

**THE BRAY SINGLE-FAMILY RESIDENTIAL
DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS**

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

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THE BRAY SINGLE-FAMILY RESIDENTIAL
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**THE BRAY SINGLE-FAMILY RESIDENTIAL
DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS**

THIS THE BRAY SINGLE-FAMILY RESIDENTIAL DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS (this “**Declaration**”) is made as of the 9th day of September, 2022 by **LIBERTY PARK JOINT VENTURE, LLP**, an Alabama limited liability partnership (the “**Developer**”).

RECITALS:

A. Developer is the developer of Liberty Park, a partially developed master planned community located in Vestavia Hills, Jefferson County, Alabama (“**Liberty Park**” or the “**Development**”).

B. In early 2018, Developer commenced the development of approximately 700 acres of undeveloped land within Liberty Park as a sustainable live, work, and play community known as The Bray at Liberty Park (“**The Bray**”).

C. Developer, as owner of the Property (as hereinafter defined) located within The Bray, desires to own, develop, improve, and sell the Property for single-family attached and detached residential housing purposes, subject to the covenants, easements, conditions, restrictions, requirements, assessments, liens, and regulations set forth in this Declaration, in order to protect the value and desirability of the Property for single-family attached and detached residential uses, and to have a flexible and reasonable method for the development, administration and maintenance of the Property. For the sake of clarity, this Declaration is not applicable to any of the commercial property within The Bray and shall expressly not apply to any multi-family residential facilities or senior housing facilities that may be developed within the commercial areas of The Bray.

NOW, THEREFORE, Developer does hereby declare that all of that certain real property situated in Jefferson County, Alabama which is more particularly described in **Exhibit “A”** attached hereto and incorporated herein by reference (the “**Property**”) shall be held, developed, improved, transferred, sold, conveyed, occupied and used subject to the following easements, covenants, conditions, restrictions, requirements, charges, liens and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title or interest in any portion of the Property and any of the Additional Property, as hereinafter defined (but only to the extent that Developer submits any Additional Property to the terms and provisions of this Declaration), and their respective heirs, executors, administrators, personal representatives, successors and assigns.

**ARTICLE I
DEFINITIONS**

As used throughout this Declaration, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms and tenses of such terms:

Section 1.01 **ADDITIONAL PROPERTY**. The term “Additional Property” shall mean and refer to any real property and any Improvements situated thereon lying adjacent to or in close proximity with the Property (but which does not presently comprise any part of the Property) which Developer may from time to time submit and add to the provisions of this Declaration pursuant to the provisions of Section 2.02 below. The Additional Property may also include additional Common Areas.

Section 1.02 **AFFILIATE**. The term “Affiliate” shall mean, as to any Person, any other Person which, directly or indirectly, is in common control of, is controlled by, or is under direct or indirect common control with, such Person, and, if such Person is an individual, any member of the immediate family of such individual and any trust whose principal beneficiary is such individual or one or more members of such immediate family and any Person which is controlled by any such member or trust. As used herein, the term “control” (and like terms) when used with respect to any Person, means the direct or indirect beneficial ownership of more than five percent (5%) of the outstanding voting securities or voting equity of such Person or possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through ownership of voting securities or by contract or otherwise.

Section 1.03 **ANNUAL ASSESSMENTS**. The term “Annual Assessments” with respect to each Lot or Dwelling shall mean the prorata portion of the Common Expenses together with any Sector Expenses levied against the Lot payable each calendar year by each Owner in accordance with the provisions of Article VIII.

Section 1.04 **ARC**. The term or letters “ARC” shall mean the architectural review committee for the Association to be appointed pursuant to Article V hereof with the rights and obligations conferred upon such architectural review committee pursuant to this Declaration.

Section 1.05 **ARCHITECTURAL STANDARDS**. The term “Architectural Standards” shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Article V below for the purpose of reviewing and approving all exterior improvements, landscaping and any other Improvements which may be made to any Lot or Dwelling.

Section 1.06 **ASSESSMENT**. The term “Assessment” shall mean, collectively, the Annual Assessments (as defined in Section 8.03(a) below), Special Assessments (as defined in Section 8.05 below), and Individual Assessments (as defined in Section 8.06 below).

Section 1.07 **ASSOCIATION**. The term “Association” shall mean The Bray Single-Family Residential Property Owners’ Association, Inc., an Alabama nonprofit corporation, and its successors and assigns.

Section 1.08 **BOARD**. The term “Board” shall mean and refer to the Board of Directors of the Association and their duly elected successors as may be provided in the Certificate of Formation and Bylaws.

Section 1.09 **BYLAWS**. The term “Bylaws” shall mean and refer to the Bylaws of the Association, as the same may be amended from time to time.

Section 1.10 **CERTIFICATE OF FORMATION**. The term “Certificate of Formation” shall mean and refer to the Certificate of Formation of the Association, as the same may be amended from time to time.

Section 1.11 **CITY**. The term “City” shall mean and refer to the City of Vestavia Hills, Alabama, a municipal corporation.

Section 1.12 **COMMON AREAS**. The term “Common Areas” shall mean and refer to all real and personal property now or hereafter owned by the Association or the Master Association for the common use and enjoyment of the Owners. The Common Areas shall also mean and include (regardless of whether legal title to the same has been conveyed to the Association) (a) all signage (including, without limitation, informational, traffic and street signage) situated within any portion of the Property, street lights, landscaping lighting, walkways, nature trails, greenways, sidewalks, paths, bicycle and jogging paths and lanes, gates, walls, fences, Improvements, landscaping and landscaped or other areas immediately adjacent to any public roadways, including all medians within any public roadways, whether the same are located within the boundaries of the Property or on or within the rights-of-way of any public roadways which may provide ingress to and egress from any portion of the Property (other than any such areas located solely within the boundary lines of any Lot or Dwelling), (b) any community buildings or facilities provided for the common use by the Owners and Occupants and any buildings and personal property utilized by the Association or the Master Association in connection with the performance of its duties or obligations hereunder, (c) all lakes, water features, any storm drains that are not located within City rights-of-way and that have not been dedicated to the City, drainage and/or watershed protection or retention ponds, basins or other areas and facilities located within the Property (other than such areas located solely within the boundary lines of any Lot or Dwelling or which are maintained by any Governmental Authority), (d) all utility and irrigation lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which serve any portion of the Common Areas (which are not owned or maintained by any public or private utility providers or Governmental Authorities), (e) the Restricted Use Amenities and Unrestricted Use Amenities, and (f) any other areas or Improvements on or within the Property or the Development which are designated by Developer as Common Areas from time to time for the express benefit of the Association. The designation of the land and/or Improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof; provided, however, that the Vestlake Owners and the Tipple Drive Owners shall have rights to use the Restricted Use Amenities in common with the Owners, and the members of all Residential Associations shall have rights to use the Unrestricted Use Amenities, in each case subject to the terms and conditions set forth herein.

Section 1.13 **COMMON EXPENSES**. The term “Common Expenses” shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Section 8.03(c) below, all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration, and a proportionate share of all Master Association Expenses.

Section 1.14 **COTTAGE DWELLINGS**. The term “Cottage Dwellings” shall mean single-family detached Dwellings developed on Lots designated as “cottage lots” on a subdivision plat recorded in the Probate Office.

Section 1.15 **DECLARATION**. The term “Declaration” shall mean and refer to this Declaration, together with all amendments thereto.

Section 1.16 **DEVELOPER**. The term “Developer” shall mean Liberty Park Joint Venture, LLP, an Alabama limited liability partnership, and its successors and assigns.

Section 1.17 **DEVELOPMENT**. The term “Development” shall mean and refer to the approximately 3,596 acre planned unit development known as “Liberty Park” and all Improvements thereon and any additional property submitted thereto as Developer, in its sole discretion, shall deem necessary or desirable. The Property comprises a part of the Development.

Section 1.18 **DWELLING**. The term “Dwelling,” with an initial capital letter, shall mean and refer to any improved Lot intended for use as a single-family attached or detached residential housing unit, including, without limitation, townhouses, condominium units, duplexes, zero-lot-line homes and cluster, patio and garden homes. Common Areas shall not constitute Dwellings.

Section 1.19 **GOVERNMENTAL AUTHORITY**. The term “Governmental Authority” shall mean and refer to any and all City, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Property or any Improvements thereto.

Section 1.20 **IMPROVEMENT**. The term “Improvement,” with an initial capital letter, shall mean and refer to all Dwellings and any building, structure or device constructed, erected or placed upon any Lot or Dwelling which in any way affects, alters or causes a change in the exterior appearance of any Lot or Dwelling. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, roads, driveways, walkways, paving, curbing, parking areas, swimming pools, tennis courts, treehouses, playhouses, swing sets, trees, shrubbery, landscaping, fences, screening, walls, signs and any other artificial or man-made changes or alterations to the natural condition of any Lot or Dwelling and any fixtures, appurtenances, personal property or devices installed, erected, constructed, attached, placed or maintained on the exterior of any Dwelling or any other buildings situated on any Lot or Dwelling. “Improvements” shall also mean any exterior alterations or additions to any existing Dwelling or other structure situated on a Lot and any grading, any excavation or fill, the volume of which exceeds eight (8) cubic yards.

Section 1.21 **LIBERTY PARK PUD**. The term “Liberty Park PUD” means and refers to the Liberty Park PUD established by Ordinance Number 1864 adopted by the City on or about October 16, 2000, approving the Liberty Park Planned Unit Development Zoning Application submitted by Developer and other parties thereto dated December 5, 2000, as amended by the First Amendment to Liberty Park PUD, Application for Amendment to Liberty Park Planned Unit Development dated May 9, 2003, approved by the City in Ordinance Number 2001 adopted by the City on July 7, 2003, as the same may be amended by a City ordinance approving the Application for Second Amendment Liberty Park Planned Unit Development being submitted by Developer to the City on or about the date of this Declaration, together with all amendments thereto, or any amendments and restatements thereof.

Section 1.22 **LIVING SPACE**. The term “Living Space” shall mean and refer to the enclosed and covered areas within a Dwelling which are heated and cooled by heating, ventilating and air conditioning equipment, exclusive of any of the following areas of a Dwelling which are not heated and cooled by heating, ventilating and air conditioning equipment: “bonus” rooms in garages or attics, garages, carports, porches, terraces, balconies, decks, patios, courtyards, greenhouses, atriums, bulk storage areas, attics and basements. Following initial approval by the ARC of the minimum and maximum Living Space for any Dwelling, none of the foregoing described areas which are not heated and cooled by heating, ventilating and air conditioning equipment shall be enclosed or otherwise improved to create Living Space out of such areas unless (a) the same is approved by the ARC and (b) any additional Living Space created out of such areas will not result in the Dwelling exceeding the maximum Living Space limitations established for such Lot and Dwelling unless the same has been specifically approved in writing by the ARC.

Section 1.23 **LOT**. The term “Lot” shall mean each lot created by a subdivision plat of a portion of the Property or any condominium unit created by a condominium plat of a portion of the Property (other than any lots designated thereon as Common Areas or which subsequently become Common Areas). A parcel of land shall be deemed unimproved and thus considered to be a Lot, rather than a Dwelling, until the Improvements constructed thereon are sufficiently complete to reasonably permit habitation thereof. Upon completion of construction of such Improvements, such Lot and the Improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration. Common Areas shall not constitute Lots.

Section 1.24 **MASTER ASSOCIATION**. The term “Master Association” shall mean and refer to the Liberty Park Master Owners' Association, Inc., an Alabama nonprofit corporation, the present members of which are: the Residential Associations, Old Overton Club, LLC, an Alabama limited liability company, Liberty Park Commercial Development Area Owners' Association, Inc., an Alabama nonprofit corporation, and The Urban Center at Liberty Park Owners' Association, Inc., an Alabama nonprofit corporation. The Master Association may include other residential or commercial property owners' associations which may hereafter be formed by Developer and designated as a member of the Master Association or any affiliate of Developer in connection with any undeveloped portions of the Development, all as determined by Developer to constitute members of the Master Association.

Section 1.25 **MASTER ASSOCIATION DOCUMENTS**. The term “Master Association Documents” shall mean and refer to, collectively, Articles of Incorporation of the Liberty Park Master Owners' Association, Inc. and the bylaws of Liberty Park Master Owners' Association, Inc., together with all amendments thereto.

Section 1.26 **MASTER ASSOCIATION EXPENSES**. The term “Master Association Expenses” shall mean and refer to all expenditures made or incurred by or on behalf of the Master Association, including without limitation, those expenses described in Section 8.04 below.

Section 1.27 **MORTGAGE**. The term “Mortgage,” with an initial capital letter, shall mean and refer to any mortgage, deed of trust or other security device encumbering a Lot or

Dwelling or any interest therein and which shall have been duly and properly recorded in the Probate Office.

Section 1.28 **MORTGAGEE**. The term “Mortgagee,” with an initial capital letter, shall mean and refer to the holder of any Mortgage.

Section 1.29 **OCCUPANT**. The term “Occupant” shall mean and include any family members, guests, and invitees of any Owner and their respective family members, guests, invitees and any other person who occupies or uses any portion of the Property. All actions or omissions of any Occupant are and shall be deemed the action or omission of the Owner of such Lot or Dwelling.

Section 1.30 **OLD OVERTON Owner**. The term “Old Overton Owner” shall mean, collectively each Owner and Occupant in Old Overton Communities, as defined in in the Old Overton Communities Covenants, Conditions, and Restrictions dated October 9, 1993 and recorded in Book 9313, Page 8012 in the Probate Office, together with all amendments thereto.

Section 1.31 **OWNER**. The term “Owner” shall mean and refer to the Person, including Developer, who is the record owner of fee simple title to any Lot or Dwelling, but shall not include (i) any Mortgagee unless and until such Mortgagee has foreclosed on its Mortgage and purchased such Lot or Dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot or Dwelling solely by virtue of a lease, contract, installment contract or other agreement.

Section 1.32 **PERSON**. The term “Person” with an initial capital letter, shall mean and refer to any individual, corporation, association, partnership, limited liability company, joint venture, trust, estate or other entity or organization.

Section 1.33 **PROBATE OFFICE**. The term “Probate Office” shall mean and refer to the Office of the Judge of Probate of Jefferson County, Alabama, and any successors thereto which serves as the official public registry for the public recording of real estate documents in Jefferson County, Alabama.

Section 1.34 **PROPERTY**. The term “Property,” with an initial capital letter, shall mean and refer to that certain real property situated in Jefferson County, Alabama which is more particularly described in **Exhibit “A”** attached hereto and incorporated herein by reference. The Property shall also include any Additional Property made subject to this Declaration pursuant to **Section 2.02** hereof and shall include all Lots, Dwellings and Common Areas.

Section 1.35 **RESIDENTIAL ASSOCIATIONS**. The term “Residential Associations” shall mean all single-family residential property owners’ associations now or hereafter located within the Development, which, as of the date hereof, consist of the following:

- (a) the Association;
- (b) Old Overton Single-Family Residential Property Owners' Association, Inc., an Alabama nonprofit corporation (the “**Old Overton Association**”);

(c) Vestlake Communities Property Owners' Association, Inc., an Alabama nonprofit corporation (the "**Vestlake Association**"); and

(d) The Townhomes at Tipple Drive Association, Inc., an Alabama nonprofit corporation (the "**Tipple Drive Association**").

Section 1.36 **RESTRICTED USE AMENITIES.** The term "Restricted Use Amenities" shall mean and refer to any swim/tennis/clubhouse facilities that may be constructed within the Property or within other areas of the Development which are restricted for the sole and exclusive use by the Owners, the Vestlake Owners, and the Tipple Drive Owners. Upon completion of construction, Developer shall convey the Restricted Use Amenities to the Master Association subject to the restriction that such Restricted Use Amenities are for the sole and exclusive use by the Owners, the Vestlake Owners, and the Tipple Drive Owners, subject to the rules and regulations and conditions and assessments as shall be determined in accordance with the provisions of this Declaration. **Notwithstanding anything provided herein to the contrary, in no event shall Developer be obligated to construct or otherwise provide any Restricted Use Amenities within any portion of the Property or the Development.** For the sake of clarity, the term "Restricted Use Amenities" shall not include the swim/tennis/clubhouse located at the Old Overton Club, which is a private club restricted to use by the members of Old Overton Club, or the existing swim facility which is located in the Vestlake sector of the Development, which is owned by the Vestlake Association and is restricted to use by the Vestlake Owners, or any pool amenities which may be located within any multi-family facility or senior housing facility within the Development, which shall be restricted to use by the residents of such facilities.

Section 1.37 **RUAC.** The term or letters "RUAC" shall mean the Restricted Use Amenity Committee to be appointed pursuant to Section 4.09 hereof with the rights and obligations conferred upon such committee pursuant to this Declaration.

Section 1.38 **SECTOR.** The term "Sector" shall mean and refer to any group of Lots or Dwellings designated as a Sector by Developer or the Association in this Declaration, any amendment to this Declaration, or on a plat recorded in the Probate Office. For example, Sectors may include, without limitation, townhome, garden home, cottage, and condominium developments within The Bray.

Section 1.39 **SECTOR ASSESSMENTS.** The term "Sector Assessments" shall mean and refer to the assessments levied against the Lots or Dwellings within a particular Sector.

Section 1.40 **SECTOR EXPENSES.** The term "Sector Expenses" shall mean the expenses, and reserve contributions, and capital contributions incurred by the Association or the Master Association on behalf of only one Sector and designated by the Master Association or the Association as a Sector Expense in the annual budget.

Section 1.42 **TIPPLE DRIVE COVENANTS.** The term "Tipple Drive Covenants" shall mean the Declaration of Easements, Covenants, Conditions, and Restrictions of The Townhomes at Tipple Drive, dated September 26, 2019 and recorded as Instrument No. 2019191308 in the Probate Office, together with all amendments thereto.

Section 1.44 **TIPPLE DRIVE Owner**. The term “Tipple Drive Owner” shall mean, collectively each Owner and Occupant in The Townhomes at Tipple Drive, as “Owner” and “Occupant” are defined in the Tipple Drive Covenants.

Section 1.46 **TIPPLE DRIVE Property**. The term “Tipple Drive Property” shall mean the “Property” as defined in the Tipple Drive Covenants.

Section 1.47 **TOWNHOME COVENANTS**. The term “Townhome Covenants” shall mean the covenants, conditions, easements, and restrictions set forth on **Exhibit “B”** attached hereto and applicable to Townhome Developments within The Bray.

Section 1.48 **TOWNHOME DEVELOPMENT**. The term “Townhome Development” shall mean those Lots and Improvements thereon that have been developed for attached single-family homes within The Bray and designated as townhome lots on a subdivision plat recorded in the Probate Office.

Section 1.49 **TURNOVER DATE**. The term “Turnover Date” shall mean the **latter** of (a) five (5) years from the date hereof or (b) the first to occur of the following: (i) the date on which Developer and any Affiliates of Developer cease to own any portion of the Property or (ii) the date on which Developer elects, in its sole and absolute discretion, to relinquish (1) all rights to appoint and remove members of the Board pursuant to **Section 4.02** below and (2) all voting rights in the Association reserved to Developer pursuant to **Section 4.03(c)** below.

Section 1.50 **UNRESTRICTED USE AMENITIES**. The term “Unrestricted Use Amenities” shall mean and refer to any parks, playgrounds, or walking trails that may be constructed within the Property or within other areas of the Development which may be owned either by the Association or the Master Association, and which shall be for the use of all members of all Residential Associations, subject to such rules and regulations and conditions and assessments as shall be determined by the Association or Master Association (as applicable). **Notwithstanding anything provided herein to the contrary, in no event shall Developer be obligated to construct or otherwise provide any Unrestricted Use Amenities within any portion of the Property or the Development.**

Section 1.51 **VESTLAKE Owner**. The term “Vestlake Owner” shall mean, collectively each Owner and Occupant in the Vestlake Communities, as “Owner” and “Occupant” are defined in in the Vestlake Communities Covenants, Conditions, and Restrictions dated May 5, 1994 and recorded in Book 9406, Page 9798 in the Probate Office, together with all amendments thereto.

