, including, specifically, building in accordance with the plans and specifications approved by the Architectural Review Committee and compliance with all the terms and provisions of the Declaration. Approved Builders may be required to post a deposit in an amount of up to two percent (2%) of the estimated sales price of each Dwelling under construction, the amount of which shall be determined from time to time by the Architectural Review Committee, in order to insure compliance and offset for damages and/or fines. To the extent any Approved Builder fails, in the sole discretion of the ARC, to comply with all of the requirements of the Architectural Review Committee and/or the Declaration, such failure to comply may result in fines, forfeiture of the deposit and revocation of the right to build in the Community and removal from the Approved Builder list. Failure to pay any fines imposed by the ARC within 14 days of the imposition of the fine shall result in automatic removal from the Approved Builder list. The Declarant is not responsible for any claims relating to the construction of the any Improvements; such claims are solely the responsibility of the individual Builder. No home may be constructed in the Community unless an approved Builder is responsible for the supervision of the construction. The intent of this provision prohibits individual Owners from constructing their own Residence without the assistance of a licensed and approved Builder.

Section 10. Improvement of Common Areas. DECLARANT SHALL HAVE THE RIGHT, BUT NOT THE OBLIGATION, TO IMPROVE THE COMMON AREAS OR ANY PORTION THEREOF WITH SUCH AMENITIES AS DECLARANT, IN ITS SOLE DISCRETION, MIGHT DEEM APPROPRIATE. DECLARANT HAS NO PRESENT PLAN TO MAKE ANY SPECIFIC IMPROVEMENTS, AND NO REPRESENTATION IS HEREBY MADE THAT SUCH WILL OR WILL NOT BE MADE.

Section 11. Declarant's Exemption. Declarant and any Lot or other portion of the Property owned by Declarant (until such owners Lot is transferred) shall be exempt from the covenants and requirements of Article VI.

SIGNATURES ON FOLLOWING PAGE(S).

IN WITNESS WHEREOF, the undersigned Owners and Mortgagees have caused this instrument to be executed as of this the 14th day of December, 2007.

STREET SIDE COMMUNITIES, INC.

By: 

Sandra P. Steele

Its: Executive Vice President

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that Sandra P. Steele, whose name as Executive Vice President of Street Side Communities, Inc., an Alabama corporation, whose name 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 the instrument, she, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this the 14th day of December, 2007.



Notary Public

My Commission Expires: 10/10/2011

RATIFIED BY MORTGAGEES AND HARRIS:

FIRST COMMERCIAL BANK OF HUNTSVILLE

By: *Angel Chambers*
Its: *Vice President*

REGIONS BANK

By: *Don Salyer*
Its: *see Vice President*

MARK HARRIS HOMES, LLC

By: *M. Harris*
Mark Harris
Its: Manager

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that *Angel Chambers*, whose name as *Vice President* of First Commercial Bank of Huntsville, whose name 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 the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal this the *14* day of *December*, 2007.

Sandy Fort
Notary Public
My Commission Expires: *July 17, 2010*

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that Tom Henken whose name as Sr. Vice President of Regions Bank, whose name 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 the instrument, he/she, as such officer and with full authority, executed the same voluntarily for and as the act of said banking corporation.

Given under my hand and official seal this the 14 day of December, 2007.

Sandy Ruten
Notary Public
My Commission Expires: July 9, 2010

STATE OF ALABAMA

COUNTY OF MADISON

I, the undersigned Notary Public in and for said county and state, hereby certify that Mark Harris, whose name as, whose name is signed to the foregoing instrument in his capacity as Manager of Mark Harris Homes, Inc., and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Manager, and with full authority, executed the same voluntarily for and as the act of said limited liability company.

Given under my hand and official seal this the 14th day of December, 2007.

Kendall Gunnels
Notary Public
My Commission Expires: 10/10/2011

EXHIBIT "A"
Definitions

The following words, when used in this Declaration or in any Supplementary Declaration (unless the context shall prohibit), shall have the following meanings:

"Approved Builder" and/or **"Builder"** shall mean any Person who holds either a general contractor's license (provided that such Person is approved for residential construction and/or renovation) or a Homebuilder's license with the respective Governing Authorities with the State of Alabama and who is identified, from time to time, by the Declarant during the Class B Member Control Period, or the Board after such time, as being approved to purchase Lots and construct Dwellings for resale in the Community for so long as such persons remain on the approved builder list maintained by the Declarant and/or the ARC.

"Articles of Incorporation" shall mean the Articles of Incorporation of MidTowne Owners Association, as such document may be amended.

"Association" shall mean and refer to MidTowne Owners Association, a nonprofit, non-stock, membership corporation incorporated under the laws of the State of Alabama, its successors and assigns.

"Association Expenses" shall mean and include the actual and estimated expenses of operating the Association, both for general and Parcel purposes, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to the Declaration, the By-Laws, and the Articles of Incorporation.

"Board of Directors" or **"Board"** shall mean the governing body of the Association, and the Board shall have such duties as are provided in the Declaration, the By-Laws, the Articles of Incorporation, and the Alabama Nonprofit Corporation Act.

"By-Laws" shall refer to the By-Laws of MidTowne Owners Association, as such document may be amended from time to time. The initial By-Laws of the Association are attached hereto as Exhibit D.

"Certificate of Occupancy" shall mean any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any Lot.

"Cluster" shall mean each group of either Town Home Units or Condominium Units that are connected by the same roof, facade and/or Water Systems.

"Common Areas" and/or **"Common Property"** shall mean and refer to all real and personal property now or hereafter owned by the Association for the nonexclusive, common use and enjoyment of the Owners and Occupants. The Common Areas shall include (a) all signage, street lights, lighting, walkways, paths, bicycle and jogging paths or lanes, if any, improvements, landscaped or other areas

of common use, (b) all storm drains and sewers, drainage and/or watershed protection areas located within the Community (other than such areas located solely within the boundary lines of any Lot), (c) 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 on more than one Lot, (d) all easements and easement areas within the Community (other than such areas located solely within the boundary lines of any Lot), (e) any other areas or Improvements on or within the Community which are designated as Common Areas by Declarant or the Board from time to time, (f) any and all easements and easement areas within the boundary lines of any Lot upon which a Community installed (whether by Declarant or the Association) fence or berm is located and/or any such areas within Lot boundaries that are designated by plat as being a "Landscape Easement," and (g) all Roadways. The designation of any land and/or Improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment thereof or any other rights, licenses or benefits therein. The designation of any real estate as Common Area on any recorded plat shall not be a dedication to the Association. Such dedication may only take place upon the execution and recording of a deed, or quit claim deed, from the Declarant to the Association.

"Condominium Unit" shall mean and refer to any parcel of real estate created and designated as a "Unit" under the Alabama Uniform Condominium Act of 1991.

"Community" and or **"Property"** shall mean and refer to that certain real property and interests therein described in Exhibit "B", attached hereto, and such additions thereto of other real property as may be made by the Association by Supplementary Declaration.

"Community-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing in the Community. Such standard may be more specifically determined by the Board of Directors of the Association and by committees required or permitted to be established pursuant to the Declaration and By-Laws. Such determination, however, must be consistent with the Community-Wide Standard originally established by the Declarant.

"Declarant" and or **"Developer"** shall mean and refer to STREET SIDE COMMUNITIES, INC., and its successors-in-title and assigns, provided any such successor-in-title or assign shall acquire for the purpose of development or sale all or any portion of the remaining undeveloped or unsold portions of the real property described in Exhibit "B", attached hereto, and provided further, in the instrument of conveyance to any such successor-in-title or assign, such successor-in-title or assign is designated as the "Declarant" hereunder by the grantor of such conveyance, which grantor shall be the "Declarant" hereunder at the time of such conveyance; provided, further, upon such designation of such successor Declarant, all rights of the former Declarant in and to such status as "Declarant" hereunder shall cease, it being understood that as to all of the property described in Exhibit "B" attached hereto, which is now or hereafter subjected to this Declaration, there shall be only one person or legal entity entitled to exercise the rights and powers of the "Declarant" hereunder at any one point in time.

"Declaration" and or **"Covenants"** shall mean the Declaration of Covenants, Conditions, Restrictions and Easements for MidTowne, as such document may be amended.

"Dwelling" or "Unit" shall mean any structure built, existing or under construction on a Lot for human habitation.

"General Assessments" shall mean assessments levied for Association Expenses determined by the Board to benefit all Owners and Occupants.

"Governing Documents" shall mean the Declaration, Articles, and Bylaws.

"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 Property.

"Improvements" shall mean and refer to all dwellings, any building, Structure, planting or device constructed, erected or placed upon any Lot or Common Area which in any way affects the exterior appearance of any Lot or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, septic tanks, 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 conditions of any Lot.

"Lake Lot Owner" shall mean and refer to the Owner of any Residence whose rear and/or side Lot line(s) abuts a portion of the Common Area that contains a Lake with the Lake elevation being located within 50 feet, or less, from any Lot line of such Owner.

"Lot" shall mean and refer to any subdivided portion of land in the Community (with the exception of the Common Areas). Upon the recordation of any subdivision plat or any Declaration of Condominium for the Community, each lot and/or unit, respectively, indicated thereon shall be deemed a Lot for purposes of these Covenants.

"Maintenance" shall mean the exercise of reasonable care to keep the Lots and the Common Areas, including buildings, Dwellings, roads, easements of ingress, drainage easements, sign easements, utility easements, parks, landscaping, lighting and other related improvements and fixtures in a condition comparable to their original condition. All drainage structures shall be constructed and maintained according to the local governing regulations.

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

"Member" shall mean a Person that is a member of the Association as provided in the Declaration.

"MidTowne" shall mean MidTowne at the Park Subdivision, along with all current and any and all future phases on property described in Exhibits "B" and "C."

"Mortgage" means any first mortgage, deed of trust, and any and all other similar instruments used for the purpose of conveying or encumbering real property in favor of a Mortgagee as security for the payment or satisfaction of an obligation.

"Mortgagee" shall mean the holder of a Mortgage who is a recognized institutional lender. An individual or other non-institutional entity may only become a Mortgagee by acquiring a Mortgage from a recognized institutional lender.

"Occupant" shall mean any Person occupying all or any portion of a Residence or other property located within the Community for any period of time, regardless of whether such Person is a tenant of the Owner of such property.

"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 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.

"Person" means any natural person, as well as a corporation, joint venture, partnership (general or limited), association, trust, or other legal entity.

"Residence" shall mean a portion of the Community designated on an approved layout plan or subdivision plat, as more particularly described below, for any type of independent use and occupancy as a residence by a single family. For example, each single family detached home shall constitute a Residence; each Condominium Unit in a condominium development shall constitute a Residence; each Apartment Unit in an Apartment Complex shall constitute a Residence; and each townhome or cluster home unit in an attached or semi-attached housing development shall constitute a Residence. The foregoing examples are set out by way of illustration and not in limitation of the term "Residence." Residence shall include all portions of the land owned as well as any structure thereon, as described above. Except where it is clear that a different usage is intended, references to a Lot shall include the term "Residence." A Residence shall come into existence for the purpose of assessments on the earliest date of the happening of any of the following events: (1) when a Certificate of Occupancy is issued by the proper governing authority; (2) in the case of a Lot in a subdivision, the expiration of one year from the date the subdivision is accepted for maintenance by the proper governing authority (unless made earlier or later by contract between Declarant and Owner) or (3) in the case of a Condominium Unit, as provided in the Declaration of Condominium. For purposes of the section on Assessments, Lot shall include the term Residence.

"Residential Use" shall mean and refer to the occupancy of any Lot for single-family residential housing purposes.

"Roadway(s)" shall mean and refer to all roads within the Community that do not constitute private driveways.

"Rules and Regulations" shall mean and refer to the rules and regulations adopted by the Board pursuant to the authority arising under Article VI, Section 1, and other provisions of the Covenants.

"Service Assessment" shall mean and refer to the charge or charges imposed upon a section, neighborhood, housing type, or subdivided parcel of the Community for certain services rendered pursuant to this Declaration.

"SFD Unit" shall refer to a single family detached Dwelling.

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

"Structure" shall mean and refer to:

(i) anything or object other than trees, shrubbery, landscaping and hedges less than two feet high) the placement of which upon any Lot may affect the appearance of such Lot, including any dwellings, buildings, sheds, foundations, covered or uncovered patios, garages, driveways, greenhouses, walkways, paving, curbing, parking areas, fences, screening, walls, signs, swimming pools, wishing wells, bird baths, statues and any other temporary or permanent improvements on such Lot;

(ii) Any excavation, fill, ditch, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any Lot;

(iii) Any change of more than six inches in the grade of any Lot.

"Town Home Unit" or **"Town Home"** shall mean any Dwelling, other than a Condominium Unit, that is located in a Cluster.

"Unit" shall include any Dwelling and/or Lot, unless the context clearly intends a different meaning.

"Water Systems" shall mean shall mean all pipes, water lines, valves, risers, flow meters and other plumbing features associated with the fire suppression system and/or lawn irrigation system installed in connection with each Cluster. The Water Systems shall be owned by the Association and Builder shall be required to convey title to the same by a quit claim bill of sale. Plumbing features specific to any Unit are excluded from this definition and the responsibility for maintaining the same shall be placed upon the respective Owners.

EXHIBIT B

Lots 1 -10, 25 - 40, and 78 - 93 according to the map of plat of MidTowne on the Park Phase 1A as recorded as Instrument Number 20070830000619720, Probate Records of Madison County, Alabama.

AND ALSO:

Lots 11 - 25, 40 - 61, and 71 - 77 according to the map of plat of MidTowne on the Park Phase 1B, a resubdivision of Tract A of MidTowne on the Park Phase 1A, as recorded as Instrument Number 20071022000739970, Probate Records of Madison County, Alabama.