Section 1.52 **WATERSHED PROTECTIVE COVENANTS**. The term “Watershed Protective Covenants” shall mean and refer to that Declaration of Protective Covenants for Liberty Park dated as of May 1, 1991, between Developer and The Water Works and Sewer Board of The City of Birmingham which is recorded in Real Volume 4037, Page 122 in the Probate Office of Jefferson County, Alabama, as the same may be amended from time to time. All Property is subject to the Watershed Protective Covenants in addition to this Declaration.

ARTICLE II
PROPERTY SUBJECT TO THE DECLARATION

Section 2.01 **GENERAL DECLARATION.** Developer hereby declares that the Property is and shall be subject to the covenants, easements, conditions, restrictions, requirements, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot, Dwelling and Common Area thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, requirements, charges, liens and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and all Owners and Occupants of the Property and any Lot, Dwelling and Common Area thereof. This Declaration shall apply only to the Property (and any Additional Property added to the terms and provisions hereof by Developer). This Declaration shall not apply to any other real property owned by Developer unless the same is subjected specifically by written instrument to this Declaration.

Section 2.02 **ADDITIONAL PROPERTY.**

(a) Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration (whether before or after the Turnover Date), to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer in the manner required for the execution of deeds and recorded in the Probate Office, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant or Mortgagee of any Lot or Dwelling) and shall (a) refer to this Declaration, (b) contain a statement that such Additional Property is conveyed or subject to the provisions of this Declaration or only specified portions thereof, (c) contain a legal description of such Additional Property and (d) state such other or different covenants, conditions and restrictions as Developer, in its sole discretion, may specify to regulate and control the use, occupancy and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office submitting any Additional Property to the terms and provisions of this Declaration, the number of votes in the Association shall be increased by the number of Lots or Dwellings within the Additional Property which are added and submitted to this Declaration so that there shall continue to be one vote in the Association per Lot or Dwelling within the Property. In no event shall Developer be obligated to submit any Additional Property to the provisions of this Declaration or to impose any of the covenants, conditions or restrictions set forth in this Declaration upon any real property owned by Developer situated adjacent to or in close proximity with the Property. Notwithstanding anything provided in this Declaration to the contrary, (i) the provisions of this Section 2.02(a) may not be abrogated, modified, rescinded, supplemented or amended, in whole or in part, without the prior written consent of Developer, (ii) the rights reserved by Developer to add Additional Property to this Declaration pursuant to this Section 2.02(a) shall not be deemed to inure to the benefit of any transferee or purchaser of the Property, the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to this Section 2.02(a) of this

Declaration and (iii) if Developer elects to add Additional Property to this Declaration, whether before or after the Turnover Date, then this Declaration may be amended solely by Developer in accordance with the provisions of this Section 2.02(a) without any requirement that the consent or approval of any Owner or Mortgagee be obtained.

(b) Without limitation on the provisions of Section 2.02(a) above, the Tipple Drive Covenants expressly reserved the right to Developer, without the consent of the Tipple Drive Association or any Tipple Drive Owner to submit the Tipple Drive Property to this Declaration pursuant to the provisions of Section 2.02(a) above. The Tipple Drive Covenants further provide that upon such submission of the Tipple Drive Property to this Declaration, the Tipple Drive Property will henceforth become a part of the Property subject to the terms and conditions of Declaration rather than the Tipple Drive Covenants, and that each Tipple Drive Owner will become a member of the Association in lieu of the Tipple Drive Association and the Commercial Association (each as defined in the Tipple Drive Covenants). Upon such submission of the Tipple Drive Property to this Declaration, all references herein to the "Tipple Drive Association," the "Tipple Drive Owner," and "Tipple Drive Property" shall be moot and of no further force and effect, and the Tipple Drive Property will be deemed a Townhome Development subject to the Townhome Covenants set forth in this Declaration.

Section 2.03 **RIGHT OF DEVELOPER TO MODIFY RESTRICTIONS WITH RESPECT TO PROPERTY OWNED BY DEVELOPER.** With respect to any Property owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.02 above, modify the provisions of this Declaration as the same apply to any such Property.

Section 2.04 **LIBERTY PARK PUD.** EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY LOT OR DWELLING, ACKNOWLEDGES AND AGREES THAT THE LIBERTY PARK PUD ALLOWS MIXED USES WHICH MAY INCLUDE SINGLE-FAMILY ATTACHED AND DETACHED DWELLINGS BEING SITUATED DIRECTLY ADJACENT TO EACH OTHER AS WELL AS BEING ADJACENT TO COMMERCIAL AREAS, WHICH MAY INCLUDE A COMBINATION OF RETAIL, OFFICE AND RESIDENTIAL USES SITUATED DIRECTLY ADJACENT TO EACH OTHER OR WHICH MAY BE COMBINED INTO ONE BUILDING (WITH THE POSSIBILITY THAT RETAIL AND OFFICE USES MAY BE UTILIZED ON THE LOWER FLOORS OF THE BUILDING WITH RESIDENTIAL DWELLINGS SITUATED ON THE UPPER FLOORS OF A BUILDING). EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY LOT OR DWELLING, ACKNOWLEDGES AND AGREES THAT THE FOREGOING TYPES OF DEVELOPMENT MAY BE UNDERTAKEN BY DEVELOPER; HOWEVER, NO REPRESENTATIONS AND WARRANTIES ARE MADE BY DEVELOPER THAT ANY SUCH DEVELOPMENT WILL BE UNDERTAKEN.

Section 2.05 **RIGHT OF DEVELOPER TO WITHDRAW PROPERTY.** Developer reserves the right to withdraw all or any portion of the Property owned by Developer or its affiliate from the Declaration by filing an amendment to this Declaration that need be signed only by Developer and any Mortgagee secured by that portion of the Property that is to be withdrawn. Any property withdrawn from this Declaration may be developed by Developer in its sole discretion, may be conveyed to the Master Association, or may be resubmitted to this Declaration, as may be determined in Developer's sole discretion.

Section 2.06 **MUTUALITY OF BENEFIT AND OBLIGATION.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot and Dwelling and are intended to create mutual, equitable servitudes upon and in favor of each Lot and Dwelling, (b) to create reciprocal rights and obligations between the respective Owners and all future and subsequent Owners of any Lot or Dwelling within the Property and (c) to create a privity of contract and estate between the Owners, their respective heirs, executors, administrators, personal representatives, successors and assigns.

Section 2.07 **ADDITIONAL COVENANTS.** Developer may, in its sole and absolute discretion, create additional restrictive covenants, in addition to the terms and provisions of this Declaration, for any portion of the Property. Furthermore, other owner associations may be created for portions of the Property subject to any such additional covenants. Only those portions of the Property which are specifically subjected to and encumbered by any such additional restrictive covenants shall be bound by the terms and provisions thereof or shall be allowed to have any membership interest in any such additional owners' associations which may be established from time to time by Developer. In the event of any conflict or ambiguity between the terms and provisions of any such additional restriction covenants and the terms and provisions of this Declaration, the terms and provisions of this Declaration shall at all times control. Without limiting the foregoing, Developer hereby imposes the Townhome Covenants set forth on **Exhibit "B"** attached hereto with respect to any and all townhome-style Dwellings hereafter developed within the Property.

Section 2.08 **MASTER ASSOCIATION.** Each Owner will be required to pay a pro rata share of Master Association Expenses as set forth in Section 8.04 hereof. Notwithstanding anything provided herein to the contrary, no individual Owner or Occupant shall be deemed a member of the Master Association. The Association shall be a member of the Master Association.

Section 2.09 **DEVELOPMENT OF PROPERTY.** Developer shall have the right, but not the obligation, for so long as Developer owns any portion of the Property, to make improvements and changes to all Common Areas and to all Lots and Dwellings owned by Developer, including, without limitation, (a) installation and maintenance of any Improvements in or to the Common Areas, (b) changing the location of the boundaries of any Lots or Dwellings owned by Developer or the boundaries of any of the Common Areas, (c) changing the boundaries of any portion of the Property owned by Developer, including any Additional Property owned by Developer, (d) the installation and maintenance of any water, sanitary sewer, storm sewer and any other utility systems and facilities within any of the Common Areas, (e) converting and changing any Lots or any portion thereof owned by Developer into Common Areas, streets, roadways, paths, parks or other uses, (f) removing or exempting any portion of the Property and any Lots, Dwellings or Common Areas from the terms and provisions of this Declaration, and (g) installation and maintenance of any soil erosion control, ponds, lakes, or drainage channels pursuant to the Watershed Protective Covenants. The exercise by Developer of any of the rights set forth in this **Section 2.09** may be exercised solely by Developer without any requirement that the consent or approval of any Owners or Mortgagees be obtained. Each Owner, by acceptance of a deed to any Lot or Dwelling, acknowledges and agrees that Developer may either own or may in the future own real property situated adjacent to or in close proximity with the Property, which real property will not be subject to any of the terms and provisions of this Declaration unless Developer, in its

sole and absolute discretion, elects to add such real property to the terms and provisions of this Declaration pursuant to the provisions of Section 2.02 above.

Section 2.10 **SUBDIVISION**. Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, one or more subdivision plats setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots, Dwellings, Common Areas, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such subdivision plats and any amendments thereto shall be binding on the portions of the Property indicated thereon as if such subdivision plat were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, the rights reserved by Developer pursuant to this Section 2.09 may be exercised by Developer without any requirement that the consent or approval of any Owners or Mortgagees be obtained (other than the Owner or Mortgagee of any Lot which is being subdivided or re-subdivided) and shall include, without limitation, the right to divide and re-subdivide, combine, subdivide and re-subdivide any Lots, Dwellings, Common Areas and other portions of the Property owned by Developer.

ARTICLE III
EASEMENTS

Section 3.01 **GRANT OF NON-EXCLUSIVE EASEMENTS TO COMMON AREAS.**

(a) **Common Areas**. Subject to the terms and conditions of this Declaration and the rules, regulations, fees and charges from time to time established by the Master Association and/or the Board, Developer does hereby grant to each Owner and Occupant the non-exclusive right, privilege and easement of access to and the use and enjoyment of the Common Areas in common with the following: (i) Developer, its successors and assigns; (ii) all other Owners, Occupants and other parties having any rights or interest therein; (iii) as to the Restricted Use Amenities which are part of the Common Areas, also in common with the Vestlake Owners and the Tipple Drive Owners; and (iv) as to the Unrestricted Use Amenities which are part of the Common Areas, also in common with all members of all Residential Associations. Subject to the rights of the Association and/or the Master Association to limit or prohibit access to and the use of the Common Areas and the Restricted Use Amenities, if any, as provided in Sections 3.01(b) and 11.01 below, the easement and rights granted pursuant to this Section 3.01(a) are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot and Dwelling.

(b) **Restricted Use Amenities**. Developer does hereby grant to each Owner and Occupant, to each Vestlake Owner, and to each Tipple Drive Owner, the non-exclusive right, privilege and easement, to use and enjoy the Restricted Use Amenities in common with one another. Notwithstanding anything provided herein to the contrary, access to and the use and enjoyment of the Restricted Use Amenities (i) shall be subject to any and all rules and regulations established from time to time by the Master Association pursuant to Section 4.09 below, (ii) shall be limited to the Owners and Occupants, the Vestlake Owners, and the Tipple Drive Owners, and (iii) may be suspended or permanently revoked by the Master Association as to any such Person who (1) violates any of the rules and regulations applicable to the use and enjoyment of the

Restricted Use Amenities or (2) fails to timely pay all Assessments or use fees to be established by the Master Association due and payable by such member of the Association or such Vestlake Owner or such Tipple Drive Owner as set forth in this Declaration. The easement and rights granted pursuant to this Section 3.01(b) are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot and Dwelling in the Property and each lot owned by a Vestlake Owner or a Tipple Drive Owner.

(c) Unrestricted Use Amenities. Developer does hereby grant to each Owner and Occupant, to each Vestlake Owner, to each Tipple Drive Owner, and to each Old Overton Owner, the non-exclusive right, privilege and easement, right and privilege to use and enjoy the Unrestricted Use Amenities in common with one another. Notwithstanding anything provided herein to the contrary, access to and the use and enjoyment of the Unrestricted Use Amenities (i) shall be subject to any and all rules and regulations established from time to time by the Association (with the approval of the Master Association) pursuant to Section 4.08 below, (ii) may be suspended or permanently revoked by the Association (with the approval of the Master Association) as to any such Person who (1) violates any of the rules and regulations applicable to the use and enjoyment of the Unrestricted Use Amenities or (2) fails to timely pay all Assessments due and payable by such Owner, such Vestlake Owner, such Tipple Drive Owner, or such Old Overton Owner, as set forth in this Declaration. The easement and rights granted pursuant to this Section 3.01(c) are and shall be permanent and perpetual, are non-exclusive, are appurtenant to and shall pass and run with title to each Lot and Dwelling in the Development.

Section 3.02 RESERVATION OF GENERAL ACCESS AND MAINTENANCE EASEMENT. Developer does hereby establish and reserve for itself, the ARC, the Master Association, the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot and Dwelling for the purpose of (a) providing ingress to and egress from each Lot and Dwelling for (i) inspecting each Lot and Dwelling and any Improvements thereon in order to determine compliance with the provisions of this Declaration and (ii) the performance of the respective duties of Developer, the Master Association, the ARC and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the Master Association, the ARC and the Association pursuant to any of the terms or provisions of this Declaration, the Master Association Documents, or the Watershed Protective Covenants; provided, however, that upon completion and occupancy of any Dwelling, then except in the event of emergencies, the foregoing easement shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Dwelling directly affected thereby and (b) mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within the Property; provided, however, that such easement shall not impose any duty or obligation upon Developer, the Master Association, the ARC or the Association to perform any of the foregoing actions.

Section 3.03 RESERVATION OF EASEMENTS WITH RESPECT TO COMMON AREAS.

(a) Developer does hereby establish and reserve, for itself, the Master Association, the ARC, the Association and their respective agents, employees, representatives,

invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant, over, across, under, through and upon all of the Common Areas for the purpose of (i) constructing Dwellings and other Improvements in and to any Lots, Dwellings and Common Areas, (ii) installing, maintaining, repairing and replacing any other Improvements to the Property or to the Common Areas, including, without limitation, sidewalks, walkways, signage and traffic directional signs and (iii) doing all other things reasonably necessary and proper in connection therewith; provided, however, that in no event shall Developer, the Master Association, the ARC or the Association have any obligation to undertake any of the foregoing.

(b) Developer does hereby establish and reserve for itself and its successors and assigns the permanent right to change, modify and realign the boundaries of any of the Common Areas. Developer hereby establishes and reserves for itself and its successors and assigns (i) a permanent and perpetual non-exclusive easement to have access, ingress to and egress from and the right and privilege to use and enjoy all of the Common Areas and all Improvements thereon for such purposes as Developer deems appropriate, (ii) the right to grant to third parties rights to use the Common Areas and (iii) the right to grant to third parties rights to use any of the Common Areas. Developer further reserves the right, but shall not have any obligation, to convey by quitclaim deed to the Master Association, at any time and from time to time any portion of the Property or any Improvements thereto to be utilized as Common Areas, as Developer, in its sole discretion, may determine.

Section 3.04 **RESERVATION OF EASEMENT FOR UTILITIES.** Developer does hereby establish and reserve for itself, the Master Association, and the Association and their respective successors and assigns a permanent and perpetual non-exclusive easement appurtenant over, across, under, through and upon all portions of the Property, including all Common Areas and all Lots and Dwellings which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining and operating master telecommunication and/or internet, and/or cable systems, security and similar systems and all utilities necessary or convenient for the use of any portion of the Property or other real property, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sanitary sewer services, storm drains and sewers, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Property or any other real property. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same. Notwithstanding anything provided in this Section 3.04 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.04 shall not unreasonably interfere with the use or occupancy of any Dwelling situated on any Lot, (ii) Developer shall use commercially reasonable efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.04 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein and (iii) the establishment and reservation of easements pursuant to this Section 3.04 shall not create any obligation, responsibility

or liability of Developer, the Master Association, or the Association to undertake any of the actions allowed or permitted pursuant to the terms of this Section 3.04.

Section 3.05 RESERVATION OF EASEMENTS FOR SIGNS, WALKS, TRAILS, WALLS AND FENCES.

(a) Developer does hereby establish and reserve for itself, the Master Association, and the Association and their respective successors and assigns, a permanent and perpetual easement appurtenant over, across, through and upon a strip of land ten (10) feet in width lying parallel to and running along the common exterior boundary between each Lot or Dwelling and any public roadway which is directly adjacent to and abuts such Lot or Dwelling for the purpose of constructing, installing, maintaining, repairing, operating, replacing and the use of sidewalks, walkways, trails, bicycle and jogging paths and lanes, traffic directional signs and related improvements; provided, however, that neither Developer, the Master Association, nor the Association shall have any obligation to construct any of the foregoing improvements.

(b) Developer does hereby reserve for itself, the Master Association, and the Association and their respective successors and assigns, the right to establish on any plat to be recorded such permanent and perpetual easements appurtenant over, across, through and upon a Lot as Developer shall deem appropriate for the purpose of constructing, installing, maintaining, repairing, operating and replacing a perimeter wall, fence, mound or berm around the perimeter boundary of the Property; provided, however, that (i) neither Developer, the Master Association, nor the Association shall have any obligation to construct any such perimeter wall, fence, mound or berm and (ii) to the extent Developer desires to exercise the easement rights reserved in this Section 3.05, then Developer shall have the further right, at any time and from time to time, to alter, change, modify, terminate and remove any improvements constructed by Developer on any portion of the Property pursuant to this Section 3.05.

Section 3.06 RESERVATION OF ENVIRONMENTAL EASEMENT. Developer does hereby establish and reserve for itself, the Master Association, the ARC, the Association and their respective agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across, through and upon all Lots and all unimproved portions of any Dwellings for the purpose of taking any action necessary to effect compliance with the Architectural Standards and any watershed, soil erosion or environmental rules, regulations and procedures from time to time affecting or otherwise promulgated or instituted by any Governmental Authorities, the Board, the Master Association, or the Declaration of Watershed Covenants. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any Governmental Authorities, including, without limitation, any watershed, soil erosion, stormwater discharge or environmental rules, regulations or procedures affecting the Property, including those set forth in the Declaration of Watershed Covenants. Except in the case of an emergency or a perceived emergency, the exercise by Developer, the Master Association, the ARC or the Association of the rights reserved in this Section 3.06 shall not unreasonably interfere with the use or occupancy of any Dwelling.

Section 3.07 **LANDSCAPING BY OWNERS ON EASEMENT AREAS**. Developer, the Master Association, 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 or road right-of way within the Development by any Owner, Occupant or any other party.

ARTICLE IV
ASSOCIATION

Section 4.01 **MEMBERSHIP**. The Owner of each Lot or Dwelling shall be a member of the Association. For purposes of determining membership in the Association, only one (1) membership in the Association shall be allowed per each Lot or Dwelling, Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling; provided, however, that (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot or Dwelling within the Property owned by Developer, (b) in the event any Lot or Dwelling is owned by more than one (1) person, then the Owner of such Lot or Dwelling shall, designate only one (1) representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot or Dwelling owned by such Owner and (c) no Mortgagee shall become a member of the Association until such time, if at all, that the Mortgagee becomes an Owner by virtue of foreclosure or deed in lieu of its Mortgage and title to such encumbered Lot or Dwelling is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot or Dwelling (other than by a Mortgage as security for the payment of an obligation), shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot or Dwelling transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments or other evidence of such membership. Membership in, or the rights and benefits of, the Association may not be transferred, assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a Lot or Dwelling. Each member of the Association shall at all times comply with the provisions of this Declaration, the Certificate of Formation, the Bylaws and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

Section 4.02 **BOARD**. The Board shall have the rights and duties set forth in the Certificate of Formation and the Bylaws. Developer hereby retains and shall have the sole and exclusive right to appoint and remove, with or without cause, any and all members of the Board and any and all officers of the Association until the occurrence of the Turnover Date. From and after the time that 500 Dwellings have been constructed within the Property and sold for occupancy by a resident, Developer will appoint one (1) resident as a member of the Board. From and after the time that 750 Dwellings have been constructed in the Property and sold for occupancy by a resident, Developer will appoint a second resident as a member of the Board. From and after the Turnover Date, the number of members of the Board shall increase to five (5) and the Owners shall have the exclusive right to elect and remove all five (5) members of the Board in accordance with the terms and provisions of the Bylaws. As used throughout this Declaration, all actions required or permitted to be taken by the Association shall, unless otherwise expressly provided herein to the contrary, be by the majority vote of the members of the Board. Each Owner, by acceptance of a deed to a Lot or Dwelling, vests in Developer the sole and absolute authority to appoint and

remove all of the members of the Board and all of the officers of the Association until the occurrence of the Turnover Date.

Section 4.03 **VOTING RIGHTS.**

(a) Notwithstanding anything provided to the contrary in this Declaration, the Certificate of Formation or the Bylaws, Developer shall, subject to the provisions of Section 4.02 and the remaining terms and provisions of this Section 4.03(a), have the sole and exclusive right to exercise all voting rights in the Association and the Master Association until the Turnover Date; provided, however, that (i) any Special Assessments must be approved by the Owners in accordance with the terms and provisions of Section 8.05 below and (ii) certain amendments to this Declaration are subject to the terms and provisions of Section 10.02 below. Each Owner, by acceptance of a deed to any Lot or Dwelling, shall be deemed to have irrevocably and unconditionally agreed to the foregoing terms and provisions of this Declaration and shall further be deemed to waive any and all voting rights in the Association prior to the Turnover Date except as specifically set forth in Sections 8.04 and 10.02 hereof.

(b) Following the Turnover Date, the Owner of each Lot or Dwelling shall be entitled to one (1) vote in any matter submitted to the members of the Association for approval. No Owner, whether one or more persons, shall have more than one membership and one vote per Lot or Dwelling owned and, to the extent any Lot contains more than one Dwelling, then such Lot and Dwelling shall be entitled to only one (1) vote regardless of the number of Dwellings situated on such Lot. Such voting rights shall continue to apply to each Lot or Dwelling upon the addition of any of the Additional Property to this Declaration. Only those Owners who hold legal title to a Lot or Dwelling shall be entitled to vote on any matter submitted to the members of the Association for approval. For purposes of this Section 4.03, at all times prior to and after the Turnover Date, Developer shall be deemed the Owner of, and entitled to, all voting rights attributable to any Lots or Dwellings owned by Developer.

(c) Each Owner, by acceptance of a deed to a Lot or Dwelling, consents and agrees to the dilution of his or her voting interest in the Association by virtue of the resubdivision of any Lot by Developer or the submission of any Additional Property to the terms of this Declaration. In no event, whether as a result of there being multiple ownership interests in any Lot or Dwelling or otherwise, shall more than one vote be allowed for any one Lot or Dwelling. Fractional voting shall not be permitted.

(d) Notwithstanding anything provided herein to the contrary, the Association shall have the right to suspend any Owner's voting rights or privileges in the Association pursuant to the terms and provisions of Section 11.01 below.

Section 4.04 **DUTIES AND POWERS OF ASSOCIATION.** In addition to the rights, duties, responsibilities and obligations of the Association otherwise set forth in this Declaration, the Association shall have the power to do, cause to be done and otherwise perform or cause to be performed any of the duties and powers set forth in the Certificate of Formation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by the Master Association, this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary

to effectuate any such right or privilege. The powers and authority granted herein and in the Certificate of Formation and Bylaws of the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

Section 4.05 **MEETINGS OF MEMBERS OF ASSOCIATION.** Notwithstanding anything provided in this Declaration, the Certificate of Formation or the Bylaws to the contrary, no meetings of the Owners (*i.e.*, members of the Association) are required to be held prior to the Turnover Date. Following the occurrence of the Turnover Date, annual meetings of the Owners (members of the Association) shall be held in accordance with the terms and provisions of the Bylaws.

Section 4.06 **ACTIONS BY BOARD.**

(a) Subject to the conditions, restrictions and other provisions of this Declaration, all agreements, actions and determinations lawfully authorized by the Board shall be binding upon all Occupants and Owners, their heirs, executors, personal representatives, administrators, successors and assigns and all others having any interest in the Property.

(b) The Board, either prior to or after the occurrence of the Turnover Date, shall each have the right, in its sole and absolute discretion, to enter into any and all agreements with third parties, which may include affiliates of Developer, pursuant to which such third party shall 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 Common Areas owned by the Association, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association or the Master Association. All costs and expenses incident to the employment of a manager of the Association shall be a Common Expense. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically reserved to the Board or the officers of the Association by this Declaration, the Certificate of Formation or the Bylaws. Such manager may be any Person and may be bonded in such manner as the Board may require, with the cost 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, accounting and other professional services as are necessary or desirable in connection with the administration and operation of the Property and the Association or the enforcement of this Declaration, the Certificate of Formation, the Bylaws, the Architectural Standards or any rules and regulations of the Association.

Section 4.07 **MANAGEMENT BY DEVELOPER OR ITS AFFILIATES.** Developer or any of Developer's affiliates may be employed as the manager of the Association and for the Property until the Turnover Date at such compensation and on such terms as would be usual, customary and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size, quality and nature of the Development.

Section 4.08 **RULES AND REGULATIONS.** The Board may establish and enforce rules and regulations governing the use, improvement, maintenance and repair of all Lots and

Dwellings and any Common Areas that are owned by the Association. Such rules and regulations shall be binding upon all Owners, until and unless such rule or regulation is specifically overruled, canceled or modified by the Board or the Master Association, or by the vote of the members of the Association entitled to vote thereon at any regular or special meeting of the Association or any ballot vote held in accordance with the terms and provisions of the Bylaws.

Section 4.09 **Restricted Use Amenity Committee**. Notwithstanding any provision herein to the contrary, from and after the time that the Restricted Use Amenities or any other Common Areas are conveyed to the Master Association, the Master Association, and not the Association, will have all corporate governance rights with respect to such Common Areas, including, without limitation, the right to establish the rules and regulations regarding the use of such Common Areas by those Persons permitted to use the same as set forth herein, the establishment of budgets, and the determination of Assessments applicable to such Common Areas as set forth herein and the allocation of such Assessments among the benefitting Associations. The Master Association will establish a committee of not less than three (3) nor more than seven (7) persons (the "**RUAC**") and will assign the corporate governance over such Common Areas to such RUAC. The RUAC will initially be comprised of Developer and such individuals as Developer shall, in its sole discretion, select, provided however, that at least one member of the RUAC shall be a member of the Vestlake Association; and provided further that from and after the time that 500 Dwellings in the Property have been constructed and sold for occupancy by a resident, the Developer will appoint a member of the Bray Association to the RUAC. Notwithstanding any provision herein to the contrary, until the occurrence of the Turnover Date, Developer shall retain the majority vote of the RUAC and all actions or inactions undertaken by the RUAC shall require the approval or disapproval, in Developer's sole discretion, of Developer. Without limiting the foregoing, the RUAC shall adopt rules and regulations which shall govern the use such Common Areas, including, specifically, rules and regulations which (a) restrict or limit the number of guests of any Owner, any Vestlake Owner, or any Tipple Drive Owner utilizing the Restricted Use Amenities, (b) specify the hours and days on which any of the Restricted Use Amenities may be utilized, or (c) prohibit the use of all or any portion of the Restricted Use Amenities by those Owners, Vestlake Owners, or Tipple Drive Owners who have violated the rules and regulations of the Association or who have not paid all Assessments or use fees hereunder. Such rules and regulations shall be binding upon all Owners, all Vestlake Owners, and all Tipple Drive Owners.

Section 4.10 **INDEMNIFICATION**. The Association shall and does hereby indemnify, defend and agree to hold each and every member of the Board and each and every officer, agent, employee and representative (including any person designated by the Board to serve as a committee member on any committee established by the Board) of the Association harmless from and against any and all expenses, including court costs and reasonable attorneys' fees, suffered, paid or incurred by any of them in connection with any action, suit or other proceeding, including the settlement of any suit or proceeding to which such person may be made a party by reason of being or having been a member of the Board or an officer, agent, employee or representative (including any person designated by the Board to serve as a committee member on any committee established by the Board) of the Association. The members of the Board and the officers, agents, employees and representatives of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) shall not be liable for any mistake in judgment, negligence or otherwise except for their own willful misconduct or reckless disregard of duty, as finally determined by a court of competent

jurisdiction. The members of the Board and the officers, agents, employees and representatives of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association and the Association shall and does hereby indemnify, defend and agree to forever hold each such member of the Board and each such officer, agent, employee and representative of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) harmless from and against any and all liability to others on account of any such contract or commitment. The indemnification obligations and rights provided for herein shall not be exclusive of any other rights to which any member of the Board or any officer, agent, employee or representative of the Association (including any person designated by the Board to serve as a committee member on any committee established by the Board) may be entitled, including anything provided to the contrary in the Certificate of Formation or the Bylaws. The Association shall maintain adequate general liability and, to the extent financially feasible, officers' and directors' liability insurance in order to fulfill its obligations under this Section 4.10 and the costs of such insurance shall constitute a Common Expense.

Section 4.11 **TURNOVER.** Developer may, in its sole and absolute discretion, elect to transfer and convey to the Master Association or the Association by quitclaim deed any Common Areas and/or other real property owned by Developer at any time prior to or after the occurrence of the Turnover Date. The Master Association and the Association, by execution of this Declaration, each agree to accept conveyances by quit claim deeds of any and all real property which may be conveyed to it by Developer and, if requested by Developer, from any builders or developers of any portion of the Property and all such Property shall thereafter constitute and be deemed to be part of the Common Areas. In addition, on or before the Turnover Date, Developer shall transfer and assign to the Association and the Association shall assume all of Developer's rights and obligations under any and all agreements entered into by Developer on behalf of the Association or which benefit the Association. **Developer does not make, and has not made, any representations or warranties, either express or implied, as to the physical condition of any real or personal property which may be conveyed by Developer to the Association and the Association shall accept any such real or personal property in its then "AS IS" condition, "WITH ALL FAULTS".**

ARTICLE V
ARCHITECTURAL REVIEW AND ARCHITECTURAL STANDARDS

Section 5.01 **COMMITTEE COMPOSITION.** The ARC shall consist of not less than three (3) nor more than seven (7) persons, each of whom shall be appointed or elected as provided in Section 5.02 below. The persons designated to serve on the ARC may, but shall not be required to be, Owners or Occupants. The regular term of office for each member of the ARC shall be three (3) years, coinciding with the fiscal year of the Master Association. Any member of the ARC may be removed with or without cause in the manner provided in Section 5.02 below.

Section 5.02 **APPOINTMENT AND REMOVAL OF ARC MEMBERS.**

(a) **FOR SO LONG AS DEVELOPER OWNS ANY PORTION OF THE DEVELOPMENT OR SUCH EARLIER DATE AS DEVELOPER MAY ELECT IN**

DEVELOPER'S SOLE DISCRETION, DEVELOPER RESERVES THE RIGHT TO APPOINT AND REMOVE ALL MEMBERS OF THE ARC. Any person appointed as a member of the ARC by Developer may be removed, with or without cause, at any time by Developer. In the event of the death or resignation of a member of the ARC who has been appointed by Developer, then Developer shall appoint a substitute member of the ARC to fill such vacancy.

(b) Developer reserves the right, at any time either prior to or after the occurrence of the Turnover Date to elect, in a written notice given to the Association and the Master Association, to no longer retain the exclusive rights to appoint and remove members of the ARC as set forth in Section 5.02(a). Following the giving of such written notice by Developer to the Association, the Master Association shall, at all times thereafter, have the right to appoint and remove all persons who will serve on the ARC. Any person appointed as a member of the ARC by the Master Association may be removed, with or without cause, at any time by the Board. In the event of the death or resignation of a member of the ARC who has been appointed by the Master Association, then the Master Association shall appoint a substitute member of the ARC to fill such vacancy. Any person appointed by the Master Association to serve on the ARC shall be deemed an agent of the Association. The terms and provisions of this Section 5.02(b) shall not be effective until such time as Developer elects, in its sole and absolute discretion, to relinquish the right to appoint and remove members of the ARC, which election must be evidenced by a written notice provided by Developer to the Association and the Master Association.

Section 5.03 **PROCEDURE AND MEETINGS.** The ARC shall elect a chairman and he or she, or in his or her absence, any vice-chairman so elected, shall be the presiding officer at all meetings of the ARC. The ARC shall meet upon call of the chairman or vice-chairman and all such meetings shall be held at such places as may be designated by the chairman or vice-chairman. The presence, either in person or by proxy, of a majority of the total number of members of the ARC shall constitute a quorum of the ARC for the transaction of business and the affirmative vote of a majority of those present at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. Any such costs and expenses incurred by the ARC which are not paid by Owners as part of the plan review fee established from time to time by the ARC shall constitute Common Expenses. The ARC 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 the business of the ARC.

Section 5.04 **ARCHITECTURAL STANDARDS.** The ARC is hereby authorized to promulgate and amend and modify from time to time written Architectural Standards governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, location, landscaping and design of all Dwellings and any other Improvements on any Lot or Dwelling, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Dwelling or other Improvements on a Lot or Dwelling are to be submitted to and approved by the ARC and any other matters affecting the construction, repair or maintenance of any Dwelling or other Improvements on any Lot or Dwelling. The Architectural Standards and any and all amendments thereto adopted from time to

time by the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

Section 5.05 APPROVAL OF PLANS AND SPECIFICATIONS.

(a) **IN ORDER TO PRESERVE THE ARCHITECTURAL AND AESTHETIC APPEARANCE AND THE NATURAL SETTING AND BEAUTY OF THE PROPERTY, TO ESTABLISH AND PRESERVE A HARMONIOUS DESIGN FOR THE PROPERTY AND TO PROTECT AND PROMOTE THE VALUE OF THE PROPERTY, THE LOTS, THE DWELLINGS AND ALL IMPROVEMENTS THEREON, NO IMPROVEMENTS OF ANY NATURE SHALL BE COMMENCED, ERECTED, INSTALLED, PLACED, MOVED ONTO, ALTERED, REPLACED, RELOCATED, PERMITTED TO REMAIN ON OR MAINTAINED ON ANY LOT OR DWELLING OTHER THAN BY DEVELOPER, WHICH AFFECT THE EXTERIOR APPEARANCE OF ANY LOT OR DWELLING UNLESS PLANS AND SPECIFICATIONS THEREFORE HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW. WITHOUT LIMITING THE FOREGOING, THE CONSTRUCTION AND INSTALLATION OF ANY DWELLINGS, SIDEWALKS, DRIVEWAYS, PARKING LOTS, MAILBOXES, DECKS, PATIOS, COURTYARDS, SWIMMING POOLS, TENNIS COURTS, GREENHOUSES, PLAYHOUSES, PLAY EQUIPMENT, AWNINGS, WEATHER VANES, WALLS, FENCES, EXTERIOR LIGHTS, GARAGES, GUEST QUARTERS, GARAGES OR ANY OTHER OUTBUILDINGS OR IMPROVEMENTS, SHALL NOT BE UNDERTAKEN, NOR SHALL ANY EXTERIOR ADDITION TO OR CHANGE OR ALTERATION TO AN EXISTING DWELLING, GARAGE OR OTHER STRUCTURE ON A LOT BE MADE (INCLUDING, WITHOUT LIMITATION, PAINTING OR STAINING OF ANY EXTERIOR SURFACE), UNLESS THE PLANS AND SPECIFICATIONS FOR THE SAME HAVE BEEN SUBMITTED TO AND APPROVED BY THE ARC IN ACCORDANCE WITH THE TERMS AND PROVISIONS OF SECTION 5.05(b) BELOW. NO INTERIOR PORTIONS OR AREAS WITHIN A DWELLING OR OTHER STRUCTURES LOCATED ON A LOT WHICH DO NOT CONSTITUTE LIVING SPACE MAY BE CONVERTED INTO LIVING SPACE UNLESS THE ARC, IN ITS SOLE AND ABSOLUTE DISCRETION, APPROVES THE SAME.**

(b) The ARC is hereby authorized and empowered to review and approve or disapprove all plans and specifications and the construction of all Dwellings and other Improvements on any part of the Property, including, specifically, all Common Areas but specifically excluding any and all of those areas of the Property being developed by Developer for which no ARC approval shall be required. Prior to the commencement of any Dwelling or other Improvements on any Lot or Dwelling, the Owner thereof shall submit to the ARC plans and specifications and related data for all such Improvements as set forth in the Architectural Standards.

(c) The ARC shall, in its sole and absolute discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. The ARC shall have the right to disapprove any plans and specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic

considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for the Property, objection to the location of any proposed Improvements on any such Lot or Dwelling, objection to the landscaping plan for such Lot or Dwelling, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any Improvement or any other matter which, in the sole and absolute judgment of the ARC, would render the proposed Improvement inharmonious with the general plan of development contemplated for The Bray. The ARC shall have the right to approve any submitted plans and specifications with conditions or stipulations by which the Owner of such Lot or Dwelling shall be obligated to comply and must be incorporated into the plans and specifications for such Improvements. Approval of plans and specifications by the ARC for Improvements to one particular Lot or Dwelling shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the Improvements for any other Lot or Dwelling. Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within such Owner's Dwelling without the necessity or requirement that the approval or consent of the ARC be obtained so long as (i) such improvements and alterations do not affect the exterior appearance of such Dwelling and (ii) the Living Space within such Dwelling is not increased or decreased. No interior addition, renovation or other alteration that will result in an increase or decrease in Living Space (e.g. completion of a basement, attic, or bonus room) shall be commenced, erected, installed, placed, permitted to remain or maintained by an Owner unless the plans and specifications therefor have been submitted to and approved by the ARC in accordance with this Article V and the Architectural Standards and the Owner shall have paid the additional impact fee to the Master Association and any "tap-on" fees, if applicable to the Master Association, Developer, or any municipal association that may have jurisdiction over such matters for any sanitary sewer system serving any such Lot or Dwelling.

(d) The ARC shall establish a fee sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve such plans and specifications and to monitor and otherwise enforce the terms hereof. Such fee or fees shall be paid by the Owner who is seeking approval of plans and specifications. The ARC shall also have the right, in its sole and absolute discretion, to require the Owner of each Lot or Dwelling to deposit a construction escrow/security deposit with the ARC at the time the ARC approves the plans and specifications for any Improvements to such Owner's Lot. Such construction escrow/security deposit shall be held by the Association, shall serve as security for the full and faithful completion by such Owner of all Improvements to be made by such Owner on such Owner's Lot or Dwelling and the compliance with all of the terms, conditions and provisions of this Declaration and interest, if any, earned on said deposit shall belong to and remain the property of the Association. Any such escrow/security deposit shall be returned to the Owner who has deposited the same upon completion of all Improvements on such Lot or Dwelling and the determination by the ARC, in its sole and absolute discretion, that all of the other terms and provisions of this Declaration have been satisfied and complied with in all respects by such Owner, his or her agents, employees and independent contractors. If the ARC, in its sole discretion, determines that such Improvements are not timely completed in accordance with the terms and provisions of this Declaration, or if, in the construction of such Improvements, such Owner or his or her agents, employees or independent

contractors, fail to abide by all of the terms and provisions of this Declaration and any of the Architectural Standards, then the ARC shall have the right, in its sole and absolute discretion, to use all or any portion of such escrow/security deposit to complete, correct or remedy any such breach by such Owner or his or her agents, employees or independent contractors; provided, however, that application of such escrow/security deposit to the costs to complete, correct or remedy any such breach or violation shall not be deemed a release or waiver of any rights of the ARC or the Association to exercise any of their respective rights or remedies set forth in this Declaration. In addition to the foregoing, the ARC reserves the right, in its sole and absolute discretion, to require each Owner and/or such Owner's builder, to execute a soil erosion indemnity in favor of the ARC, the Association and Developer.

(e) In the event the ARC fails to approve in writing any proposed plans and specifications within forty-five (45) days after such plans and specifications have been submitted, then the plans and specifications so submitted to the ARC will be deemed to have been disapproved.