AND ALSO:

Lots 63 - 70 according to the map of plat of a Resubdivision of Tract A of MidTowne on the Park Phase 1B, a resubdivision of Tract A of MidTowne on the Park Phase 1A, as recorded as Instrument Number 20071025000748990, Probate Records of Madison County, Alabama.

EXHIBIT "C"

All property within a 1 mile radius of the perimeter of the property described in Exhibit "B."

EXHIBIT "D"
BY-LAWS

BY-LAWS
OF
MIDTOWNE
OWNERS ASSOCIATION

Prepared by:

Samuel H. Givhan
Attorney for Declarant
100 Washington Street
Huntsville, Alabama 35801
Telephone Number: (256) 533-0202

BY-LAWS
OF
MIDTOWNE
OWNERS ASSOCIATION

Article 1

Name, Membership, and Definitions

Section 1. Name. The name of the Association shall be MIDTOWNE OWNERS ASSOCIATION (hereinafter sometimes referred to as the "Association").

Section 2. Membership. Provisions regarding membership in the Association are fully set forth in the Declaration of Covenants, Conditions, Restrictions and Easements for MidTowne at the Park Subdivision, (this Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), the terms of which pertaining to membership are specifically incorporated by reference herein.

Section 3. Definitions. The words used in these By-Laws shall have the same meaning as set forth in the Declaration, unless the context shall prohibit.

Article II

Association: Meetings, Voting, Proxies, Quorum

Section 1. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board of Directors, either in the Community or as convenient thereto as practical.

Section 2. First Meeting and Annual Meetings. An annual or special meeting shall be held after the Association's directors are no longer appointed by the Declarant. Annual meetings shall be set thereafter by the Board so as to occur within sixty (60) days of the close of the Association's fiscal year. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held at the same hour on the first day following which is not a legal holiday (excluding Saturday and Sunday). Any Member may attend an annual meeting. Failure to hold an annual meeting at the designated time shall not, under any circumstances, invalidate the corporate existence or otherwise affect valid corporate acts.

Section 3. Special Meetings. The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a Majority of the Board or upon a petition signed by Owners holding at least twenty-

five (25%) percent of the total Association vote entitled to vote thereon. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting, except as stated in the notice. Any Member may attend a special meeting.

Section 4. Notice of Meetings. It shall be the duty of the Secretary to mail or to cause to be delivered to each Member a notice of each annual or special meeting of the Association stating the purpose of the special meeting, as well as the time and place where it is to be held. If an Owner wishes notice to be given at an address other than his or her Residence, he or she shall designate by notice in writing to the Secretary such other address. The mailing or delivery of a notice of meeting in the manner provided in this Section shall be considered service of notice so long as Article VI, Section 4 of the By-Laws is complied with. In addition to serving notice as provided above, or as an alternative thereto, the Board may serve notice of an annual or special meeting by publishing notice in a newspaper or newsletter circulated within the Community. The date of publication shall be the date that notice is served. Notices shall be served not less than ten (10) nor more than fifty (50) days before a meeting.

Section 5. Waiver of Notice. Waiver of notice of a meeting of the Association shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Association, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, shall be deemed waiver by such Member of notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order.

Section 6. Adjournment of Meetings. If any meeting of the Association cannot be held because a quorum is not present, a Majority of the Association vote present at the meeting, in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 7. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights are specifically incorporated herein. Voting may be held either by referendum or at a meeting. Unless a vote on any question is required by law or is required by the Declaration or By-Laws to be taken at a meeting (in which case a meeting shall be called and proxies shall be sent to all Members entitled to vote on the issue(s) to be decided at the meeting), elections and other matters requiring a membership vote may be submitted on a ballot or ballots to the Members in referendum by mail or at polling places in MIDTOWNE. Ballots shall be returned to the Secretary by the date specified on the ballot. The Board shall determine the method of voting, the form of all ballots, the wording of questions thereon and the deadline for return of ballots. It shall designate the number and location of polling places, if any. The Board may include on any ballot questions on which it seeks an advisory vote. Members may suggest questions for an advisory vote which shall be evaluated by the Board for consistency with the exercise of its duties and

responsibilities. In any advisory vote, each such question on a ballot shall indicate that the vote is for advisory purposes only. Notice of referenda shall be given in the same manner as notice of meetings.

Section 8. Proxies. At all meetings of the Association, Members entitled to vote may vote in person or by proxy. All proxies shall be in writing, dated, and filed with the Secretary before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Owner of his or her Residence, upon receipt of notice by the Secretary of the death or judicially declared incompetence of an Owner, or of written revocation, or upon the expiration of eleven (11) months from the date of the proxy.

Section 9. Quorum. The presence, in person or by proxy, of Members entitled to cast at least ten (10%) percent of the votes of Members entitled to vote on the issue(s) before the meeting shall constitute a quorum at all meetings of the Association. The Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Members to leave less than a quorum, so long as any action taken thereafter is approved by at least a Majority of the votes required to constitute a quorum. The quorum for a referendum shall be twenty-five (25%) percent of the votes of Members entitled to vote thereon, except that there shall be no quorum requirement for advisory votes.

Section 10. Assessments. The rights of membership are subject to the payment of annual assessments and charges and other assessments as provided in the Declaration. The obligation of such assessments and charges is imposed against each Member of, and is a lien upon, the Member's Lot against which such assessment or charge is made, as provided by the Declaration. Assessments shall be determined by the Board of the Association and levied as set forth in the Declaration. Such assessments shall be used for the purposes set forth in Declaration and for such other purposes as may be set forth in the Articles.

Section 11. Suspension of Membership Rights. The membership rights of any Member including the right to vote, may be suspended by the Board of Directors (a) for any period during which any assessment or charge owed to the Association by such Member remains unpaid and, (b) for a period not to exceed thirty (30) days for any infraction of the Association or the Architectural Review Committee's published Rules and Regulations. Any such suspension shall not affect such Member's obligation to pay Assessments coming due during the period of suspension and shall not affect the permanent charge and lien on the Member's Lot in favor of the Association.

Section 12. No transfer. Membership in the Association shall not be transferable or assignable except in connection with the transfer of a Lot.

Section 13. Limited Liability. No Member of the Association shall be individually or personally liable to the creditors of the Association for any indebtedness or liabilities of the Association, and any all creditors of the Association shall look only to the assets of the Association for payment of any such indebtedness or liabilities.

Section 14. Alternative Voting Procedures. Notwithstanding any other provision of these Bylaws, to the extent permitted by the laws of Alabama, any vote to be taken of the members upon a stated proposal or for the election of directors may be taken by mail, and the number of votes necessary for passage of the proposal or election as a Director shall be the same as if the vote were taken at a meeting.