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

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

(h) In addition to the fee paid to the ARC as set forth in 5.05(d) above, each Owner who submits plans and specifications that are approved by the ARC shall pay (i) an impact fee to the Master Association which fee shall be based on the estimated square footage of Living Space in the proposed Dwelling set forth in the plans and specifications, and (ii) reasonable "tap-on" fees and service fees as may be established by the Master Association, Developer, or any municipal association that may have jurisdiction over such matters for any sanitary sewer system serving any such Lot or Dwelling. The Master Association, in its sole discretion, may apply such impact fee to any expenses incurred by the Master Association or Developer

Section 5.06 **LANDSCAPING APPROVAL.** In order to preserve, to the extent practicable, the natural landscaping and plant life currently situated on the Property and in order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation or fill work of any nature shall be implemented or installed by any Owner (other than by Developer) on any Lot or Dwelling unless and until landscaping plans therefore have been submitted to and approved by the ARC in accordance with this Article V.

Section 5.07 **CONSTRUCTION WITHOUT APPROVAL.** If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot or Dwelling without ARC approval of the plans and specifications for the same or (b) the ARC shall determine that any

approved plans and specifications for any Improvements or the approved landscaping plans for any Lot or Dwelling are not being complied with, then, in either event, the Owner of such Lot or Dwelling shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 5.12 below.

Section 5.08 **INSPECTION**. The ARC and any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Lot or Dwelling or any Improvements being constructed thereon in order to determine whether the approved plans and specifications therefore are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the ARC.

Section 5.09 **SUBSURFACE CONDITIONS**. The Property is located in an area which includes underground mines or other geological formations or conditions which may result in surface subsidence. The approval of plans and specifications by the ARC for any Dwelling or other Improvements on a Lot or Dwelling shall not be construed in any respect as a representation or warranty by the ARC, the Association, the Master Association, or Developer to the Owner submitting such plans or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Lot or Dwelling are suitable for the construction of the Improvements contemplated by such plans and specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Lot or Dwelling for the construction of any contemplated Improvements thereon.

Section 5.10 **LIMITATION OF LIABILITY**. Notwithstanding anything provided herein to the contrary, (a) neither Developer, the ARC, the Association, the Master Association, nor any agent, employee, representative, member, shareholder, partner, officer or director thereof shall have any liability of any nature whatsoever for, and (b) each Owner, by acceptance of a deed to any Lot or Dwelling, does hereby irrevocably and unconditionally waive and release Developer, the ARC, the Association, the Master Association, and each agent, employee, representative, member, shareholder, partner, officer and director thereof from, any and all damage, loss, action, cause of action, liability, expense or prejudice suffered, claimed, paid or incurred by any Owner on account of (i) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article V, (ii) any defects, structural or otherwise, in any work done according to such plans and specifications, (iii) the failure of the ARC to approve or the disapproval of any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article V, (iv) the construction or performance of any work related to such plans, drawings and specifications, (v) bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Dwellings, Improvements or the personal property of any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any Dwellings or Improvements or the plans and specifications therefore, or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any Lot or Dwelling) and (vi) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Lot or Dwelling, or any Improvements situated thereon.

Section 5.11 **COMMENCEMENT AND COMPLETION OF CONSTRUCTION.**

(a) Upon commencement of construction of any Dwelling, construction work thereon shall be prosecuted diligently and continuously and shall be completed within one (1) year of the commencement date of said construction (unless an extension is granted in writing by the ARC), such completion to be evidenced by a final certificate of occupancy issued by the appropriate Governmental Authorities.

(b) If any Owner who is a participant in Developer's approved builder program ("**ABP**") fails to comply, in Developer's sole discretion, with all terms, conditions and provisions of the ABP, Developer shall have the right, but not the obligation, to repurchase any Lot owned by any such Owner upon which construction of a Dwelling or site preparation has not yet commenced, at an amount equal to the purchase price paid to Developer for such Lot, without interest.

Section 5.12 **ENFORCEMENT AND REMEDIES.**

(a) In the event any of the provisions of this Article V or Article VI below are breached or are not otherwise being complied with in all respects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees or contractors of any Owner or Occupant, then the ARC, the Association, and the Master Association shall each have the right, at their option, to (a) enjoin any further construction on any Lot or Dwelling and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot or Dwelling and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the ARC, the Association, and/or the Master Association in enforcing any of the provisions of this Article V or Article VI including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the ARC, the Association, and/or the Master Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this Article V or Article VI, shall be paid by such Owner, shall constitute an Individual Assessment to such Owner pursuant to Section 8.05 below and, if the same is not paid when due, shall be subject to the lien provided for in Sections 8.01 and 8.07 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC, the Association, and the Master Association set forth in this Section 5.12 shall not be deemed exclusive of any other rights and remedies which the ARC, the Association and the Master Association may exercise at law or in equity or any other rights and remedies specified in this Declaration.

(b) If any Owner who is a participant in Developer's approved builder program ("**ABP**") fails to comply, in Developer's sole discretion, with all terms, conditions, and provisions of the ABP, Developer shall have the right, but not the obligation, to repurchase any Lot owned by such Owner upon which construction of a Dwelling or site preparation has not yet commenced, for a purchase price equal to the purchase price paid to Developer for such Lot, without interest

and the Owner shall convey such Lot(s) free and clear of all encumbrances other than those existing prior to the Owner's purchase of the Lot(s).

Section 5.13 **COMPLIANCE CERTIFICATION.** The ARC (or any authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to an Owner a certificate in writing setting forth whether all necessary ARC approvals have been obtained and whether any Dwelling or Improvement has been constructed in accordance with the provisions of this Declaration.

Section 5.14 **REPURCHASE OPTION.** In the event the Owner of any Lot desires to convey such Lot prior to the expiration of one (1) year after the purchase of such Lot from Developer, and in the event the Owner has not then commenced construction of a Dwelling thereon, Developer shall have and retains the option, but not the obligation, to purchase such Lot for an amount equal to the purchase price paid to Developer for the Lot, without interest ("**Repurchase Option**"). Any such Owner shall give Developer written notice of such Owner's desire to sell such Lot, and Developer shall have thirty (30) days after receipt thereof to exercise Developer's option to purchase such Lot.

ARTICLE VI
USE AND PROPERTY RESTRICTIONS

Section 6.01 **USE RESTRICTIONS.** Except as otherwise provided to the contrary in this Section 6.01, each Lot and Dwelling shall be used for single-family residential purposes only; provided, however, that any portion of the Property may be used for Common Areas to the extent approved by either Developer or the Association and any portion of the Property may be developed and used for attached or detached townhouses, condominium units, duplexes, zero-lot-line homes and cluster, patio and garden homes and other types of residential dwelling purposes as allowed by the PUD Plan and as may be approved by the ARC. No trade or business may be carried on in or from any Lot or Dwelling; provided, however, that (a) the use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client or employee traffic and (b) the foregoing shall not be applicable to any live/work units (*i.e.*, structures which provide for office and retail uses on the lower floors of a building and residential uses on upper floors) within any of the Town Center, as such term is defined in the PUD Plan. The leasing or rental of a Dwelling for residential purposes only shall not be considered a violation of this covenant so long as the lease (*i*) is for not less than the entire Dwelling, (*ii*) is for a term of at least six (6) months and (*iii*) is otherwise in compliance with the rules and regulations promulgated and published from time to time by the Association. Notwithstanding anything provided in this Section 6.01 to the contrary, the Property or any portion thereof, including, specifically, any Lots constituting any portion of the Property, may be used and developed for (1) any of the uses included in the definition of Common Areas and (2) any other uses so long as such other uses have been approved in writing by the ARC. In no event shall any of the Lots be used for trailers and mobile homes; provided, however, that with ARC approval, construction trailers may be located on any of the Property during the construction of Improvements on the Property.

Section 6.02 **UNDERGROUND UTILITIES AND SANITARY SEWER SYSTEM.** All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sanitary sewer (to the

extent available), cable television, internet, security and any other utility service for any portion of the Property shall be installed and maintained below ground. Enviro Services, LLC, an Alabama limited liability company (“**Enviro**”), will be the sole provider of off-site sewage treatment and disposal services to the Property and each Owner will be required to connect such Owner’s Lot and Dwelling to such sanitary sewer system and pay the established connection fee and ongoing monthly service fees.

Section 6.03 **BUILDING SETBACKS.**

(a) Subject to the provisions of Section 6.04 below, minimum building setback lines for all Dwellings shall be established either (i) on the recorded subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development) or (ii) in the deed from Developer to the Owner of such Lot or Dwelling.

(b) No Dwelling shall be built within the setback areas established in accordance with any of the procedures specified in Section 6.03(a) above or Section 6.04 below. All eaves, steps, stoops, porches, terraces, decks and patios shall be deemed a part of the Dwelling for the purposes of determining building setback areas pursuant to this Section 6.03.

Section 6.04 **SITING OF DWELLINGS.** Prior to commencing any construction-related activities on any Lot or Dwelling (including any grading or clearing), the location of any Dwelling to be constructed thereon (or any alterations to the existing Dwelling situated thereon) shall be set forth on the site development plan for such Lot which must be approved by the ARC pursuant to the provisions of Section 5.05(b) above. Notwithstanding anything provided in Section 6.03 above to the contrary, subject to the terms and provisions of this Section 6.04, the ARC may require building setback requirements different from those described in or established pursuant to Section 6.03, including building setbacks which are less than or greater than those specified in or established pursuant to Section 6.03 above.

Section 6.05 **HEIGHT LIMITATIONS.** The height of all Dwellings shall be compatible with all other Dwellings adjacent to such Lot or Dwelling. No Dwelling shall exceed three (3) stories in height, as measured from the finished grade of the Lot on the front of the Dwelling facing a street or roadway. Towers, decks and outside porches shall be subject to the foregoing height limitations. Chimneys and roof finials are not subject to the foregoing height limitations.

Section 6.06 **MINIMUM AND MAXIMUM LIVING SPACE.** Minimum and maximum Living Space requirements for all Dwellings shall be established either (a) on the recorded subdivision plat for the subdivision of which such Lot is included (which may vary for each phase of development for the Property), (b) in the separate restrictive covenants, if any, for any portion of the Property, (c) in the deed from Developer to the Owner of such Lot or Dwelling or (d) in any other document, instrument or agreement executed by Developer and recorded in the Probate Office.

Section 6.07 **LANDSCAPING AND TREES.**

(a) Subject to the provisions of Section 3.07 above, unless located within ten (10) feet of a Dwelling or any driveway or sidewalk, no Owner (other than Developer) shall cut,

remove or mutilate any tree, shrub, bush or other vegetation having a trunk diameter of four (4) inches or more at a point of three (3) feet above ground level, without first obtaining the approval of the ARC; provided, however, that the foregoing shall not be deemed to prohibit the cutting and removal of any dead or diseased trees, prohibit Developer from cutting or removing trees to the extent reasonably required to construct roads, utilities or Common Areas within the Property or clearing any portion of the Property in connection with the development of the same for any of the uses described in Section 6.01 above.

(b) All yards of each Lot or Dwelling shall, unless otherwise approved by the ARC as a natural area or unless the same is landscaped with shrubbery and other approved plant life, be sodded with grass. All yards and other landscaped areas of each Lot or Dwelling shall have underground irrigation (sprinkler) systems, which must be installed at the time the initial landscaping for such Lot or Dwelling is installed.

(c) All landscaping for a Lot or Dwelling shall be completed in accordance with the landscaping plan approved by the ARC no later than the date of occupancy of any Dwelling situated thereon.

(d) No hedge or shrubbery planting which obstructs sight-lines of streets and roadways shall be placed or permitted to remain on any Lot or Dwelling where such hedge or shrubbery interferes with traffic sight-lines for any roadways within or adjacent to the Property. The determination of whether any such obstruction exists shall be made by the ARC, whose determination shall be final, conclusive and binding on all Owners. No hedge or shrubbery plantings shall be allowed to exceed six (6) feet in height or four (4) feet in width at any time and shall be neatly trimmed.

(e) No bird baths, fountains, reflectors, free standing flag poles, statues, lawn sculptures, lawn furnishings, artificial plants, bird houses or other fixtures and accessories shall be placed or installed on or within the front or side yards of any Lot or Dwelling or which would be visible from any roadway within or adjacent to the Property.

(f) No vegetable, herb or similar gardens or plants shall be planted or maintained in the front or side yards of any Lot or Dwelling or in the rear (back) yard of any Lot or Dwelling if the same would be visible from any roadway within or adjacent to the Property.

(g) No Owner shall allow the grass on his or her Lot or Dwelling to grow to a height in excess of six (6) inches, measured from the surface of the ground.

(h) Seasonal or holiday decorations (*e.g.*, Christmas trees and lights, pumpkins, Easter decorations) may not be placed on any Lot or Dwelling more than 40 days prior to such holiday and shall be promptly removed from each Lot or Dwelling no later than 30 days following the date of such holiday.

Section 6.08 **ROOFING**. The ARC shall have the right to establish specific requirements for the pitch of any roof and the type of roofing materials which may be utilized for any Dwelling. No solar or other energy collection panel, equipment or device shall be installed or maintained on any Lot or front of Dwelling. All plumbing and heating vents, stacks and other projections of any nature on the roof shall (*i*) be painted the same color as the roofing material

used for such Dwelling and (ii) to the extent practicable, not be visible from any roadways within or adjacent to the Property. No projections of any type shall be placed or permitted to remain above the roof of any Dwelling except for approved chimneys and vent stacks.

Section 6.09 **EXTERIOR LIGHTING.** All exterior lighting for any Dwelling, including, without limitation, freestanding lighting, accent lighting and utility (*e.g.*, flood) lighting, is subject to review by the ARC.

Section 6.10 **EXTERIOR MATERIALS AND FINISHES.**

(a) All exterior building material finishes and exterior colors for any Dwelling are subject to review by the ARC.

(b) Concrete steps, stoops, or porches must be finished in tile, brick, or stone. No concrete block or cinder block shall be used as an exposed building surface; any concrete, concrete block or cinder block utilized in the construction of a Dwelling or for retaining walls and foundations shall be finished in the same materials utilized for the remainder of the Dwelling (*e.g.*, brick, stone, stucco, etc.). Metal flashing, valleys, vents and gutters installed on a Dwelling shall be painted to blend with the color of the exterior materials to which it is adhered or installed.

(c) The exterior of all chimneys shall be constructed of materials approved by the ARC. If a fireplace utilizes a metal spark arrester or other metal venting apparatus at the top of the chimney, then a painted metal cowl or surround shall be installed atop the chimney. All metal or other materials placed on top of or around a chimney shall be painted to blend with the color of the roofing material used for such Dwelling.

Section 6.11 **OFF-STREET PARKING, GARAGES AND ALLEYS.**

(a) Each single-family detached Dwelling, other than Cottage Dwellings, shall provide for off-street parking for at least two (2) automobiles in enclosed garages (which must be equipped with garage doors). All driveways and sidewalks shall be paved; chert, gravel and loose stone driveways and sidewalks are prohibited; provided, however, that gravel and loose stone walkways at the rear of a Dwelling and which are not visible from any roadways within or adjacent to the Property shall be allowed if approved by the ARC. Garage doors shall be constructed of such materials as are approved by the ARC.

(b) Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of the ARC. Garage doors may open directly onto a street subject to the following requirements: (i) garage doors and driveways for each Dwelling shall be staggered so that the garage door and driveway for any Dwelling located directly across the street from such Dwelling shall not be located in the same location and (ii) front opening garage doors must be approved in writing by the ARC. All automobiles owned or used by the Owner or Occupant of any Dwelling and their respective family members shall be parked in such garages and garages shall not be used for storage or for any other purposes or uses, which would result in the garage being unavailable for the parking of vehicles therein. Non-operable vehicles shall not be stored in any garages if the same would result in any vehicles being parked outside and not in a garage.

(c) In no event shall any automobiles or other vehicles, machinery or equipment be parked or left unattended on or within (i) any areas of a Lot or Dwelling which are not paved driveways or enclosed garages, (ii) any Common Areas or (iii) any of the public roadways within the Property (unless parking on or within such roadways is required for guests or invitees or any Owner or Occupant due to full utilization of any off-street parking for such Lot or Dwelling and then, only to the extent that such vehicles do not remain parked on or within such roadways for more than 24 hours). Each Lot or Dwelling shall provide for adequate off-street parking (i.e., parking areas located solely within the property lines of such Lot or Dwelling). Vehicles shall not be parked on any landscaped or natural areas of a Lot or Dwelling or within any of the Common Areas. No vehicles, machinery or equipment shall be (1) repaired or restored outside an enclosed structure (e.g., a garage) on any Lot or Dwelling or (2) placed on any types of blocks or other types of fixtures or personal property which are located outside of an enclosed garage.

(d) No portion of any Lot or Dwelling may be utilized to provide access, ingress to or egress from any property outside the boundaries of the Property without the express prior written consent of the ARC, which consent may be withheld by the ARC in its sole and absolute discretion.

(e) No vehicles, garbage cans or other personal property of any Owner shall be parked or allowed to remain in any of the alleyways within the Property, which would or could interfere with vehicular or pedestrian access through such alleyways or access into or out of any garages situated on any such alleyways. With respect to all Lots which abut alleyways, the Owner of each such Lot shall install and maintain on the alleyway side of the garage situated on such Owner's Lot incandescent lighting utilizing photo cells which automatically switch such lighting on or off (which shall not be individually operable by Owners) or such other lighting and switch operations required from time to time by the ARC.

Section 6.12 **FENCES**. No chain link fences shall be allowed on any Lot. All fences, including the height, materials to be used, paint colors, style or architectural features of such fences and the location of any fences, must be approved in writing by the ARC. Wood fences are discouraged in lieu of metal rail fencing. Wood fencing may be approved by the ARC for sideyards to create privacy or accent features.

Section 6.13 **WINDOWS, WINDOW TREATMENTS AND DOORS**.

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

(b) The ARC may adopt guidelines for the types of windows and materials from which windows may be constructed on any Dwelling. All exterior doors on any Dwelling or other Improvements on a Lot must be approved by the ARC as to style, materials used, color, size and types of door hardware to be utilized. Burglar bars on windows and doors shall not be permitted. Screen doors shall be authorized only on the rear of a Dwelling. No aluminum or metal doors with glass fronts (e.g., storm doors) shall be allowed on the front of any Dwelling. Appropriate window treatments shall be used on all windows and shall be white or beige to exterior of Dwelling. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments.

Section 6.14 **MAILBOXES.** Each Lot or Dwelling shall have only one (1) mailbox; provided, however, that the ARC may authorize and require that double mailboxes containing only one post be located at or near the common property line of two (2) Lots (or Dwellings) which will serve both Lots (or Dwellings). All mailboxes shall be of the type, design, color and location as may be established in the Architectural Standards or approved by the ARC; provided, however, that the ARC and/or Developer may require, in lieu of mailboxes, that a kiosk or community mail center be constructed for certain portions of the Property, which kiosks or community mail centers shall constitute part of the Common Areas. Mailboxes shall contain only the house number of the Lot or Dwelling as approved by the ARC, but no further inscription, paintings, ornaments or artistry shall be allowed.

Section 6.15 **UTILITY METERS AND HVAC EQUIPMENT.** All electrical, gas, telephone and cable television meters shall be located on each Lot so as not to be visible from any roadways within or adjacent to the Property. No window mounted heating or air conditioning units or window fans shall be permitted.

Section 6.16 **SATELLITE DISHES AND ANTENNAE.** No satellite dishes shall be allowed on any Lot or Dwelling; provided, however, that one (1) satellite dish no more than two (2) feet in diameter may be installed on a Dwelling so long as (a) the same is not visible from any roadway within or adjacent to the Property and (b) the location of such satellite dish is approved by the ARC. No radio antenna, radio receiver or other similar device or aerial shall be attached to or installed on any Lot or Dwelling unless the same is (i) contained entirely within the interior of a building or other structure, (ii) not visible from any roadway within or adjacent to the Property or any adjacent Lot or Dwelling and (iii) approved by the ARC. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Lot or Dwelling, which may interfere with the reception of radio or television signals within the Property or any other real property situated in close proximity to the Property.

Section 6.17 **DRIVEWAYS AND SIDEWALKS.** All driveways and sidewalks for each Lot or Dwelling shall be constructed of concrete. Other materials (e.g., brick or asphalt) may be used but only if approved in writing by the ARC. All driveways and sidewalks shall be paved; chert, gravel and loose stone driveways and sidewalks are prohibited; provided, however, that sidewalks situated along the side or in the rear of any Dwelling which are not otherwise visible from any roadway within or adjacent to the Property need not be paved. To the extent any Owner or Occupant or any of their respective builders, contractors, subcontractors, agents, employees, guests or invitees damage or destroy any sidewalks, curbing or gutters within the Property which constitutes part of the Common Areas, then the Owner of such Lot or Dwelling shall promptly cause, at his, her or its sole cost and expense, such damaged sidewalk, curbing or gutters to be repaired and replaced in accordance with any and all requirements of the Association.

Section 6.18 **SOIL EROSION AND DRAINAGE.** Each Owner shall provide and maintain on his or her Lot or Dwelling adequate soil erosion measures and drainage facilities to accommodate any stormwater runoff resulting from any Improvements being or having been constructed on such Owner's Lot or Dwelling. Each Owner shall also insure that his or her Lot or Dwelling 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 statutes, ordinances, codes, laws, permits, legislation, rules, regulations, requirements, and rulings of any Governmental Authority. Each Owner shall, in connection with the construction of any Dwelling or other Improvements on such Owner's Lot, be solely responsible for providing adequate stormwater drainage improvements and facilities on such Owner's Lot which shall be sufficient to adequately channel any stormwater which may either cross or come upon such Owner's Lot from adjoining Lots or Common Areas or which may originate and drain from such Owner's Lot and any Improvements thereto onto adjoining Lots and Common Areas. **Each Owner, by acceptance of a deed to his or her Lot or Dwelling, shall and does hereby indemnify, defend and agree to hold Developer, the ARC, the Association, the Master 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 expenses, and any and all other amounts suffered, paid or incurred by Developer, the ARC, the Association, the Master Association and their respective agents, employees, officers, directors, shareholders, members, managers and representatives 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 the breach by such Owner (or such Owner's Occupants, contractors, subcontractors, guests, agents, employees or invitees) of any of the terms and provisions of this Section 6.18.**

Section 6.19 **OUTDOOR FURNITURE, RECREATIONAL FACILITIES AND CLOTHESLINES.**

(a) Unless otherwise specifically approved by the ARC, any yard (exterior) furniture placed, kept, installed, maintained or located in or on any Lot or Dwelling shall, to the greatest extent practicable, be located so that the same will not be visible from any roadways within or adjacent to the Property. No interior furniture or furnishings (i.e., sofas, appliances, etc.) shall be allowed outside any Dwelling.

(b) Wood piles, free-standing playhouses, treehouses, children's toys, swing sets, jungle gyms, trampolines and other outdoor and recreational or play equipment and appurtenances shall be located (i) so that the same are not visible from any roadways within or adjacent to the Property and (ii) in a location approved in writing by the ARC.

(c) Basketball backboards shall not be located within the front yards of any Lots or Dwellings and, if located within the side yard of any Lot or Dwelling, must be behind the forward most corner of the front façade of the Dwelling on such Lot. Basketball goal backboards shall be of clear Plexiglas or acrylic.

(d) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot or Dwelling unless such clotheslines or other facilities are screened by appropriate landscaping from view from any roadways within or adjacent to the Property and from any adjacent Lot or Dwelling. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall.

(e) Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear of a Dwelling and shall not be visible from any roadways within

or adjacent to the Property. No commercial barbecue equipment, including, without limitation, commercial grade smokers and grills, shall be placed, stored or operated on any Lot or Dwelling.

(f) Bird feeders, wood carvings, plaques, pallet crafts and other types of home crafts shall not be permitted in the front or side yards of any Lot or Dwelling nor shall any of the foregoing items be attached to the front or side of any Dwelling. All bird feeders, wood carvings, plaques and other types of home crafts shall be located only at the rear of a Dwelling and shall not be visible from any roadways within or adjacent to the Property.

Section 6.20 **PETS AND ANIMALS.** No animals, livestock, reptiles, birds or poultry of any kind shall be kept, raised or bred by any Owner upon any Lot or Dwelling or any other portion of the Property; provided, however, that not more than three (3) dogs and cats may be kept and maintained on a Lot or Dwelling so long as they are not kept for breeding or commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. Any structure or area for the care, housing or confinement of any pet (including, without limitation, dog houses, dog runs and other confined areas and spaces) shall be located only at the rear of a Dwelling, shall not be visible from any roadways within or adjacent to the Property and shall be constructed of materials and of a size approved by the ARC. Dogs and cats shall not be allowed to roam unattended within the Property; all dogs shall be kept and maintained within fenced or walled areas on a Lot or Dwelling which are screened with appropriate landscaping approved by the ARC or otherwise under leash. Pets shall not be permitted to leave excrement on the Lot or Dwelling of any other Owner or within any street right-of-way or any portion of the Common Areas and the Owner of such pet shall immediately remove the same. Each Owner shall be liable to the Association for the costs of repairing any damage to the Common Areas caused by the pet of such Owner or Occupant. Notwithstanding anything provided herein to the contrary, to the extent any Owner or Occupant violates any of the laws, statutes, ordinances, rules or regulations of the City with respect to any pets or other animals maintained by such Owner or Occupant on or within any Lot or Dwelling or within any portion of the Property, then enforcement of such laws, statutes, ordinances, rules and regulations shall be solely by the City and not the Association.

Section 6.21 **TRASH, RUBBISH AND NUISANCES.**

(a) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Property nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot or Dwelling which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Lots, Dwellings or Common Areas or any other real property in close proximity to the Property. Noxious or offensive activities shall not be carried on in or from any Lot or Dwelling or in any part of the Common Areas, and each Owner and Occupant shall refrain from any act or use of a Lot or Dwelling which could cause disorderly, unsightly or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Property or be in violation of any law, statute, ordinance, rule, regulation or requirement of any Governmental Authority. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than security and fire alarm devices used exclusively for such purposes, shall be located, used or placed upon any Lot or Dwelling or any other portion of the Property; provided, however, that the foregoing shall not apply to the use of

any of the foregoing devices within or for any of the Recreational Facilities, if any. Any Owner or Occupant who dumps, places or allows trash or debris to accumulate on his or her Lot or Dwelling or on any other portion of the Property shall be liable to the Association for all costs incurred by the Association to remove the same.

(b) Trash, garbage and any other refuse or waste shall not be kept on any Lot or Dwelling except in sanitary containers or garbage compactor units. Trash cans and containers shall at all times be kept at the rear of or inside a Dwelling and shall be screened from view from all roadways within or adjacent to the Property and all adjacent Lots and Dwellings by appropriate landscaping or fencing approved by the ARC; provided, however, that trash cans and containers may be moved to the side or front yard of any Dwelling on trash collection days so long as such trash cans and containers are removed from the front and side yard promptly after trash has been collected. No trash or garbage cans or other rubbish shall be placed within any of the alleyways within any portions of the Property to the extent the same would interfere with either vehicular or pedestrian ingress to and egress from any Lots or Dwellings from such alleyway or which could or would impede access to any mailboxes located on or adjacent to such alleyway.

(c) No outdoor burning of trash, garbage, leaves, limbs, shrubbery or other materials shall be permitted on any Lot or Dwelling.

Section 6.22 **RECREATIONAL VEHICLES AND MACHINERY AND EQUIPMENT.**

(a) Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, bicycles, motorized carts and all-terrain vehicles, lawnmowers, tractors, tools, construction machinery and equipment of any type or nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery or equipment shall not be permitted, stored or allowed to remain on any Lot or Dwelling unless the same is placed, stored and maintained within a wholly-enclosed structure, with roofing and doors, on such Lot or Dwelling. Any such enclosed structure must be approved by the ARC. Neither the Common Areas nor the roadways within the Property shall be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery or equipment.

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

(c) Subject to the written approval of the Master Association, which may be granted or refused in the sole discretion of the Master Association, the Board shall have the right at any time and from time to time to adopt rules and regulations with respect to the keeping, storage, parking, operation, use or maintenance of mobile homes, motor homes, tractors, equipment, machinery, trailers (with or without wheels), trucks (other than pick-up trucks), vans (other than mini-vans used solely for passenger uses), commercial vehicles of any type, campers, motorized campers or trailers, boats or other water craft, boat trailers, motorcycles, motorized bicycles, golf carts, all-terrain vehicles, motorized go-carts and other forms of transportation. No

motorcycles, motorized bicycles, all-terrain vehicles, golf carts or motorized go-carts shall be allowed to be operated on any of the streets within the Property in violation of any of the laws, statutes, ordinances, rules and regulations of the City or any other Governmental Authorities. Enforcement of any and all laws, statutes, ordinances, rules and regulations concerning the operation of any types of vehicles (including, without limitation, all-terrain vehicles or motorized go-carts) shall be undertaken solely by the City and not the Association.

Section 6.23 **SIGNAGE**. No signs or advertising posters of any kind (other than one (1) “for sale” or “for rent” sign in size and color approved by the ARC) shall be maintained or permitted within any windows or on the exterior of any Lot or Dwelling or elsewhere on any portion of the Property without the express written permission of the ARC. The approval of any signs and posters, including, without limitation, political campaign signs and name and address signs, shall be upon such conditions as may from time to time be determined by the ARC, in its sole and absolute discretion. Notwithstanding the foregoing, the restrictions set forth in this Section 6.23 shall not be applicable to any signs erected pursuant to Section 6.26(b) below.

Section 6.24 **ABOVE OR BELOW GROUND TANKS AND WELLS**. No exposed above-ground tanks for the storage of fuel, water or any other substances shall be located on any Lot or Dwelling or within any of the Common Areas. No private water wells may be drilled or maintained and no septic tanks or similar sewage facilities may be installed or maintained on any Lot or Dwelling without the prior written consent of the ARC.

Section 6.25 **TEMPORARY STRUCTURES**. No temporary house, trailer, shack, tent, barn, shed, storage shed, utility building, portable building, stable, poultry house or yard, rabbit hut, treehouse or other outbuilding or structure of any kind, shall be permitted, constructed, installed or allowed to remain on any Lot or Dwelling; provided, however, that the foregoing shall not be deemed to prohibit (a) any detached garages or other structures which are approved in writing by the ARC, (b) to the extent approved by the ARC, dog houses for not more than two (2) dogs so long as such dog houses are visibly screened with landscaping from view from all roadways within or adjacent to the Property and all adjacent Lots and Dwellings, (c) to the extent approved by the ARC, temporary structures for social functions as may be permitted by the rules and regulations of the Board and (d) construction trailers and/or sales offices of Developer.

Section 6.26 **CONSTRUCTION OF IMPROVEMENTS**.

(a) During the construction of any Improvements (including a Dwelling) on any Lot, (i) such Lot or Dwelling shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any roadways within or adjacent to the Property and (iii) all construction trash, debris and rubbish on each Lot shall be properly disposed of outside Liberty Park at least weekly. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on any roadways within or adjacent to the Property. Each Owner and each Owner’s contractor, subcontractors, laborers and suppliers shall cause all such dirt, mud, gravel and other substances to be removed from the treads and wheels of all vehicles used in or related to the construction of Improvements on a Lot or Dwelling prior to such vehicles traveling on any roadways within or adjacent to the Property.

(b) During the initial construction of any Dwelling, up to two (2) signs, in size and color to be approved by the ARC, may be posted on a Lot at a height not to exceed five (5) feet from the ground level advertising the Lot or the Dwelling thereon for sale or containing information identifying the builder of such Dwelling. No other signage, banners, flags or advertising posters shall be allowed on any portion of the Property. No signage shall be attached, nailed or otherwise adhered to any tree or other plant life.

(c) During the construction of any Improvements, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall (i) not park within any of the Common Areas, (ii) utilize off-street parking only, (iii) enter the Lot or Dwelling on which such Improvements are being constructed only from the driveway for such Lot or Dwelling, and (iv) not damage trees or other vegetation on such Lot which, pursuant to the provisions of Section 6.08 above, are to be preserved. No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any roadways within the Property. Upon completion of construction of any Improvements or any Dwelling, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Lot or Dwelling and such Lot or Dwelling shall be kept and maintained in a clean and uncluttered condition. All builders, contractors, subcontractors, laborers, suppliers, materialmen and other professionals involved in the construction of any Dwelling or other Improvements on a Lot shall be required to abide by and comply with all construction standards, guidelines and requirements adopted from time to time by the ARC as part of the Architectural Standards.

(d) All Dwellings and any other Improvements shall be constructed in compliance with the Architectural Standards and all applicable federal, state, county and local laws, ordinances, rules, regulations and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate Governmental Authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any Improvements on such Owner's Lot. Each Owner shall also be responsible for strict compliance with the Architectural Standards and all applicable watershed protection, soil erosion and other governmental requirements, both during and after completion of construction of any Improvements on such Owner's Lot.

Section 6.27 SUBDIVISION AND INTERVAL OWNERSHIP. No Lot may be further subdivided into more than one (1) Lot unless such Lot is owned by Developer. Lots may be resubdivided to combine two (2) Lots into one (1) Lot or resubdivided to reflect the same number of Lots which existed immediately prior to any such resubdivision so long as the same is approved by the ARC. Nothing contained in this Section 6.27 shall be applicable to the subdivision, resubdivision, or combination of any Lots or other real property owned by Developer. No Lot or Dwelling shall be sold or owned under any time-sharing, time-interval or similar right-to-use programs. To the extent the ARC has approved the resubdivision or combination of any Lot as required by the terms and provisions of this Section 6.27, then such resubdivided or combined Lot shall continue to constitute the same number of Lots which existed immediately prior to the resubdivision or combination of such Lots and the Owner of such combined Lots shall continue to pay Assessments on the basis of the number of Lots which existed immediately prior to the resubdivision or combination of such Lots.

Section 6.28 **SWIMMING POOLS AND TENNIS COURTS.** Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, lap pools and tennis courts may be constructed, installed and maintained on any Lot or Dwelling but only to the extent that the ARC has approved the same in writing and the construction of the same satisfy all restrictions and requirements imposed by the ARC with respect thereto. Above ground pools shall not be permitted. The ARC shall have the right to adopt further rules and regulations governing the construction of swimming pools, other outdoor water facilities and amenities and tennis courts within the Property. Swimming pools and tennis courts shall be fenced as may be required by any of the Governmental Authorities, which fencing must also be approved by the ARC.

Section 6.29 **TRAFFIC REGULATIONS.**

(a) All vehicular traffic on the private streets and roads in the Development shall be subject to the applicable provisions of the laws of the State of Alabama and any other city or county having jurisdiction thereof concerning operation of motor vehicles on public streets. The Master Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic, including adopting reasonable safety measures and speed limits for any of the private roads within any portion of the Development. The Master Association shall be entitled to enforce such rules and regulations by establishing such enforcement procedures as it deems appropriate, including levying charges for the violation thereof. In the event of any conflict between the provisions of the laws of the State of Alabama and the traffic rules and regulations promulgated by the Master Association, the more restrictive shall govern.

(b) Only drivers licensed to operate motor vehicles by the State of Alabama or by any other state in the United States may operate any type of motor vehicle, including golf carts, within the Development. In order to operate a golf cart in the Development, the owners or users thereof shall comply with any regulations and requirements for the operation thereof as may be required by the Master Association. All vehicles of any land and nature which are operated on the streets in the Development shall be operated in a careful, prudent, safe and quiet manner, and with due consideration for the rights of all residents of the Development.

Section 6.30 **COMPLIANCE WITH GOVERNMENTAL REGULATIONS.** Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements and code provisions of the City and all other Governmental Authorities.

Section 6.31 **ADDITIONAL REGULATIONS.** In addition to the restrictions set forth in this Declaration, the (a) ARC shall have the right, in its sole and absolute discretion, from time to time and at any time to adopt, modify and amend the Architectural Standards in order to impose such other, further or different requirements or restrictions which shall be binding on all Owners, and each Lot or Dwelling, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot or Dwelling, and (b) Master Association shall have the right from time to time and at any time to adopt, modify and amend such rules and regulations as the Master Association, in its sole discretion, determines to be in the best interest of all Owners, which rules and regulations shall be binding on all Owners and each Lot or Dwelling.

Section 6.32 **VARIANCES**. The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to any of the provisions of Article V above and this Article VI. Any variance request submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written variance executed by either the chairperson or vice chairperson of the ARC.

ARTICLE VII
MAINTENANCE RESPONSIBILITIES

Section 7.01 **RESPONSIBILITIES OF OWNERS**.

(a) Unless specifically identified herein as being the responsibility of the Master Association or the Association, the maintenance and repair of all Lots, Dwellings, all other Improvements situated thereon or therein and all lawns, landscaping and grounds on or within a Lot or Dwelling shall be the responsibility of the Owner of such Lot or Dwelling. Each Owner shall be responsible for maintaining his or her Lot and Dwelling in a neat, clean and sanitary condition, both inside and outside of any Dwelling or other Improvements thereto. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all Dwellings and other Improvements and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent Owner or as may be required by the ARC. No exterior changes, alterations or Improvements shall be made to any Lot or Dwelling without first obtaining the prior written approval of the same from the ARC.

(b) Each Lot or Dwelling shall be landscaped in accordance with plans and specifications approved by the ARC pursuant to Section 5.05(b) above. All areas of any Lot or Dwelling which are not improved by the construction of a Dwelling thereon (except those areas which are to be maintained as a Buffer Area as required by the terms of this Declaration) shall at all times be maintained by the Owner thereof in a fully and well-kept landscaped condition utilizing ground cover and/or shrubbery and trees. The maintenance obligations set forth in this Section 7.01(b) shall apply to all portions of a Lot or Dwelling up to the edge of the pavement of the roadway abutting such Lot or Dwelling and shall be applicable at all times either prior, during or after the construction of any Improvements thereon. Grass, hedges, shrubs, vines and any other vegetation of any type on any Lot or Dwelling shall be cut and trimmed at regular intervals at all times in order to maintain the same in a neat, safe and attractive condition. Trees, shrubs, vines, plants and other vegetation which die shall be promptly removed and replaced with living plants of like kind and quantity. Dead vegetation, stumps, weeds, trash, refuse, rubbish, debris, garbage and waste material shall be promptly removed from any Lot or Dwelling and properly disposed of outside of Liberty Park. In no event shall any dead trees, shrubs, vines, plants or other vegetation, leaves, grass clippings, limbs, dirt or any rubbish, debris, trash, refuse, garbage or waste be allowed to accumulate on any Lot or Dwelling nor shall any Owner or Occupant place, deposit or discard any of the foregoing items on or within any of the Common Areas or any other portion of Liberty Park.

(c) No Owner shall decorate, change or otherwise alter the appearance of any portion of the exterior of any Lot or Dwelling or the landscaping, grounds or other Improvements within a Lot or Dwelling unless such decoration, change or alteration is first approved, in writing, by the ARC.

Section 7.02 **RESPONSIBILITIES OF MASTER ASSOCIATION AND ASSOCIATION.**

(a) Except as may be otherwise provided herein to the contrary, the Master Association or the Association shall maintain and keep in good repair and condition all portions of the Common Areas, which responsibility shall include the maintenance, repair, upgrade, improvement and replacement of (i) all private streets and roads within the Development, walks, trails, paths, walkways, bicycle and jogging paths and lanes, parking lots, street lights, landscaped areas, recreational areas and other improvements made by Developer or the Master Association within any of the Common Areas or within any of the easements encumbering the Lots or Dwellings as provided in Article III above, (ii) such limited access systems and facilities, entrance gates (if any) and utility lines, pipes, plumbing, wires, conduits and related systems, sanitary sewage disposal system installed by Developer, in Developer's sole discretion, appurtenances, equipment and machinery which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility, or other person (iii) all lawns, trees, shrubs, hedges, grass and other landscaping and all lakes and ponds situated within or upon the Common Areas, (iv) all retention lakes, ponds and other water areas and facilities constructed by Developer or the Master Association or the Association pursuant to the Watershed Protective Covenants, wherever located (either within or outside of the Development so long as the same are utilized for the benefit of the Development), as may be necessary or otherwise required by the Watershed Protective Covenants or any Governmental Authority, and (v) the Restricted Use Common Areas. Neither the Master Association nor the Association shall be liable for injuries or damage to any person or property (1) caused by the elements, acts of God or any Owner or other person, (2) resulting from any surface or subsurface conditions which may at any time affect any portion of the Property caused by rain or other surface water which may leak or flow from any portion of the Common Area onto a Lot or Dwelling or (3) resulting from thief, burglary or other illegal entry into the Property, any Lot or Dwelling thereof. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Master Association to take some action or perform some function required to be taken by or performed by the Master Association hereunder or for inconvenience or discomfort arising from the making of Improvements or repairs which are the responsibility of the Master Association or from any action taken by the Master Association to comply with any requirements of the Watershed Protective Covenants or any Governmental Authorities.