Article III

Board of Directors

A. Composition and Selection.

Section 1. Governing Body; Composition. The affairs of the Association shall be governed by a Board of Directors, each of whom shall have one equal vote. Except with respect to directors appointed by the Class "B" Member or serving as a representative of the Declarant, the directors shall be eligible Members or residents; provided however, no Owner and resident representing the same Lot may serve on the Board at the same time. No Owner or resident shall be eligible to serve as a director if any assessment for such Owner's or resident's Lot is delinquent. A "resident" shall be any natural person 19 years of age or older whose principal residence is within the Community. In the case of a Member which is not a natural person, any officer, director, partner, member, employee, or trust officer of such Member shall be eligible to serve as a director unless otherwise specified by written notice to the Association signed by such Member, provided that no Member may have more than one such representative on the Board at a time, except in the case of directors appointed by or serving as a representative of the Class "B" or the Declarant.

Section 2. Directors During Class "B" Control Period. Subject to the provisions of this Article, the directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member during the Class "B" Control Period. Directors appointed by or serving as a representative of the Class "B" Member or the Declarant shall not be subject to the qualifications for directors set forth in Section 1.

Section 3. Veto. After the termination of the Declarant's right to appoint Directors and officers, the Declarant shall have a veto power over all actions of the Board, as is more fully provided in this Section. This power shall expire upon the expiration of Declarant's option unilaterally to subject additional property to the Declaration, unless earlier surrendered in writing. This veto power shall be exercisable only by Declarant, its successors, and assigns who specifically take this power in a recorded instrument. The veto shall be as follows:

No action authorized by the Board of Directors shall become effective, nor shall any action, policy, or program be implemented until and unless:

(a) Declarant shall have been given written notice of all meetings and proposed actions to be approved at meetings by certified mail, return receipt requested, or by personal delivery at the

address it has registered with the Secretary of the Association, as it may change from time to time, which notice shall comply with the provisions of these By-Laws regarding notice of regular and special meetings of the Directors and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth in reasonable particularity the agenda to be followed at the meeting; and

(b) Declarant shall have been given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board or the Association. Declarant and its representatives or agents shall make its concerns, thoughts, and suggestions known to the Members of the Association and/or the Board. As to such meeting, Declarant shall have and is hereby granted a veto power over any such action, policy, or program authorized by the Board of Directors and to be taken by the Board. The veto may be exercised by Declarant, its representatives, or agents within fourteen (14) days after notice in writing to Declarant of action taken by the Board of Directors. Any veto power shall not extend to the requiring of any action or counterclaim on behalf of the Board.

Section 4. Number of Directors. The initial Board of Directors shall consist of three (3) members. The Board shall be increased to seven (seven) members as provided in Section 5 of this Article. After the Turnover Date, the number of directors may be increased or decreased by resolution of the Board. However, in no event shall such number be reduced to less than three (3).

Section 5. Election and Term of Office.

(a) On the eighth (8th) anniversary of the recording of the Declaration, the Board shall be increased to seven (7) directors and Class "A" Members shall be entitled to elect two (2) of the seven (7) directors, who shall be at-large directors and shall serve a term of two (2) years, beginning _____, 2015. The remaining five (5) directors shall be appointees of the Class "B" Member.

(b) On the tenth (10th) anniversary of the recording of the Declaration, Class "A" Members shall be entitled to elect three (3) of the seven (7) directors, who shall be at-large directors and shall serve a term of two (2) years, beginning _____, 2017. The remaining directors shall be appointees of the Class "B" Member.

(c) Until the termination of the Class "B" membership, the Class "B" Member shall be entitled to appoint four (4) directors. Upon termination of the Class "B" membership, the directors appointed by the Class "B" Member shall resign and the remaining directors shall be entitled to appoint directors to serve until the next annual meeting, at which time the Class "A" Members shall be entitled to elect directors to fill such positions. The two newly elected directors receiving the fewest votes shall serve until the following _____. The other two newly elected directors shall serve for one year longer than the former two.

(d) Notwithstanding anything above, until the Turnover Date, Declarant may remove any

elected or appointed Director. Any elected director shall be replaced by the remaining Directors as provided in Section 8. Any appointed director shall be replaced by the Declarant.

Section 6. Nomination of Directors. The Board may establish a nominating committee consisting of a chairperson, who shall be a member of the Board, and three or more Members or representatives of Members. If established, the nominating committee shall be appointed by the Board not less than 30 days prior to each election to serve a term of one year or until their successors are appointed, and such appointment shall be announced at each such election. A nominating committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled as provided in Section 5 above.

Nominations shall be also permitted from the floor at a meeting of the Members. All candidates shall have a reasonable opportunity to communicate their qualifications to the Members and to solicit votes. Directors appointed by or serving as a representative of the Class "B" Member or the Declarant shall not be subject to these nomination requirements.

Elected Directors may be elected by referendum. Those candidates receiving the largest number of votes shall be elected. In the case of a tie vote, the winner shall be determined by the flip of a coin.

All Owners of Residences eligible to vote shall have the right to vote on all Directors to be elected as provided in the Declaration. The election shall be by a plurality of the votes cast. There shall be no cumulative voting. Each Member shall be entitled to cast his vote for each of as many nominees as there are vacancies to be filled at the time of the election.

The Declarant, in its sole discretion and without loss of any rights herein to the contrary, may permit Owners of Residences to elect a larger number of Directors earlier than is required herein.

Section 7. Removal of Directors. At any regular or special meeting of the Association duly called, any one (1) or more of the members of the Board may be removed, with or without cause, by Owners holding a Majority of the total Association vote entitled to vote thereon and a successor may then and there be elected to fill the vacancy thus created. A Director whose removal has been proposed by the Members shall be given at least ten (10) days' notice of the calling of the meeting and the purpose thereof and shall be given an opportunity to be heard at the meeting. Additionally, any Director who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of an assessment for more than three (3) calendar months shall automatically be removed from the Board. This Section shall not apply to Directors appointed by Declarant.

Section 8. Vacancies. Vacancies in the Board of Directors caused by any reason, excluding the removal of a Director by vote of the Members, shall be filled by a vote of the Majority

of the remaining Directors at any meeting of the Board of Directors. Each Person so selected shall serve the unexpired portion of the term.

B. Meetings.

Section 9. Organization Meetings. The first meeting of the members of the Board of Directors following each referendum of the membership shall be held promptly thereafter at such time and place as shall be fixed by the Board.

Section 10. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a Majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the regular schedule shall constitute sufficient notice of such meetings.

Section 11. Special Meetings. Special meetings of the Board shall be held when requested by the President, Vice President or by any two (2) Directors. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each Director by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the Director or to a Person at the Director's home or office who would reasonably be expected to communicate such notice promptly to the Director; or (d) by facsimile transmission with confirmation of delivery. All such notices shall be given or sent to the Director's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or facsimile transmission must be received at least forty-eight (48) hours before the time set for the meeting.

Section 12. Waiver of Notice. The transactions of any meeting of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice, if (a) a quorum is present, and (b) either before or after the meeting, each of the Directors not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any Director who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 13. Quorum of Board of Directors. At all meetings of the Board, a Majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a Majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board of Directors. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a Majority of the required quorum for that meeting. If any meeting cannot be held because a quorum is not present, a Majority of the Directors who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time that the original meeting

was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 14. Compensation. Directors may not receive compensation from the Association for acting as such, unless such compensation is approved by the Members. Directors may be reimbursed for their actual out-of-pocket expenses necessarily incurred in connection with their services as Directors.

Section 15. Open Meetings. (a) Except as provided in this Section, all meetings of the Board shall be open to all Members, but Members other than Directors may not participate in any discussion or deliberation unless expressly so authorized by the Board. In such case, the President may limit the time, in his/her sole unfettered discretion, unless overruled by a majority of the Board, any such individual may speak, (b) Notwithstanding the above, the President may adjourn any meeting of the Board and reconvene in executive session, and may exclude persons other than directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matter, real estate contracts, employee reviews, etc.

Section 16. Executive Session. The Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a sensitive nature as determined by the Board President. Provided, however, that a majority of the Board may overrule the President's decision to hold an executive session.

Section 17. Action Without A Formal Meeting; Conference Call Meetings. Any action to be taken at a meeting of the Board or any action that may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors. A member or members of the Board may participate in a meeting of the Board by means of conference telephone or similar communications equipment, by means of which all Persons participating in the meeting can hear each other. Such participation shall constitute presence in person at such meeting.

C. Powers and Duties.

Section 18. Powers. The Board of Directors shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles of Incorporation, or these By-Laws directed to be done and exercised exclusively by the Members. In addition to the duties imposed by these By-Laws or by any resolution of the Association that may hereafter be adopted, the Board shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Association Expenses;

(b) making assessments to defray the Association Expenses and other assessments authorized by the Declaration, establishing the means and methods of collecting such assessments, and establishing the period of payment for assessments;

(c) providing for the operation, care, upkeep, and maintenance of all areas which are the maintenance responsibility of the Association as determined by the Board, including maintenance or provision of services which are generally provided by a municipality, such as maintenance of street lights, roads, lakes, park areas and garbage pick-up;

(d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association;

(f) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(g) providing services to all areas that the Association is obligated to provide services for;

(h) paying the cost of all services, if any, rendered to the Association or its Members which are not chargeable to Owners of Residences;

(i) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, and specifying the maintenance and repair expenses and any other expenses incurred;

(j) depositing Association funds into interest bearing accounts; and

(k) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements and other agreements with trusts, condominium associations, or other associations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity.

To the extent permitted by law, the Board shall have the power to delegate its functions to designees of the Board such as, without limitation, a management agent, committees established by the Board, and employees and independent contractors of the Association.

Section 19. Management Agent. The Board may employ for the Association a management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Declarant or an affiliate of the Declarant may be

employed as management agent. The term of any management agreement shall not exceed three (3) years and shall be subject to termination by either party, without cause and without penalty, upon not more than ninety (90) days' written notice.

Section 20. Borrowing. The Board shall have the power to borrow money for the purpose of repair or restoration of the Common Property and facilities without the approval of the Members of the Association; provided, however, the Board shall obtain a two thirds approval from a membership vote at either an annual meeting or special meeting at which a quorum is present in the event that the proposed borrowing is for the purpose of modifying, improving, or adding amenities, and the total amount of such borrowing exceeds or would exceed One Hundred Thousand (\$100,000.00) Dollars outstanding debt at any one time. This limitation does not apply to borrowing incurred to cover operating cost overruns or repairs to the infrastructure within MIDTOWNE.

Section 21. Enforcement.

(a) Notice. Prior to imposition of any sanction for non compliance as set forth in the Declaration Articles, these Bylaws or the Rules and Regulations adopted by the Board, the Board or its delegate shall serve the alleged violator with written notice including (i) the nature of the alleged violation; (ii) the proposed sanction to be imposed, (iii) a statement that the alleged violator may present a written request for a hearing to the Board or the Architectural Review Committee (ARC), (or subcommittee, if one has been appointed), as appropriate within 15 days of the notice; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a request for a hearing is received within 15 days of the notice. If a timely request is not received, the sanction stated in the notice shall be imposed; provided, however, the Board, ARC or covenants subcommittee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 15-day period. Such suspension shall not constitute a waiver of the right to sanction future violation of the same or other provisions and rules by any Person. In the event of a continuing violation, each day the violation continues beyond the 15-day period shall constitute a separate offense, and fines may be imposed on a per diem basis without further notice to the violator. In the event of a violation which recurs within one year from the date of any notice hereunder, either the Board, ARC, or covenants committee may impose a sanction without further notice to the violator.

(b) Hearing. If a hearing is requested within the allotted 15-day period, the hearing shall be held before the body imposing the sanction, in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, director or delegate who delivered such notice. The notice requirements shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) Appeal. If a hearing is held before the ARC or a subcommittee thereof, the violator shall have the right to appeal the committee's decision to the Board. To exercise the right, a written notice of appeal must be received by the manager, president, or secretary of the Association within 15 days after the hearing date.

Article IV

Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer, and shall be elected by a majority of the members of the Board. Any two (2) or more offices may be held by the same Person, excepting the offices of President and Secretary.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board at the organizational meeting of the Board. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term. Officers shall serve until their successors have been elected.

Section 3. Removal. After termination of the Class B Membership, any officer may be removed by 2/3's vote of the Board whenever, in its judgment, the best interest of the Association will be served thereby.

Section 4. President. The President shall be the chief executive officer of the Association and shall preside at all meetings of the Association and the Board of Directors. The President shall have all the general powers and duties which are incident to the office of the president of a corporation organized under the Alabama Nonprofit Corporation Act.

Section 5. Vice President. The Vice President shall act in the president's absence and shall have all powers, duties, and responsibilities provided for the president when so acting.

Section 6. Secretary. The Secretary shall keep the minute of all meetings of the Association and of the Board and shall have charge of such books and papers as the Board may direct and shall, in general, perform all duties incident to the office of the secretary of a corporation organized in accordance with Alabama law.

Section 7. Treasurer. The Treasurer shall have the responsibility for the Association's funds and securities and shall be responsible for keeping or causing to be kept full and accurate financial records and books of account showing all receipts and disbursements, for preparing or causing to be prepared all required financial statements and tax returns, and for the deposit of all monies and other valuable effects in the name of the Association or the managing agent in such depositories as may from time to time be designated by the Board.

Section 8. Resignation. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Article V

Committees

Section 1. General. In addition to the committees established in the Declaration, committees to perform such tasks and to serve for such periods as may be designated by the Board are hereby authorized. Each committee shall be composed and shall operate in accordance with the terms of the resolution of the Board designating the committee or with rules adopted by the Board. The Board in its sole discretion shall obtain liability insurance covering the members of each committee and the Association for the activities of such committees, if reasonably available.

Section 2. Covenants Committee. The Board may establish a Covenants Committee to advise the Board regarding violations of the Declaration, By-Laws, rules and regulations, use restrictions and design guidelines. The Committee shall also advise the Board regarding sanctions to be imposed for such violations.