(b) In the event that the Master Association or Board of the Association determines that (i) any Owner has failed or refused to discharge properly his, her or its obligations with regard to the maintenance, cleaning, repair or replacement of items for which he, she or it is responsible hereunder or (ii) any maintenance, cleaning, repair or replacement for which the Master Association or the Association, as the case may be, is responsible hereunder is caused by the willful or negligent act of an Owner or Occupant, or their respective family members, guests, servants, employees, invitees or contractors, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the Master Association or the Association, as the case may be, with respect thereto, then, in either event, the Association, in addition to the exercise of any of its rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same

in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workman-like manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an individual Assessment to such Owner, and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.10 below. In the event the Association fails for any reason to exercise its rights of enforcement set forth in this Section 7.02(b), the Master Association may, at its option, exercise such rights of enforcement, and all provisions, rights and benefits of this Section 7.02(b) shall inure to the Master Association.

ARTICLE VIII

COMMON AREA ASSESSMENTS

Section 8.01 **ASSESSMENTS AND CREATION OF LIEN.** Each Owner of a Lot or Dwelling, by acceptance of a deed or other instrument conveying any interest therein, regardless of whether such deed or instrument contains a reference to this Declaration, is hereby deemed to covenant and agree to pay to the Association (a) Annual Assessments, as established and to be collected as provided in Section 8.03 below, (b) Special Assessments, to be established and collected as provided in Section 8.04 below, and (c) Individual Assessments which are established or assessed pursuant to Section 8.05 below. All Assessments, together with late charges and interest at the Applicable Rate, as provided in Section 8.08(a) below, and all court costs and attorneys' fees and expenses incurred by the Association to enforce or collect such Assessments shall be an equitable charge and a continuing lien upon each Lot or Dwelling for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.08(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he or she is the Owner of a Lot or Dwelling and his or her grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his or her grantor any amounts paid by such grantee to the Association which were the legal obligations of the grantor. All Assessments, together with late charges and interest at the Applicable Rate, as specified in Section 8.08(a) below, court costs and attorneys' fees and expenses incurred with respect thereto by the Association shall also be a personal obligation of the person who was the Owner of the Lot or Dwelling at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot or Dwelling, all of the co-owners shall be jointly and severally liable for the entire amount of such Assessments. All Assessments shall commence as to each Lot or Dwelling as provided in Section 8.07 below and be paid in such manner and on such dates as may be fixed by the Master Association. All Assessments shall be payable in all events without offset, diminution or abatement by reason of fire or other casualty or any taking as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof with respect to any Lot, Dwelling, Common Area or any other portion of the Property or any other cause or reason of any nature. The Annual Assessments and Special Assessments shall be used for the general purposes of promoting the recreational, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Property and otherwise for the general upkeep and maintenance of the Property, including, specifically, the Common Areas thereto, all as may be more specifically authorized from time to time by the Master

Association. Notwithstanding anything provided herein to the contrary, each Owner and Occupant does hereby acknowledge and agree that certain portions of the Annual Assessments and the Special Assessments as well as certain Common Expenses to be incurred by the Association may not benefit all of the Owners and Occupants equally but that the levy of such Annual Assessments and Special Assessments and the incurrence of Common Expenses shall be deemed to be for the benefit of all of the Property. The Sector Expenses shall be assessed against the Owners of Lots in the Sectors to which the Sector Expenses are designated in the annual budget.

Section 8.02 **RATE OF ASSESSMENTS.**

(a) Both Annual and Special Assessments, as described in Sections 8.03 and 8.04 below, shall be assessed against each Lot or Dwelling at a uniform rate, with the Owner of each Lot or Dwelling being required to pay his or her prorata portion of such Annual Assessments and Special Assessments, as determined by a fraction, the numerator of which shall be the total number of Lots or Dwellings owned by such Owner and the denominator of which shall be the total number of Lots and Dwellings within the Property at the time such Annual Assessments or Special Assessments are levied. Notwithstanding anything contained herein to the contrary, any Sector Assessments shall be levied against only the Lots and Dwellings in the Sector to which the Sector Assessments are attributed as set forth in the annual budget.

(b) Notwithstanding anything provided in Section 8.02(a) above to the contrary, in the event any Additional Property is added to the Property, then each Lot or Dwelling within the Additional Property shall be subject to the same Annual Assessments and Special Assessments then being paid by the Owners of all other Lots and Dwellings in the Property, subject to proration for the actual number of days remaining in the calendar year in which such Additional Property was added to the Property.

(c) Each Owner of a Lot or Dwelling, by acceptance of a deed to such Lot or Dwelling, acknowledges and agrees that the Annual Assessments and Special Assessments payable by such Owner are subject to change, modification, increase or decrease, respectively, in the event that (i) any Additional Property is added to the Property or any Lots or Dwellings are combined, subdivided or resubdivided pursuant to Sections 2.08 or 6.28 above or (ii) any portion of the Property becomes Common Areas.

Section 8.03 **COMPUTATION OF ANNUAL ASSESSMENTS.**

(a) The Association, with cooperation and input from the Master Association, shall determine and approve annually an annual budget covering the estimated Common Expenses for the Property for the upcoming year and the Sector Expenses for each Sector for the upcoming year, such budget to include (i) a capital contribution or reserve account, if necessary, for the capital needs of the Association, and (ii) Sector Assessments, and (iii) the amount owed by the Association to the Master Association. The amount set forth in such budget shall constitute the aggregate amount of "**Annual Assessments**" for all of the Property for the then applicable year. A copy of the budget setting forth the amount of Annual Assessments to be levied against the Lots and Dwellings for the following year shall be delivered by the Master Association (i) to the Association for its further delivery to each Owner upon written request of any such Owner, and (ii) as the same relates to the Restricted Use Amenities and the Unrestricted Use Amenities, to the

other Residential Associates for their further delivery to each Owner in such other Residential Association upon written request of any such Owner.

(b) If any budget or the amount of Annual Assessments collected by the Association at any time proves to be inadequate or insufficient for any reason to fully pay all costs and expenses of the Association and all Common Expenses, then the Board, after obtaining the prior written consent of the Master Association, may call a meeting of the Association for the purpose of approving Special Assessments as provided in Section 8.04 below. If the actual amount of Annual Assessments collected in any one year exceeds the actual costs incurred for Common Expenses for such year, the excess shall be retained by the Association as a reserve for subsequent years' Common Expenses.

(c) The Common Expenses to be funded by the Annual Assessments may include, but shall not be limited to, the following:

(i) Salaries, fringe benefits and other compensation paid and out-of-pocket expenses reimbursed by the Association for its employees, agents, officers, members of the Board and any third party contractors;

(ii) Management fees and expenses of administration, including legal and accounting fees, incurred by or on behalf of the Association;

(iii) Utility charges for any utilities serving any of the Common Areas and charges for other common services for the Property, including, without limitation, street lighting, trash collection to the extent not provided by a Governmental Authority and controlled access services;

(iv) The costs of any insurance policies purchased for the benefit of the Association as required or permitted by this Declaration, including, without limitation, fire, flood and other hazardous coverage, public liability coverage and such other insurance coverage as the Board determines to be in the best interest of the Association, including errors and omissions insurance, directors' and officers' liability insurance and any other liability insurance coverage for the benefit of the Association, the members of the Board, any officers, employees, agents or representatives of the Association (including members of the ARC);

(v) The expenses of maintaining, operating, repairing and replacing all portions of the Common Areas and any other amenities and facilities serving the Property, including, without limitation, a pro rata share of cost of maintaining, operating, repairing and replacing the Restricted Use Amenities and Unrestricted Use Amenities;

(vi) Ad valorem real and personal property taxes assessed and levied upon any of the Common Areas;

(vii) The expenses of the ARC which are not paid in full by plan review charges;

(viii) The costs and expenses for conducting recreational, social, cultural or other related programs for the benefit of the Owners and Occupants;

(ix) All other fees, costs and expenses incurred by the Association in accordance with the terms and provisions of this Declaration or which the Board, subject to the prior written approval of the Master Association, determines to be appropriate to be paid by the Association, including, without limitation, taxes and governmental charges not separately assessed against Lots or Dwellings;

(x) The establishment and maintenance of a reasonable reserve fund or funds (1) for inspections, maintenance, repair and replacement of any portions of the Common Areas for which the Association is responsible to inspect, maintain, repair or replace on a periodic basis, (2) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds and (3) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board, and as approved by the Master Association; and

(xi) A proportionate share of the Master Association Expenses described in Section 8.04 below, which proportionate share shall be determined by the Master Association, in its sole discretion.

Section 8.04 **MASTER ASSOCIATION EXPENSES.** The Master Association Expenses to be funded by the Annual Assessments and any Special Assessments may include, but shall not be limited to, the following:

(i) The costs of any insurance policies purchased for the benefit of the Master Association as required or permitted by this Declaration;

(ii) Any attorneys' fees, court costs or other expenses incurred by Developer in defending any challenge to any annexation of the Development, as set forth in Section 12.20 below;

(iii) All ad valorem real and personal property taxes assessed and levied upon any of the Common Areas that are owned by the Master Association;

(iv) The Common Expenses applicable to the Restricted Use Amenities and any other Common Elements owned by the Master Association; and

(v) The funds necessary for the establishment and maintenance of a fund to be used for the expenses of inspection, maintenance, repair and replacement of the erosion controls serving the Development, as required in the Watershed Protective Covenants.

Section 8.05 **SPECIAL ASSESSMENTS.** In addition to the Annual Assessments authorized in Section 8.03 above and the Special Assessments authorized in Sections 9.01(b) and 9.03(a)(i) below, the Board may levy in any year Special Assessments for Common Expenses or any extraordinary costs incurred by the Association, including, without limitation, costs which have been, are or will be incurred for capital improvements which are not paid for from Annual Assessments; provided, however, that any such Special Assessments (other than Special Assessments levied pursuant to Sections 9.01(b) and 9.03(a)(i) below) must be approved by a majority of the members of the Association voting at a duly convened meeting of the Association or in a ballot vote by the members of the Association held in accordance with the provisions of the

Bylaws. As used herein, the term “Special Assessments” shall mean those assessments made to all Owners pursuant to this Section 8.05 or Sections 9.01(b) and 9.03(a)(i) below. The Board may make such Special Assessments payable in one lump sum or in installments over a period of time, which may, in the Board’s discretion, extend beyond the then fiscal year in which said Special Assessments are levied and assessed. Special Assessments shall be levied against and payable by each Owner in accordance with the provisions of Section 8.02 above.

Section 8.06 INDIVIDUAL ASSESSMENTS. The Association may, in its sole discretion, at any time and from time to time levy and assess as individual assessments (collectively, “Individual Assessments”) against any Lot or Dwelling: (a) fines against an Owner and such Owner’s Lot or Dwelling in accordance with the terms and provisions of Section 11.01 hereof, (b) any costs or expenses, including, without limitation, collection costs, professional engineering and architectural fees and expenses, attorneys’ fees and expenses, court costs and any administrative costs and expenses incurred by or on behalf of the ARC or the Association as a result of the failure of any Owner, Occupant or their respective family members, agents, guests, servants, employees, invitees and contractors, to at all times observe and perform their respective duties and obligations under this Declaration, including, without limitation, any such costs and expenses incurred by the ARC or the Association or the Master Association pursuant to Sections 5.12, 7.02(b), 8.08, 11.01, 11.02 or 11.03 hereof and (c) any fees, charges and other costs incident to the use of any of the Common Areas for which a charge for the use thereof has been established by the Board or the Master Association (as applicable). The Individual Assessments provided for in this Section 8.06 shall be levied by the Board and the amount and due date of such Individual Assessment shall be specified by the Board in a notice to such Owner.

Section 8.07 DATE OF COMMENCEMENT OF ASSESSMENTS.

(a) Subject to the provisions of Section 8.07(b) below, Assessments shall commence as to each Lot or Dwelling on the day on which such Lot or Dwelling is conveyed to a person other than Developer or any Affiliate thereof, or and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board (subject to the prior written approval of the Master Association) subject to proration for the remainder of the then calendar year in which such Lot or Dwelling was conveyed to a person other than Developer or any Affiliate thereof. Assessments for Lots and Dwellings within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot or Dwelling on the day on which such Lot or Dwelling is conveyed to a person other than Developer or any Affiliate thereof, subject to proration and adjustment according to the number of days then remaining in the calendar year in which such Additional Property was added to the terms of this Declaration. Notwithstanding anything provided herein to the contrary, Developer shall have the option, in its sole discretion, to either pay Annual Assessments on Lots or Dwellings owned by Developer or fund any deficits which may exist between the total amount of Annual Assessments assessed to all other Owners and the actual cost incurred by the Association for Common Expenses in any particular year. Should Developer elect to fund such deficits, the Association will execute one or more unsecured demand promissory note(s) in the amount of such deficit funding, payable by the Association to Developer, which shall not bear any interest, and shall evidence the obligation of the Association to reimburse Developer for all deficits funded by Developer on the Association’s behalf. If the Association has accumulated surplus cash in excess

of payment of annual expenses, such surplus cash may be applied by Developer, at its option, in payment of any and all such promissory note(s) in such order and manner as Developer shall elect.

(b) When Developer no longer has any interest in any Lot or Dwelling, Developer shall have no further obligation of any nature to pay any Assessments or otherwise fund any deficits relating to the Common Expenses or the maintenance of the Common Areas.

Section 8.08 EFFECT OF NON-PAYMENT; REMEDIES OF THE ASSOCIATION.

(a) Each Owner of a Lot or Dwelling is and shall be deemed to covenant and agree to pay to the Association, all Assessments provided for herein. The Association shall provide written notice or a billing invoice to each Owner setting forth the amount of the Assessments due and payable by such Owner and the due date for payment of such Assessments (which due date shall, with respect to Annual Assessments and Special Assessments only, be at least 30 days from the date of such notice or billing invoice). In the event any Assessments or any portions thereof are not paid in full by the due date for such Assessments, then (i) the Owner of such Lot or Dwelling shall be deemed in default hereunder and (ii) a late fee in the amount of \$50.00 (which amount shall be subject to increase from time to time and at any time, as determined by the Board, in its sole discretion) shall automatically be levied and assessed against such Owner and such Owner's Lot or Dwelling. In addition, if any Assessments or any portion thereof (including late fees) are not paid in full within 30 days following the due date for the payment of such Assessments, then the unpaid portion of the Assessment (including the late fee) shall accrue simple interest at the lesser of eighteen percent (18%) per annum or the highest rate which may be charged to said Owner by law (the "Applicable Rate") from and after the 30th day following the due date of such Assessments until the same has been paid in full. In the event the Association employs an attorney or otherwise takes any legal action in attempting to collect any amounts due from any Owner, such Owner agrees to pay all attorneys' fees and expenses, court costs and all other expenses paid or incurred by the Association. The lien and equitable charge upon each Lot or Dwelling for Assessments shall also include all late fee charges, interest at the Applicable Rate and all attorneys' fees, court costs and all other expenses paid or incurred by the Association in attempting to collect any unpaid Assessments.

(b) In the event any Assessments are not paid by any Owner within 30 days following the due date for the payment of such Assessments, then, in addition to all other rights and remedies provided at law or in equity, the Association, acting through its Board or through any of its officers or authorized representatives, may at any time thereafter undertake any or all of the following remedies:

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments and any such judgment rendered in any such action shall include the late fee charge and interest at the Applicable Rate, together with attorneys' fees and expenses, court costs and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Sections 8.01 and 8.08(c) hereof in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and Dwelling, with power of sale, in favor of the Association, which secures the payment to the Association of any and all Assessments levied against or upon such Lot or Dwelling, all late fees or charges, interest at the Applicable Rate and all attorneys' fees and expenses, court costs and all other expenses paid or incurred by the Association in collecting any Assessments. If any portion of any Assessments remains unpaid for more than 30 days following the due date for the payment of such Assessments, then, at any time thereafter, the Association, through the Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot or Dwelling of such delinquent Owner, which claim shall be executed by any member of the Board or any officer of the Association, contain the following information and be recorded in the Probate Office:

- (i) The name of the delinquent Owner;
- (ii) The legal description and street address, if any, of the Lot or Dwelling upon which the lien claim is made;
- (iii) The total amount claimed to be due including late charges, interest at the Applicable Rate, collection costs and attorneys' fees and expenses incurred to date and a statement, if applicable, that such charges and costs shall continue to accrue and be charged until full payment has been received; and
- (iv) A statement that the claim of lien is made by the Association pursuant to this Declaration and is claimed against such Lot or Dwelling in an amount equal to that stated therein.

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

(d) In addition to the other rights and remedies provided herein, in the event any Owner fails to pay any Assessments within 30 days from the statement billing date for such Assessments, then the Association shall have the right to suspend the privileges of such Owner,

his or her Occupants, family members, guests and invitees from using any of the Recreational Facilities, if any.

(e) In the event the Association fails for any reason to exercise its rights under this Section 8.08, the Master Association may exercise such rights, and all provisions, rights, and benefits under this Section 8.08 shall in that event inure to the benefit of the Master Association.

Section 8.09 **SUBORDINATION OF LIEN.** Notwithstanding anything provided herein to the contrary, the lien for Assessments and other charges authorized herein with respect to any Lot or Dwelling is and shall be subordinate to the lien of any Mortgage held by any Mortgagee, but only to the extent that the Mortgage held by any such Mortgagee is recorded in the Probate Office prior to the filing of a claim of lien by the Association pursuant to Section 8.08(c) above, or by the Master Association pursuant to Section 8.08(e) above. When a Mortgagee exercises its foreclosure rights provided in its Mortgage and acquires title to or sells to a third party its interest in any Lot or Dwelling, then such Mortgagee or its purchaser or transferee at such foreclosure sale shall (a) not be liable for the then unpaid portion of any Assessments or other charges incurred prior to the date of transfer or acquisition of title by foreclosure so long as the Mortgage held by such Mortgagee was recorded in the Probate Office prior to the filing of a claim of lien by the Association pursuant to Section 8.08(c) above or by the Master Association pursuant to Section 8.08(e) above, but (b) be liable for all Assessments and other charges levied, assessed or incurred with respect to such Lot or Dwelling from and after the date of such foreclosure sale. The foregoing shall not relieve any Owner whose Lot or Dwelling has been foreclosed from the personal obligation to pay all Assessments and other charges levied, assessed or incurred by the Association and the Association, or the Master Association, as the case may be, shall have the right to pursue all rights and remedies against a defaulting Owner notwithstanding the foreclosure of a Mortgage by Mortgagee on such Owner's Lot or Dwelling.

Section 8.10 **CERTIFICATES** The Association (or any officer or authorized representative thereof) shall, upon request and at such reasonable charges as may from time to time be adopted by the Board, furnish to any Owner a certificate in writing setting forth whether the Assessments for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and other costs and expenses due from such Owner. Such certificate shall be conclusive evidence of payment of any Assessments stated therein.