Section 3. Architectural Review Committee. The Declarant shall establish an Architectural Review Committee to carry out the functions provided for such committee in the Declaration. The Committee, in its sole discretion, may employ the services of experts for advice and may expend funds of the Association for the fees of such experts. After the Turnover Date, the Board shall appoint the members of the ARC.

Section 4. Citizens Advisory Committees. The Board may establish Citizens Advisory Committees to advise the Board and other committees.

Article VI

Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be determined by resolution of the Board. In the absence of such a resolution, the fiscal year shall be the calendar year.

Section 2. Parliamentary Rules. *Roberts Rules of Order* (current edition) shall govern the conduct of all Association proceedings, when not in conflict with Alabama law, the Articles of Incorporation, the Declaration, these By-Laws, or a ruling made by the Person presiding over the proceeding.

Section 3. Conflicts. If there are conflicts or inconsistencies between the provisions of Alabama law, the Articles of Incorporation, the Declaration, and these By-Laws, then the provisions of Alabama law, the Declaration, the Articles of Incorporation, and the By-Laws (in that order) shall prevail.

Section 4. Notices. Unless otherwise specified in the Declaration or By-Laws, all notices, demands, bills, statements, or other communications required or permitted to be sent under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by first class mail, postage prepaid:

(a) if to a Member at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the last known address of the Member; or

(b) if to the Association, the board of Directors, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the Members.

If there are multiple Owners of a single piece of property, notice to one (1) shall be deemed notice to all. Multiple Owners may designate one (1) Owner as the Person entitled to receive notice of Association matters by so notifying the Association in writing.

Section 5. Amendment.

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

(b) **By Board.** Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of the Board of Directors, and the written consent of the Declarant, so long as Declarant owns any property which is subject to the Declaration or which may be unilaterally subjected to the Declaration of the Declarant.

(c) **Validity and Effective Date.** Any amendment to these By-Laws shall become effective upon recordation in the Public Records, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six (6) months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws.

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

ARTICLE VII

Notwithstanding anything provided herein or in the Articles of Incorporation or the Declaration, for so long as Declarant owns any Property within the Community or retains the right to unilaterally annex property into the Community, Declarant shall have the sole and exclusive right to (i) elect the Board of Directors (ii) remove and replace any member of the Board, (iii) amend these By-laws or the Articles of Incorporation of the Association and (iv) amend the Declaration. Declarant may, however, in its sole discretion, cede some or all of such rights to the Board of Directors and/or Members at prior time upon written notice by Declarant to the Board of Directors.

Adopted on this the 14th day of December, 2007.



MidTowne Owners Association, Secretary

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20071214000874680 77/77 \$208.75
Madison Cnty Judge of Probate, AL
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STATE OF ALABAMA

MADISON COUNTY

2009120400874680 1/4 \$27.25
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AMENDMENT TO THE DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
MIDTOWNE ON THE PARK SUBDIVISION

WHEREAS, heretofore on the 14th day of December, 2007, the undersigned, Street Side Communities, Inc., an Alabama corporation, as Declarant, did promulgate and file for record a Declaration of Covenants, Conditions, Restrictions and Easements for Midtowne on the Park, a residential subdivision, which said Declaration is recorded as Instrument Number 20071214000874680 in the Office of the Judge of Probate of Madison County, Alabama (the "Declaration").

WHEREAS, Article XIV, Section 4, of said Declaration provide that the Declarant may promulgate amendments to the Declaration.

NOW THEREFORE, pursuant to said provisions, the undersigned, Street Side Communities, Inc., an Alabama corporation, and First Commercial Bank and Progress Bank and Trust, as mortgagees, do by these presents amend the Declaration in the following manner:

1. **Modifications to Article IV.** The following sections of Article VI of the Declaration are hereby modified to read as follows:

Section 4. Vehicles and Garages. The term "vehicles," as used herein, shall include, without limitation, motor homes, boats, trailers, motorcycles, minibikes, dune buggies, ATVs, tractors, scooters, go-carts, trucks, campers, buses, vans, and automobiles and similar vehicles. Unless and except to the extent that the Occupants of a Residence shall have more vehicles than the number of parking areas serving their Residence, all vehicles shall be parked within such parking areas. Where the Residence contains a garage, "parking areas" shall refer to the number of garage parking spaces.

No motor homes, farm equipment, heavy machinery, boats, trailers, moving vans, recreational vehicles, towed vehicle, inoperable vehicles, campers, semi-tractor trucks, buses, taxicabs, or other commercial vehicle of any nature or the like shall be permitted to be kept in the Community except to the extent and circumstances permitted in this Section 4. Commercial vehicles shall be deemed to include cars, vans, SUVs and trucks in styles normally used for private purposes but painted with or carrying commercial advertising, logos, or business names exceeding four square feet per side or containing visible commercial materials, cargo, tools or equipment on the exterior of the vehicle or that extend beyond the length or width of the vehicle. No oversized/commercial vehicle (a vehicle wider than and or longer than a standard parking space, or any vehicle that has more than two axles) may park in the Community. Any such items, other than boats, motor homes and campers, may be temporarily allowed in the Community for reasonable periods of time in order to allow for typical construction/repair activities, servicing for a Residence, and the moving of furniture and appliances.

Except for Dwellings without garages, no vehicle may be left upon any portion of the Community (including public alleys and/or right-of-ways), except in a garage or other area designated by the Board, for a period longer than five (5) days if it is unlicensed or if it is in a condition such that it is incapable of being operated upon the public highways. After such five (5) day period, such vehicle shall be considered a nuisance and may be removed from the Community. Residents of Dwellings without garages shall park in their driveway or other Board approved parking areas.

No inoperable vehicle, towed vehicle, boat, recreational vehicle, motor home, or mobile

home may stored in the Community or temporarily kept in the Community, unless it is kept in a garage or other area designated by the Board. If such vehicle(s) remains in the Community for a period longer than twenty-four (24) hours each shall be considered a nuisance and may be removed from the Community. Trucks with mounted campers which are an Owner's or Occupant's primary means of transportation shall not be considered recreational vehicles, provided they are used on a regular basis for transportation and the camper is stored out of public view upon removal.

No motorized vehicles shall be permitted on pathways or unpaved Common Property except for public safety vehicles and vehicles authorized by the Board.

Carports shall not be permitted. Garage doors shall be kept closed at all times, except during times of ingress and egress from the garage. Other than an Owner's standard means of transportation, e.g., car, truck, SUV, or van, no vehicle should be in view from the street (they should either be parked in a garage or in the rear yard in an ARC approved parking area and be screened by an ARC approved fence). An Owner with more vehicles than parking spaces in a garage (if any) may park the extra vehicles (or the vehicles of guests, children, domestic employees, etc.) in their driveway. Any detached garage must be specifically approved in the sole discretion of the ARC.

No parking whatsoever is permitted in the front yard, in any alley (as designated on the plat of record or as designated by the Board).

Provided that specific Board approval is obtained, towed vehicles, i.e., boats, trailers and campers and the like, may be permitted in the rear yard of a Residence, provided that it is located on a concrete paved area and such vehicle is screened so as to not be visible from ground level by an ARC approved fence.