ARTICLE IX

CASUALTY, CONDEMNATION AND INSURANCE

Section 9.01 **DAMAGE OR DESTRUCTION TO COMMON AREAS.**

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

(b) Notwithstanding anything to the contrary provided in Section 9.01(a) above, in the event the amount of insurance proceeds, if any, recovered as a result of such damage

or destruction is insufficient to fully repair, replace and restore the damaged portions of the Common Areas, and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Master Association or the Association may levy a Special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, which such Special Assessments shall be (i) in an amount sufficient to provide funds to pay the remaining costs necessary to repair, replace or restore the Common Areas to the condition as existed immediately prior to such fire or other casualty and (ii) levied against each Owner equally as provided in Section 8.02 above. Any and all insurance proceeds received by the Association on account of any damage to or destruction of any of the Common Areas or any sums paid to the Association under or by virtue of such Special Assessments shall be held by and for the benefit of the Master Association and shall be disbursed by the Association in payment for the costs of such repair or restoration in such manner as may be determined by the Master Association. In no event shall the Owner or Mortgagee of any Lot or Dwelling be entitled to any portion of the proceeds of insurance payable as a result of the damage to or destruction of any portion of the Common Areas.

Section 9.02 DAMAGE OR DESTRUCTION TO LOTS OR DWELLINGS. In the event of any fire or other casualty which damages or destroys any portion of any Lot or Dwelling, then the Owner of such damaged Lot or Dwelling shall promptly repair and otherwise restore such Lot or Dwelling to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair shall be subject to compliance with all of the terms and provisions set forth in Articles V and VI above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. Any such restoration or repair shall be commenced within one hundred eighty (180) days following the occurrence of such fire or other casualty and shall be diligently prosecuted to completion without further delay in accordance with all of the terms and provisions of this Declaration.

Section 9.03 CONDEMNATION OF COMMON AREAS.

(a) In the event of the taking of all or any portion of any of the Common Areas as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then the award from such taking or sale in lieu thereof shall be paid to the Master Association and shall be disbursed or held as follows:

(i) To the extent the Common Areas subject to such taking can either be restored or replaced, then, to the extent practicable, the Master Association is hereby empowered, authorized and directed to take such action, including the purchase of any remaining lands within the Property or the utilization of any other Common Areas within the Property, to restore, rebuild or replace, as the case may be, those portions of the Common Areas subject to such taking. If the award is insufficient to fully defray the cost of such repair or replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, then the Master Association or the Board may levy a Special Assessment against all Owners, without the necessity of a vote of the Owners approving or disapproving the same, which such Special Assessments shall be (1) in an amount sufficient to provide funds to pay the remaining costs of repair, restoration or reconstruction and (2) levied against each Owner equally as provided in Section 8.02 above; and

(ii) To the extent the Common Areas subject to such taking cannot be restored or replaced or additional lands within the Property cannot be purchased by the Association in order to repair, replace or restore the Common Areas so taken or if the Master Association or the Board shall determine that the portions of the Common Areas so taken should not be replaced or restored, then in any such event, the net award from such taking shall be retained by and for the benefit of the Association.

(b) If any portion of the award from any taking remains after restoration or replacement of any of the Common Areas, the remainder of such award shall be retained by and for the benefit of the Master Association, without any claim thereto by any Owner. Except as specifically provided in Section 9.03(c) below, no Owner or Mortgagee of any Lot or Dwelling shall be entitled to any portion of the award made to the Master Association as a result of the taking of any portion of the Common Areas.

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

Section 9.04 **CONDEMNATION OF LOTS OR DWELLINGS.** In the event that all or any portion of a Lot or Dwelling is taken as a result of, in lieu of or in anticipation of the exercise of the right of eminent domain, condemnation or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot or Dwelling shall promptly repair, reconstruct, rebuild and otherwise restore the remaining portions of the Lot or Dwelling as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth in Articles V and VI above and all then applicable rules, regulations, statutes and ordinances of the Governmental Authorities. In the event the restoration of such Lot or Dwelling is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot or Dwelling and any remaining Improvements thereon in a clean, orderly, safe and sightly condition.

Section 9.05 **INSURANCE.**

(a) The Master Association or the Association shall have the authority to obtain and maintain at all times any and all insurance coverages, in such form and with such insurance carriers as the Master Association or the Association may from time to time deem appropriate for the benefit of the Master Association and/or the Association including, without limitation, extended coverage, flood, vandalism, malicious mischief, public liability, workmen's compensation, employer's liability insurance, directors' and officers' liability insurance and any and all other types of insurance coverage as determined by the Master Association or the Association in its sole and absolute discretion.

(b) Each Owner shall be solely responsible for obtaining and maintaining public liability, property damage, title and all other types of insurance with respect to his or her Lot, Dwelling and all other Improvements situated thereon. Each Owner, by acceptance of a deed to or other conveyance of any interest in any Lot or Dwelling, does hereby waive and release the Master Association, the Association, the ARC, Developer and their respective agents, employees, representatives, partners, shareholders, members, officers and directors from any and all liabilities or responsibilities or any other claims by or through such Owner, by way of subrogation or otherwise, for any loss or damage covered by (or which should be covered by) broad form fire and extended coverage insurance (or homeowner's insurance coverage) and comprehensive public or general liability insurance coverage maintained or which should be maintained by any Owner as required herein, even if such loss or damage has been caused by the fault or negligence of the Master Association, the Association, the ARC, Developer or any of their respective agents, employees, representatives, partners, shareholders, members, officers or directors.

ARTICLE X

TERM AND AMENDMENTS

Section 10.01 **TERM**. The terms, covenants, conditions and restrictions set forth in this Declaration shall run with and bind all of the Property, 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 this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after ninety-nine (99) years from the date hereof, an agreement executed by the Owners of at least seventy-five percent (75%) of all Lots or Dwellings within the Property agreeing to terminate or modify this Declaration has been recorded in the Probate Office; provided, however, that the rights of way and easements established, granted and reserved in Article III hereof shall continue and remain in full force and effect for the time periods and duration specified therein.

Section 10.02 **AMENDMENTS PRIOR TO TURNOVER DATE**. Until the occurrence of the Turnover Date, Developer may, in its sole discretion, amend this Declaration by a written instrument filed and recorded in the Probate Office without obtaining the approval of any Owner or Mortgagee. Notwithstanding anything provided to the contrary in this Section 10.02, each Owner, by acceptance of a deed to any Lot or Dwelling, and each Mortgagee, by acceptance of a Mortgage encumbering any Lot or Dwelling, acknowledges and agrees that (i) the addition of Additional Property to this Declaration pursuant to Section 2.02 above and the amendment of this Declaration to add Additional Property to the terms and provisions hereof, (ii) the withdrawal of any portion of the Property from this Declaration pursuant to Section 2.04 above and the amendment to withdraw that portion of the Property from this Declaration, (iii) any amendments to this Declaration made by Developer pursuant to Sections 2.03 and 2.07 above and (iv) any amendments to this Declaration to reflect the resubdivision of any Lots or Dwellings pursuant to Sections 2.08 and 6.28 above, shall not and do not constitute a material and adverse alteration or change in or to the rights of any Owner to the use of his or her Lot or Dwelling and shall not require the consent or approval of any Owner or Mortgagee. Any amendments to this Declaration made pursuant to this Section 10.02 shall be certified by Developer and shall be effective upon recording of the same in the Probate Office. Each Owner, by acceptance of a deed to a Lot or Dwelling, and each

Mortgagee, by acceptance of a Mortgage on any Lot or Dwelling, agrees to be bound by all amendments permitted by this Section 10.02. Except as specifically provided in Section 10.04 below and in this Section 10.02 (with respect to any amendments proposed by Developer which materially and adversely alter or change the rights of an Owner to the use of his or her Lot or Dwelling), at all times prior to the Turnover Date, only Developer shall have the right to amend this Declaration.

Section 10.03 **AMENDMENTS AFTER TURNOVER DATE**. After the occurrence of the Turnover Date, amendments to this Declaration shall be proposed and adopted only by the affirmative vote of fifty-one percent (51%) of those Owners (including Developer who shall have the voting rights attributable to any Lots or Dwellings owned by Developer) who are voting either in person or by proxy at either a duly constituted meeting of the Owners held in accordance with the terms and provisions of the Bylaws or who are voting in a ballot vote submitted to the Owners pursuant to the terms and provisions of the Bylaws. Any other attempt to amend this Declaration shall be deemed null and void. Any and all amendments which have been approved in accordance with the terms and provisions of this Section 10.03 shall be executed by all parties whose consent to the same is required; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Board, if any, stating unequivocally that the agreement of the requisite number of Owners was lawfully obtained may be attached to and incorporated into such amendment without joinder of any of the Owners. Any such amendment shall be effective upon recording of the same in the Probate Office.

Section 10.04 **RESTRICTIONS ON AMENDMENT**. Notwithstanding anything provided in the Declaration to the contrary, in no event may any amendment to any provisions of this Declaration which require Developer's and/or the Master Association's consent or approval be effective unless Developer and/or the Master Association consents in writing to any such amendment requiring its consent. The consent of Developer or the Master Association to any such proposed amendment may be withheld in the sole discretion of Developer or the Master Association, respectively, with or without any reason. Furthermore, Developer reserves the right at any time to amend this Declaration to attach additional or different covenants and restrictions encumbering Lots in a Cottage Development.

ARTICLE XI

DENIAL OF USE PRIVILEGES

Section 11.01 **AUTHORITY AND ENFORCEMENT**. In addition to the other rights and remedies provided elsewhere in this Declaration, in the event any Owner or Occupant or violates any of the provisions of this Declaration, the Architectural Standards, the Certificate of Formation, the Bylaws or any other rules and regulations adopted by the Board from time to time, then the Association and/or the Master Association shall have the power and right, at its option, to (a) impose monetary fines which shall constitute an Individual Assessment, (b) suspend an Owner's right, if any, to vote in the Association and (c) suspend or terminate an Owner's or Occupant's privilege (and the privilege of such Owner's or Occupant's family members, guests and tenants) to use all or any of the Recreational Facilities, if any. Any action to be taken by the Board pursuant to this Section 11.01 shall be subject to the satisfaction of the terms and provisions of Section 11.02 below.

Section 11.02 **PROCEDURE.**

(a) In the event any of the terms or provisions of this Declaration, the Architectural Standards, the Certificate of Formation, the Bylaws or any rules and regulations of the Association are violated by any Owner or Occupant, or the respective agents, contractors or invitees of any Owner or Occupant, the Board shall not impose a fine, suspend voting rights or infringe upon or suspend or terminate any other rights pursuant to Section 11.01 above unless written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violations setting forth the information required by Section 11.02(b) below and providing such Owner the opportunity to appear before and be heard by the Board.

(b) Any notices required by Section 11.02(a) above shall specify:

(i) The alleged violation;

(ii) The action required to abate such violation;

(iii) A time period of not less than ten (10) days during which the violation may be abated and corrected by such Owner without further sanction if such violation is a continuing one or, if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Architectural Standards, the Certificate of Formation, the Bylaws or any of the rules and regulations of the Association may result in the imposition of sanctions; and

(iv) The date, which shall be no earlier than ten (10) days from the date of such written notice, time and place at which such Owner may appear before the Board and be heard.

(c) The foregoing procedure shall only be applicable to the enforcement rights specified in Section 11.01 above and shall not apply to the exercise of any of the rights and remedies specified in any other section or provision of this Declaration.

Section 11.03 **NON-EXCLUSIVE REMEDIES.** Notwithstanding anything provided to the contrary in this Declaration, the authority, enforcement and procedural rights set forth in this Article XI are in addition to and shall not be deemed to limit the other rights and remedies set forth in this Declaration or which the Association, acting through the Board, would have the right to exercise at law or in equity.

Section 11.04 **MASTER ASSOCIATION ENFORCEMENT.** In the event the Board fails for any reason to exercise its rights of enforcement set forth in this Article XI, the Master Association may, at its option, exercise such rights of enforcement and, in that event, all provisions, rights, and benefits under this Article XI shall inure to the Master Association.

ARTICLE XII
MISCELLANEOUS PROVISIONS

Section 12.01 **CONTROL BY DEVELOPER.** **NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE**

CERTIFICATE OF FORMATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE PROPERTY, EACH OWNER, BY ACCEPTANCE OF A DEED TO ANY LOT OR DWELLING, AGREES THAT UNTIL THE TURNOVER DATE, DEVELOPER SHALL HAVE THE SOLE AND EXCLUSIVE RIGHT AND AUTHORITY TO (a) APPOINT AND REMOVE ALL OF THE MEMBERS OF THE BOARD AND (b) EXERCISE ALL VOTING RIGHTS IN THE ASSOCIATION (EXCEPT TO THE EXTENT OTHERWISE PROVIDED IN SECTION 10.02 ABOVE).

Section 12.02 **LEGAL EXPENSES**. In addition to all of the other rights and remedies set forth in this Declaration, in the event either Developer, the Board, the Master Association, the Association, the ARC or any of their respective agents and representatives, undertake any legal or equitable action which any of them deem necessary to abate, enjoin, remove or extinguish any violation or breach of this Declaration, then all costs and expenses incurred by any of them, including, without limitation, attorneys' fees and court costs, in enforcing any of the terms, provisions, covenants or conditions in this Declaration shall be paid for by the Owner against whom such action was initiated. The Master Association and Association and their respective agents and representatives, including the board of directors of the Master Association, the ARC, and the Board are each hereby authorized to take any and all legal or equitable action as may be necessary under the circumstances to restrain or enjoin any violation or breach of this Declaration or to otherwise seek monetary damages as a result of any expenses incurred by the Association to cure any such violation or breach by any Owner.

Section 12.03 **SEVERABILITY**. If any provision of this Declaration or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Declaration or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and each provision hereof shall be valid and enforceable to the fullest extent permitted by law.

Section 12.04 **CAPTIONS AND HEADINGS**. The captions and headings contained in this Declaration are for convenience of reference only and shall not be used in the construction or interpretation of any provisions of this Declaration. The table of contents, cover page and any index to this Declaration are for convenience of reference only and shall not define or limit any of the terms and provisions hereof.

Section 12.05 **PRONOUNS AND PLURALS**. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders. The use of the singular tense shall include the plural and the use of the plural shall include the singular.

Section 12.06 **BINDING EFFECT**. The terms and provisions of this Declaration shall be binding upon each Owner, Occupant and Mortgagee and their respective heirs, executors, administrators, personal representatives, successors and assigns and shall inure to the benefit of Developer, the Master Association, the Association, the ARC, all of the Owners and their respective Mortgagees and their respective heirs, executors, administrators, personal representatives, successors and assigns.

Section 12.07 **CONFLICT OR AMBIGUITY**. In the event of any conflict or ambiguity in the terms and provisions of this Declaration, the general rules of construction against one party as a result of that party having drafted this Declaration are hereby waived by each Owner and, to the fullest extent allowed by law, no conflicts or ambiguities shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein.

Section 12.08 **NO REVERTER**. No restriction or provision hereof is intended to be or shall be construed as a condition subsequent or a possibility of reverter in favor of Developer nor shall any provision be deemed to vest any reversionary interest in Developer; provided, however, that nothing herein shall be deemed to alter or affect the Repurchase Option and the rights of Developer set forth herein.

Section 12.09 **INTERPRETATION**. In all cases, the provisions set forth and provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Developer, the Master Association, or the Board, will best effect the intent of the general plan of development for the Property. The provisions hereof shall be liberally interpreted and, if necessary, they shall be so extended or enlarged by implication so as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes, which are less restrictive. The effective date of this Declaration shall be the date hereof. This Declaration shall be construed under and in accordance with the laws of the State of Alabama.

Section 12.10 **RIGHTS OF THIRD PARTIES**. This Declaration shall be recorded for the benefit of Developer, the Master Association, the Association, the Owners and their respective Mortgagees and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

Section 12.11 **NO TRESPASS**. Whenever the Master Association, the Association, Developer, the ARC and their respective agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot or Dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

Section 12.12 **NO PARTITION**. Each Owner hereby waives any right to seek or obtain judicial partition of any portion of the Property.

Section 12.13 **STANDARDS FOR REVIEW**. Whenever in this Declaration Developer, the Master Association, the ARC or the Association has the right to approve, consent to, or require any action be taken pursuant to the terms hereof, such approval, consent or required action shall, except as otherwise specifically provided herein to the contrary, be given or withheld in the sole and absolute discretion of Developer, the Master Association, the ARC, or the Association, as the case may be.

Section 12.14 **ORAL STATEMENTS.** Oral statements or representations by Developer, the Master Association, the Association, the ARC, or any of their respective employees, agents, representatives, successors or assigns, shall not be binding on Developer, the Master Association, the Association or the ARC.

Section 12.15 **NOTICES.** Each Owner shall furnish to the Association, in writing, the address, if other than the Lot or Dwelling of such Owner, to which any notice to such Owner under this Declaration is to be given and, if no address other than such Lot or Dwelling shall have been designated in writing, then all notices and demands shall be mailed or delivered to the Lot or Dwelling of such Owner. Each Owner shall furnish to the Master Association and the Association in writing, an email address to which any notice to such Owner under this Declaration is to be sent for that particular Owner. All notices required or permitted to be given to any Owner pursuant to the terms and provisions of this Declaration shall be deemed to have been sufficiently given or served upon any Owner when either (a) deposited in the United States mail for first-class delivery with postage prepaid and addressed to the last address furnished by such Owner to the Master Association and the Association (or if no address has been furnished, then to the Lot or Dwelling of such Owner), in which case notice shall be deemed given upon deposit of same in the United States mail, (b) delivered to the Dwelling, if any, situated on an Owner's Lot in which event notice shall be deemed given upon personal delivery of such notice to the mailbox or when attached to the front door of such Lot or Dwelling, (c) sent by Internet to an electronic mailbox address provided in writing by such Owner to the Master Association and the Association, which notice shall be deemed to have been given upon transmission of such electronic mail by the Master Association and the Association. All notices to the Master Association, the Association, or to the ARC shall be delivered or sent to the address of the registered agent of the Master Association on file with the Secretary of State of Alabama or to such other address as the Master Association, the Association, or the ARC may from time to time specify in a notice to the Owners. All notices to Developer shall be sent or delivered to Developer at the above address or to such other address as Developer may notify the Association.

Section 12.16 **ASSIGNMENT.** Developer shall have the right, in its sole and absolute discretion, to assign any and all of the rights, powers, reservations, easements and duties contained herein to any person or entity who shall thereupon have the same rights, powers, reservations, easements and duties as Developer hereunder. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance or other hypothecation of any Lot or Dwelling by Developer to a third party shall constitute or be deemed to constitute a transfer of any of the rights reserved herein to Developer unless express reference is made in such instrument of conveyance to the specific rights created in this Declaration which Developer has transferred to any such third party.

Section 12.17 **FURTHER ASSURANCES.** Each Owner covenants and agrees to execute, sign and deliver, or cause to be executed, signed and delivered and to otherwise do or make, or cause to be done and made, any and all agreements, instruments, papers, deeds, acts or things, supplemental, confirmatory or otherwise, which may be reasonably requested by Developer, the Master Association, the Association or the ARC for the purpose of or in connection with clarifying, amending or otherwise consummating any of the transactions and matters herein.

Section 12.18 **NO WAIVER**. All rights, remedies and privileges granted to Developer, the Master Association, the Association and the ARC pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative and the exercise of any one or more of such rights, remedies or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure by Developer, the Master Association, the ARC or the Association at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

Section 12.19 **PERPETUITIES**. If any of the covenants, conditions, restrictions or other provisions of this Declaration shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of George Walker Bush, former President of the United States.

Section 12.20 **ANNEXATION**. The Development has been annexed primarily by legislative act of the Legislature of Alabama into the City of Vestavia Hills, Alabama (the "**Municipality**"). Annexation by legislative act of the Legislature of Alabama is a method not customarily used in Alabama, and may be subject to judicial interpretation. Developer makes no representation or warranty as to the validity or enforceability of the Annexation. Additional property in the Development may be annexed into the Municipality either by legislative act or by other methods provided by law. Developer reserves the right, but shall not be obligated, to de-annex the Development out of the Municipality in connection with the control or settlement of any litigation or administrative proceeding (collectively, the "**Litigation**") in which the annexation or the annexation act is challenged. Each Owner, by acceptance of a deed or other conveyance of any interest in any Lot or Dwelling, and each Mortgagee, by the acceptance of any Mortgage on any Lot or Dwelling, to the extent not prohibited by law, hereby (1) agrees that Developer, in Developer's sole discretion, shall have the authority to de-annex the Development out of the Municipality in connection with the control or settlement of any Litigation, and (2) appoints Developer as such Owner's or Mortgagee's attorney-in-fact for executing any documents or taking any other action on behalf of such Owner or Mortgagee which Developer, in Developer's sole discretion, may deem necessary or desirable to either effectuate and complete the annexation of the Development into the Municipality or effectuate the de-annexation of the Development out of the Municipality. The power and authority herein granted is irrevocable and a power coupled with an interest which shall survive the death or dissolution of any Owner or Mortgagee and shall be binding on all Owners and Mortgagees, and their respective heirs, administrators, personal representatives, successors and assigns.