Section 5. Leasing. Residences may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration, By-Laws, use restrictions, and Rules and Regulations of the Association. The Association shall be provided with a copy of each lease within 10 days of its execution. The lease shall also obligate the tenant to comply with the foregoing and shall provide that in the event of noncompliance, the Board, in addition to any other remedies available to it, may evict the tenant on behalf of the Owner and specifically assess all costs associated therewith against the Owner and the Owner's property.

Section 28. Windows, Window Treatments and Doors.

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

(b) The ARC may adopt guidelines for the types of windows and materials from which windows may be allowed on any dwelling. Burglar bars or doors (including wrought iron doors) shall not be permitted. Screen doors shall not be used on the front or side of any dwelling. No aluminum or metal doors with glass fronts (e.g., storm doors) shall be allowed on the front of any dwelling. Blind/plantation shutter colors must be white, off-white, neutral or an approved natural color. Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments. The portion of all window coverings visible from the exterior of any Residence shall be white or off-white or neutral, unless otherwise approved by the ARC.


Section 39. Foundations. Slab foundations are permitted, provided that all such slab foundations must be a minimum of 16 inches above grade with a minimum of two risers from the ground level to the finished floor in the front of the dwelling. All foundations must be finished with either brick or stone with no exposed concrete or masonry block unless the ARC approves a different finish. Any variations from this rule in foundations in the Community existing as of October 30, 2009, are hereby waived and such Dwellings shall be deemed to be in compliance with the provisions of Article VI, Section 39 of the Declaration.

2. **Definitions.** All undefined capitalized terms not defined herein shall have the meaning assigned in the Declaration.

3. **No Other Modification.** Except as amended hereby, and as may be amended from time to time, the Declaration otherwise remains in full force and effect and is hereby ratified and affirmed.


IN WITNESS WHEREOF, the undersigned, Street Side Communities, Inc., an Alabama corporation, as Declarant, First Commercial Bank and Progress Bank and Trust as mortgagees, and Mark Harris Homes, LLC, Mark Justice Construction, LLC, and Heritage Homes, LLC, have caused this instrument to be executed on this the 16th day of Nov., 2009.

STREET SIDE COMMUNITIES INC.

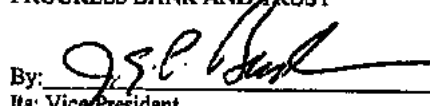
By: 
Jeffrey W. Enfinger, President

Ratified By Mortgagee:

FIRST COMMERCIAL BANK OF HUNTSVILLE 

By: 
Its: Vice President

Ratified By Mortgagee:

PROGRESS BANK AND TRUST
By: 
Its: Vice President

STATE OF ALABAMA
COUNTY OF MADISON

Before me, the undersigned authority, this day personally appeared Jeffrey W. Enfinger, whose name as President of Street Side Communities, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me that, on being informed of the contents of said instrument, he as such officer and with full authority executed the same voluntarily on the day the same bears date in his capacity as such officer and for the act of said corporation.

This the 16th day of November, 2009.


Notary Public
My Commission Expires: 10/10/2011

STATE OF ALABAMA
COUNTY OF MADISON

Before me, the undersigned authority, this day personally appeared Todd Stiles, whose name as Vice President of First Commercial Bank of Huntsville, is signed to the foregoing instrument and who is known to me, acknowledged before me that, on being informed of the contents of said instrument, he as such officer and with full authority executed the same voluntarily on the day the same bears date in his capacity as such officer and for the act of said banking institution.

This the 24th day of November, 2009.


Notary Public
My Commission Expires: 12-12-2009

STATE OF ALABAMA
COUNTY OF MADISON

Before me, the undersigned authority, this day personally appeared J.E.P. Buchanan, whose name as Vice President of Progress Bank and Trust, is signed to the foregoing instrument and who is known to me, acknowledged before me that, on being informed of the contents of said instrument, he as such officer and with full authority executed the same voluntarily on the day the same bears date in his capacity as such officer and for the act of said banking institution.

This the 24th day of November 2009.



Notary Public

My Commission Expires: _____

MY COMMISSION EXPIRES 2-01-2012

X This Instrument Prepared By:

Samuel H. Givhan, Wilmer & Lee, P.A., 100 Washington Street, Huntsville, Alabama 35801

U:\ham\RESTRICTIONS\Street Side Comm\shw\W&L\Towns.Amendment 10-30-09.v8.vpd

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STATE OF ALABAMA
MADISON COUNTY

2012020800079988 1/1 \$19.75
Madison Only Judge of Probate, AL
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AMENDMENT TO THE DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
MIDTOWNE ON THE PARK SUBDIVISION

WHEREAS, heretofore on the 14th day of December, 2007, the undersigned, Street Side Communities, Inc., an Alabama corporation, as Declarant, did promulgate and file for record a Declaration of Covenants, Conditions, Restrictions and Easements for Midtowne on the Park, a residential subdivision, which said Declaration is recorded as Instrument Number 20071214000874680 in the Office of the Judge of Probate of Madison County, Alabama (the "Declaration").

WHEREAS, Article XIV, Section 4, of said Declaration provide that the Declarant may promulgate amendments to the Declaration, including modifying the scope of Common Areas.

NOW THEREFORE, pursuant to said provisions, the undersigned, Street Side Communities, Inc., an Alabama corporation, does by these presents amend the Declaration in the following manner:

1. **Removal of Portion of Common Area.** The lands described in attached Exhibit "A" (the "Removed Property") are hereby no longer designated as Common Area as set forth in the Plat of Midtowne on the Park, Phase 1A, as recorded in the Madison County Probate Records as instrument number 20070830000619720. Furthermore, the Removed Property is hereby removed from the Community and are released from the operation and encumbrance of the terms of the Declaration.

2. **Definitions.** All undefined capitalized terms not defined herein shall have the meaning assigned in the Declaration.

3. **No Other Modification.** Except as amended hereby, and as may have been previously amended from time to time, the Declaration otherwise remains in full force and effect and is hereby ratified and affirmed.

IN WITNESS WHEREOF, the undersigned, Street Side Communities, Inc., an Alabama corporation, as Declarant, has caused this instrument to be executed on this the 7th day of February, 2012.

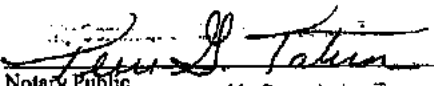
STREET SIDE COMMUNITIES, INC.

By: 
Jeffrey W. Enfinger, President

STATE OF ALABAMA
COUNTY OF MADISON

Before me, the undersigned authority, this day personally appeared Jeffrey W. Enfinger, whose name as President of Street Side Communities, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me that, on being informed of the contents of said instrument, he as such officer and with full authority executed the same voluntarily on the day the same bears date in his capacity as such officer and for the act of said corporation.

This the 7th day of February, 2012.


Notary Public
My Commission Expires: 02/08/2015

This Instrument Prepared By:
Samuel H. Givhan, Wilmer & Lee, P.A., 100 Washington Street, Huntsville, Alabama 35801

U:\Jen\RESTRICIONS\Street Side Communities\Adjustment of Common Area.wpd

2012020800079988 1/1 \$19.75
Madison Only Judge of Probate, AL
02/08/2012 10:49:33 AM FILED/CERT

BRADLEY ARANT
PICK-UP

IN WITNESS WHEREOF, the undersigned, Street Side Communities, Inc., an Alabama corporation, and Wachovia Bank, N.A., have caused this instrument to be executed on this the 30th day of September, 2008.

STREET SIDE COMMUNITIES, INC.

By: [Signature]
Its: [Signature]

Ratified By Mortgagee:

FIRST COMMERCIAL BANK OF HUNTSVILLE

By: [Signature]
Its: Vice President

Ratified By Mortgagee:

PROGRESS BANK AND TRUST

By: J. E. P. Buch
Its: President Executive Vice President

STATE OF ALABAMA
COUNTY OF MADISON

Before me, the undersigned authority, this day personally appeared Rhonda Pugh, whose name as Vice President of Street Side Communities, Inc., an Alabama corporation, is signed to the foregoing instrument and who is known to me, acknowledged before me that, on being informed of the contents of said instrument, s/he as such officer and with full authority executed the same voluntarily on the day the same bears date in his/her capacity as such officer and for the act of said corporation.

This the 30th day of Sept, 2008.

[Signature]
Notary Public
My Commission Expires: 2-2-11

STATE OF ALABAMA
COUNTY OF MADISON

Before me, the undersigned authority, this day personally appeared Todd Stiles, whose name as Vice President of First Commercial Bank of Huntsville, is signed to the foregoing instrument and who is known to me, acknowledged before me that, on being informed of the contents of said instrument, he as such officer and with full authority executed the same voluntarily on the day the same bears date in his capacity as such officer and for the act of said banking institution.

This the 30th day of Sept, 2008.

[Signature]
Notary Public
My Commission Expires: 2-2-11

STATE OF ALABAMA
COUNTY OF MADISON

Before me, the undersigned authority, this day personally appeared J.E.P. Buchanan, whose name as President of Progress Bank and Trust, is signed to the foregoing instrument and who is known to me, acknowledged before me that, on being informed of the contents of said instrument, he as such officer and with full authority executed the same voluntarily on the day the same bears date in his capacity as such officer and for the act of said banking institution.

This the 1st day of October, 2008.

[Signature]
Notary Public
My Commission ~~EXPIRES~~ EXPIRES 2-01-2012

This Instrument Prepared By:
Samuel H. Givhan, Wilmer & Lee, P.A., 100 Washington Street
Huntsville, Alabama 35801

2009100200032410 2/2 \$22.25
Madison County Judge of Probate, R.
10/02/2008 10:33:50AM FILED/CERT

STATE OF ALABAMA

MADISON COUNTY

AMENDMENT TO THE DECLARATION
OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS
FOR
MIDTOWNE ON THE PARK SUBDIVISION,
PHASE 9

WHEREAS, heretofore on the 14th day of December, 2007, Street Side Communities, LLC, an Alabama limited liability company ("Street Side"), f/k/a Street Side Communities, Inc., an Alabama corporation, as Declarant, did promulgate and file for record a Declaration of Covenants, Conditions, Restrictions and Easements for Midtowne on the Park, a residential subdivision ("Midtowne"), which said Declaration is recorded as Instrument Number 20071214000874680, and which were amended as Instrument Number 20091204000755530, in the Office of the Judge of Probate of Madison County, Alabama (the "Recording Office") (as amended, the "Declaration");

WHEREAS, Article XIV, Section 1, of said Declaration provide that the Declarant may promulgate amendments to the Declaration;

WHEREAS, Article X, Section 2, of said Declaration provides that the Declarant may subject additional parcels of real property described in Exhibit "C," of said Declaration and may promulgate amendments to the restrictive covenants by filing of such supplemental declarations in the Recording Office;

WHEREAS, Street Side conveyed all of its property in Midtowne to Heritage Plantation, LLC, an Alabama limited liability company ("Heritage") pursuant to that certain assumption warranty deed recorded in the Recording Office as Instrument Number 20131223000803190 and Street Side assigned all of its Declarant rights arising under the Declaration to Heritage in Instrument Number 20140917000493970.

NOW THEREFORE, pursuant to the Declaration, as amended, the undersigned, Heritage Plantation, LLC, as owner of the property and as successor Declarant, and Progress Bank and Trust, as mortgagee, do by these presents amend the Declaration in the following manner:

1. **Property Subjected to Declaration.** Lots 1-24 as described in the Final Plat of Midtowne on the Park, Phase 9, as recorded in the Recording Office as Instrument Number 20170928000568470, which is incorporated herein by reference (collectively "Phase 9"), are hereby made subject to the covenants, conditions, restrictions and easements set forth in the Declaration,

including as previously amended for Midtowne, as they may be amended from time to time, but which otherwise remain in full force and effect and are hereby ratified and affirmed, except as set forth herein.

2. **Assessments.** Homeowners Association Dues for Lots in Phase 9, on a prorated basis, shall be due and payable upon the respective conveyances from a Builder to a third party. Heritage shall not be responsible for the payment of such dues.

3. **Definitions.** All undefined capitalized terms not defined herein shall have the meaning assigned in the Declaration.

4. **No Other Modification.** Except as amended hereby, and as may be amended from time to time, the Declaration otherwise remains in full force and effect and is hereby ratified and affirmed.

IN WITNESS WHEREOF, the undersigned, Heritage Plantation, LLC, as current Declarant and owner, and Progress Bank and Trust, as mortgagee, have caused this instrument to be executed on this the _____ day of November, 2017.

HERITAGE PLANTATION, LLC, an Alabama limited liability company

By: _____
Jeffrey W. Enfinger, Manager

STATE OF ALABAMA

COUNTY OF MADISON

Before me, the undersigned authority, this day personally appeared Jeffrey W. Enfinger, whose name as Manager of Heritage Plantation, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me that, on being informed of the contents of said instrument, he as such Manager and with full authority executed the same voluntarily on the day the same bears date in his capacity as such Manager and for the act of said limited liability company.

This the _____ day of November, 2017.

Notary Public
My Commission Expires: _____

Ratified By Mortgagee:

PROGRESS BANK AND TRUST

By: _____
Name: _____
Its: _____

STATE OF ALABAMA

COUNTY OF MADISON

Before me, the undersigned authority, this day personally appeared _____, whose name as _____ of Progress Bank and Trust, is signed to the foregoing instrument and who is known to me, acknowledged before me that, on being informed of the contents of said instrument, s/he as such officer and with full authority executed the same voluntarily on the day the same bears date in his capacity as such officer and for the act of said banking institution.

This the _____ day of November, 2017.

Notary Public
My Commission Expires: _____

This Instrument Prepared By:

Samuel H. Givhan
Attorney for Heritage Plantation, LLC
Wilmer & Lee, P.A.
100 Washington Street
Huntsville, Alabama 35801

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