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

LIBERTY PARK JOINT VENTURE, LLP,
an Alabama limited liability partnership

By: Matthew Rohling
Matthew Rohling
Its Vice President

STATE OF ALABAMA)
 :
COUNTY OF JEFFERSON)

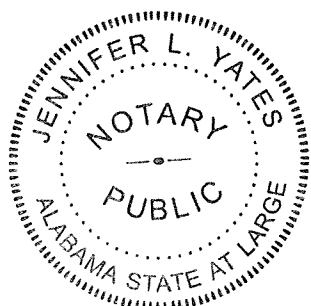
I, the undersigned, a Notary Public in and for said county, in said state, hereby certify that Matthew Rohling whose name as Vice President of LIBERTY PARK JOINT VENTURE, LLP, an Alabama limited liability partnership, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability partnership.

Given under my hand and official seal this the 9th day of September, 2022.

Jennifer L. Yates
Notary Public

[NOTARIAL SEAL]

My commission expires: 5/7/2024



Consent of Association

The undersigned, The Bray Single-Family Residential Property Owners' Association, Inc., an Alabama nonprofit corporation, has joined in the execution of this Declaration in order to consent to and agree to be bound by all of the terms and provisions of this Declaration.

Dated as of the 9th day of September, 2022.

**THE BRAY SINGLE-FAMILY RESIDENTIAL
PROPERTY OWNERS' ASSOCIATION, INC.,**
an Alabama nonprofit corporation

By: *John Bonanno*
John Bonanno
Its President

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

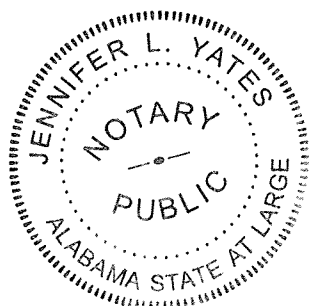
I, the undersigned, a notary public in and for said county in said state, hereby certify that John Bonanno, whose name as President of The Bray Single-Family Residential Property Owners' Association, Inc., an Alabama nonprofit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 9th day of September 2022.

Jennifer L. Yates
Notary Public

My commission expires: 5/7/2024

[NOTARIAL SEAL]



Consent of Master Association

The undersigned, Liberty Park Master Owners' Association, Inc., an Alabama nonprofit corporation, has joined in the execution of this Declaration in order to consent to and agree to be bound by all of the terms and provisions of this Declaration.

Dated as of the 9th day of September, 2022.

**LIBERTY PARK MASTER OWNERS'
ASSOCIATION, INC.,**
an Alabama nonprofit corporation

By: *John A. Bunanno*
Its: *PRESIDENT*

STATE OF ALABAMA)
 :
JEFFERSON COUNTY)

I, the undersigned, a notary public in and for said county in said state, hereby certify that *John A. Bunanno*, whose name as *President* of Liberty Park Master Owners' Association, Inc., an Alabama nonprofit corporation, is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that, being informed of the contents of said instrument, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation.

Given under my hand and official seal this 9th day of September, 2022.

Jenn L. Yates
Notary Public

[NOTARIAL SEAL]

My commission expires: *5/7/2024*

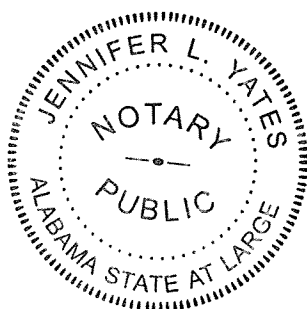


EXHIBIT A**Legal Description of Property**

Being a parcel of land situated in the N.E. 1/4, the S.E. 1/4, the S.W. 1/4, and the East 1/2 of the N.W. 1/4 of Section 13, Township 18 South, Range 2 West, the North 1/2 of the N.W. 1/4 and the S.W. 1/4 of the N.W. 1/4 of Section 24, Township 18 South, Range 2 West, the N.E. 1/4 of the N.E. 1/4 of Section 23, Township 18 South Range 2 West, the South 1/2 of the S.W. 1/4 of Section 7, Township 18 South, Range 1 West, and the N.W. 1/4, and the N.W. 1/4 of the S.W. 1/4 of Section 18, Township 18 South, Range 1 West, all in Jefferson County, Alabama, and being more particularly described as follows:

Commence at the Northwest corner of Section 18, Township 18 South, Range 1 West and run in an Easterly direction along the North line of said Section a distance of 996.43 feet to a point on the Southeasterly line of Lot 1, Amended Map of Liberty Park Waste Water Treatment Plant Survey, as recorded in Map Book 237, Page 89 in the Probate Office of Jefferson County, Alabama, said point being the Point of Beginning of the property herein described: thence $142^{\circ}57'10''$ to the right in a Southwesterly direction along the Southeasterly line of said Lot 1 a distance of 472.69 feet to the Southernmost corner of said Lot 1; thence $90^{\circ}20'39''$ to the right in a Northwesterly direction along the Southwesterly line of said Lot 1 a distance of 138.60 feet to the Easternmost corner of Lot 1, Liberty Park Commercial Phase 2, as recorded in Map Book 194, Page 25 in the Probate Office of Jefferson County, Alabama; thence $87^{\circ}52'48''$ to the left in a Southwesterly direction along the line of said Lot 1 a distance of 200.43 feet to a point; thence $9^{\circ}23'43''$ to the left in a Southwesterly direction along the line of said Lot 1 a distance of 127.86 feet to a point; thence $2^{\circ}08'33''$ to the right in a Southwesterly direction a distance of 51.90 feet to the Southernmost corner of said Lot 1; thence $102^{\circ}01'32''$ to the right in a Northwesterly direction along the Southwesterly line of said Lot 1 a distance of 11.63 feet to the Easternmost corner of Lot 1, Liberty Park Commercial Phase 1, as recorded in Map Book 192, Page 63 in the Probate Office of Jefferson County, Alabama; thence $90^{\circ}30'20''$ to the left in a Southwesterly direction along the Southeasterly line of said Lot 1 a distance of 181.51 feet to a point; thence $17^{\circ}51'14''$ to the left in a Southwesterly direction along the Southeasterly line of said Lot 1 a distance of 35.55 feet to a point; thence $67^{\circ}40'52''$ to the left in a Southeasterly direction a distance of 219.22 feet to a point; thence $113^{\circ}04'35''$ to the right in a Southwesterly direction along the Southeasterly line of said Lot 1 and its extension a distance of 757.71 feet to a point on the Westerly right-of-way of South Liberty Road, said point lying on a curve to the right having a radius of 1150.00 feet and a central angle of $17^{\circ}04'22''$; thence $86^{\circ}21'48''$ to the left (angle measured to tangent) in a Southerly direction along the arc of said curve and along the Westerly right-of-way of South Liberty Road a distance of 342.67 feet to the P.C.C. (point of compound curve) of a curve to the right having a radius of 45.00 feet and a central angle of $93^{\circ}37'13''$; thence in a Southerly, Southwesterly, Westerly and Northwesterly direction (leaving said right-of-way line) along the arc of said curve a distance of 73.53 feet to the P.T. (point of tangent) of said curve; thence tangent to said curve in a Northwesterly direction a distance of 517.31 feet to the P.C. (point of curve) of a curve to the left having a radius of 810.00 feet and a central angle of $31^{\circ}00'21''$; thence in a Northwesterly,

Westerly and Southwesterly direction along the arc of said curve a distance of 438.34 feet to the P.T. (point of tangent) of said curve; thence tangent to said curve in a Southwesterly direction a distance of 178.08 feet to the P.C. (point of curve) of a curve to the right having a radius of 740.00 feet and a central angle of $25^{\circ}55'01''$; thence in a Southwesterly and Westerly direction along the arc of said curve a distance of 334.73 feet to the P.C.C. (point of compound curve) of a curve to the right having a radius of 365.00 feet and a central angle of $55^{\circ}46'57''$; thence in a Westerly and Northwesterly direction along the arc of said curve a distance of 355.36 feet to the P.T. (point of tangent) of said curve; thence tangent to said curve in a Northwesterly direction a distance of 110.48 feet to the P.C. (point of curve) of a curve to the right having a radius of 25.00 feet and a central angle of $90^{\circ}00'$; thence in a Northwesterly, Northerly and Northeasterly direction along the arc of said curve a distance of 39.27 feet to the P.T. (point of tangent) of said curve; thence tangent to said curve in a Northeasterly direction a distance of 122.08 feet to the P.C. (point of curve) of a curve to the left having a radius of 271.00 feet and a central angle of $60^{\circ}29'43''$; thence in a Northeasterly and Northerly direction along the arc of said curve a distance of 286.13 feet to the P.T. (point of tangent) of said curve; thence tangent to said curve in a Northerly direction a distance of 151.03 feet to a point; thence $90^{\circ}00'$ to the left in a Westerly direction a distance of 828.96 feet to a point; thence $71^{\circ}08'09''$ to the left in a Southwesterly direction a distance of 524.83 feet to a point; thence $82^{\circ}49'54''$ to the right in a Northwesterly direction a distance of 238.56 feet to a point; thence $87^{\circ}42'15''$ to the left in a Southwesterly direction a distance of 311.06 feet to a point; thence $20^{\circ}15'16''$ to the left in a Southeasterly direction a distance of 522.83 feet to a point; thence $34^{\circ}46'49''$ to the right in a Southwesterly direction a distance of 208.44 feet to a point; thence $0^{\circ}23'44''$ to the left in a Southwesterly direction a distance of 485.25 feet to a point; thence $7^{\circ}54'37''$ to the right in a Southwesterly direction a distance of 765.72 feet to a point; thence $5^{\circ}00'03''$ to the left in a Southwesterly direction a distance of 594.17 feet to a point; thence $16^{\circ}00'58''$ to the left in a Southwesterly direction a distance of 542.68 feet to a point; thence $0^{\circ}55'49''$ to the left in a Southwesterly direction a distance of 614.82 feet to a point; thence $8^{\circ}11'59''$ to the right in a Southwesterly direction a distance of 779.41 feet to a point; thence $5^{\circ}35'35''$ to the right in a Southwesterly direction a distance of 436.37 feet to a point; thence $5^{\circ}32'07''$ to the left in a Southwesterly direction a distance of 363.90 feet to a point; thence $13^{\circ}23'40''$ to the left in a Southwesterly direction a distance of 182.05 feet to a point; thence $37^{\circ}58'51''$ to the left in a Southeasterly direction a distance of 383.63 feet to a point on the South line of the N.E. 1/4 of the N.E. 1/4 of Section 23, Township 18 South, Range 2 West; thence $61^{\circ}37'08''$ to the left in an Easterly direction along the North line of said 1/4-1/4 section a distance of 128.49 feet to the Southeast corner of said 1/4-1/4 section; thence $88^{\circ}50'30''$ to the right in a Southerly direction along the West line of the S.W. 1/4 of the N.W. 1/4 of Section 24, Township 18 South, Range 2 West a distance of 1336.47 feet to the Southwest corner of said 1/4-1/4 section; thence $88^{\circ}48'15''$ to the left in an Easterly direction along the South line of said 1/4-1/4 section a distance of 394.26 feet to a point; thence $29^{\circ}47'46''$ to the left in a Northeasterly direction a distance of 238.00 feet to a point; thence $19^{\circ}26'49''$ to the left in a Northeasterly direction a distance of 1076.03 feet to a point on the East line of the S.W. 1/4 of the N.W. 1/4 of Section 24, Township 18 South, Range 2 West; thence $42^{\circ}05'22''$ to the left in a Northerly direction along the East line of said 1/4-1/4 section a distance of 403.81 feet to the Southwest corner of the N.E. 1/4 of the N.W. 1/4 of Section 24, Township 18 South, Range 2 West; thence $91^{\circ}13'57''$ to the right

in an Easterly direction along the South line of said 1/4-1/4 section a distance of 393.15 feet to a point; thence $45^{\circ}22'20''$ to the left in a Northeasterly direction a distance of 1292.69 feet to a point on the East line of said 1/4-1/4 section; thence $45^{\circ}59'49''$ to the left in a Northerly direction along the East line of said 1/4-1/4 section a distance of 418.07 feet to the Southwest corner of the S.W. 1/4 of the S.E. 1/4 of Section 13, Township 18 South, Range 2 West; thence $91^{\circ}19'53''$ to the right in an Easterly direction along the South line of said 1/4 section a distance of 1599.47 feet to a point; thence $91^{\circ}26'$ to the left in a Northerly direction a distance of 1043.53 feet to a point; thence $91^{\circ}26'$ to the right in an Easterly direction a distance of 1043.53 to a point on the East line of the S.E. 1/4 of the S.E. 1/4 of Section 13, Township 18 South, Range 2 West; thence $91^{\circ}26'$ to the left in a Northerly direction along the East line of said 1/4-1/4 section a distance of 278.22 feet to the Southwest corner of the N.W. 1/4 of the S.W. 1/4 of Section 18, Township 18 South, Range 1 West; thence $90^{\circ}33'49''$ to the right in an Easterly direction along the South line of said 1/4-1/4 section a distance of 1340.47 feet to the Southeast corner of said 1/4-1/4 section; thence $90^{\circ}37'04''$ to the left in a Northerly direction along the East line of said 1/4-1/4 section a distance of 1323.68 feet to the Southwest corner of the S.E. 1/4 of the N.W. 1/4 of Section 18, Township 18 South, Range 1 West; thence $90^{\circ}32'08''$ to the right in an Easterly direction along the South line of said 1/4-1/4 section a distance of 1339.21 feet to the Southeast corner of said 1/4-1/4 section; thence $90^{\circ}35'22''$ to the left in a Northerly direction along the East line of said 1/4-1/4 section and along the East line of the N.E. 1/4 of the N.W. 1/4 of Section 18, Township 18 South, Range 1 West and its extension a distance of 2661.25 feet to a point on the South line of Lot 32, Block 2, Vestlake Village Phase One Sector One as recorded in Map Book 178, Page 17 in the Probate Office of Jefferson County, Alabama; thence $89^{\circ}32'39''$ to the left in a Westerly direction along the South line of said Lot 32 and Lot 33, Block 2, Vestlake Village Phase One Sector One, and along the South line of Lot 34-A and Lot 1-A, Vestlake Village 1st Sector 1st Addition Resurvey No. 1 as recorded in Map Book 193, Page 47 in the Probate Office of Jefferson County, Alabama a distance of 741.68 feet to the Southwest corner of said Lot 1-A; thence $115^{\circ}07'56''$ to the right in a Northeasterly direction along the Westerly line of said Lot 1-A a distance of 13.33 feet to the P.C. (point of curve) of a curve to the left having a radius of 575.00 feet and a central angle of $20^{\circ}24'38''$; thence in a Northeasterly direction along the arc of said curve and along the Westerly line of said Lot 1-A a distance of 204.83 feet to the P.T. (point of tangent) of said curve; thence tangent to said curve in a Northeasterly direction a distance of 103.19 feet to the P.C. (point of curve) of a curve to the right having a radius of 125.00 feet and a central angle of $13^{\circ}56'21''$; thence in a Northeasterly direction along the arc of said curve and along the Westerly line of said Lot 1-A a distance of 30.41 feet to the P.C.C. (point of compound curve) of a curve to the right having a radius of 25.00 feet and a central angle of $104^{\circ}39'12''$; thence in a Northeasterly, Easterly and Southeasterly direction along the arc of said curve and along the line of said Lot 1-A a distance of 45.66 feet to a point on the Southwesterly right-of-way of Lake Run Drive; thence $180^{\circ}00'$ to the left (angle measured to tangent) in a Northwesterly direction along the Southwesterly right-of-way of Lake Run Drive a distance of 41.59 feet to the P.C. (point of curve) of a curve to the right having a radius of 175.00 feet and a central angle of $39^{\circ}15'04''$; thence in a Northwesterly direction along the arc of said curve and along the Southwesterly right-of-way of Lake Run Drive a distance of 119.89 feet to a point; thence $90^{\circ}00'$ to the left (angle measured to tangent) in a Southwesterly direction a distance of 75.00 feet to a point; thence $63^{\circ}12'33''$ to the right in a Northwesterly

direction a distance of 171.00 feet to a point; thence $77^{\circ}22'21''$ to the left in a Southwesterly direction a distance of 577.86 feet to a point on the Easterly line of Lot 1, Amended Map of Liberty Park Waste Water Treatment Plant Survey, as recorded in Map Book 237, Page 89 in the Probate Office of Jefferson County, Alabama; thence $60^{\circ}03'56''$ to the left in a Southerly direction along the Easterly line of said Lot 1 a distance of 82.61 feet to the Southeast corner of said Lot 1; thence $54^{\circ}33'15''$ to the right in a Southwesterly direction along the Southeasterly line of said Lot 1 a distance of 324.61 feet to the Point of Beginning.

LESS AND EXCEPT, Lot 3, Liberty Park Commercial Phase 1, as recorded in Map Book 192, Page 63 in the Probate Office of Jefferson County, Alabama.

Containing 698.4 acres, more or less.

EXHIBIT B

ADDITIONAL COVENANTS APPLICABLE TO ALL TOWNHOME DEVELOPMENTS WITHIN THE PROPERTY

The following covenants, conditions, and restrictions shall be applicable to the Townhome Developments:

1. Responsibilities of Owners -Maintenance.

(a) Unless specifically identified in this Declaration as being the responsibility of the Association or the Master Association, the maintenance and repair of all Improvements located on the Townhome Lots shall be the responsibility of the Owner of such Townhome Lot. Each Owner shall be responsible for maintaining his, her or its Townhome Lot, as the case may be, in a neat, clean and sanitary condition, both inside and outside of any Dwellings or Improvements thereto. Notwithstanding that the Association will replace the roofs of the Dwellings in the Townhome Development from time to time. However, the routine maintenance and repairs to the roofs shall be the responsibility of the Lot Owner.

(b) Each Owner agrees as follows:

(i) To perform all maintenance, repairs and replacements which are his obligations under subparagraph (a) of this Section 1(a) above;

(ii) Not to make, or cause to be made, repairs to any plumbing, heating, ventilation or air conditioning systems required to be maintained by him under Section 1(a), except by licensed plumbers, electricians or heating and air conditioning professionals authorized to do such work by the Association or its delegate;

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

(iv) Not to make any alteration, addition, improvement, decoration, repair, replacement or change to the Common Areas, or to any outside or exterior portion of the any Dwelling or other Improvement located in or on a Townhome Lot, including, but not limited to, altering in any way exterior doors and windows, affixing outshutters to windows or painting any part of the exterior part of such Dwelling or other Improvement, without the prior written consent of the Association;

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

(vi) To pay all charges for utilities serving that Townhome Lot, including but not limited to electricity, water, and gas, cable television, and telephone service, used or consumed in or on the Lot or any Improvement thereon.

2. Responsibilities of Owners - Insurance.

(a) The Owner of each Lot shall, at his expense, obtain a policy or policies of multi-peril type hazard insurance, including insurance for such other risks of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other townhome style developments similar in construction, design and use, insuring the Improvements on his Townhome Lot against loss or damage by the perils of fire, lightning and those perils contained in extended coverage, vandalism and malicious mischief endorsements, and if the Townhome Lot is located in an area identified by the Secretary of Housing and Urban Development as having special flood hazards, the Board shall, to the extent obtainable, insure the insurable property included in the Property against the perils of flood under the National Flood Insurance Act of 1968 and acts amendatory thereto. The amount of insurance coverage shall be determined on a replacement cost basis in an amount not less than one hundred percent (100%) of the then current replacement cost of the Improvements thereon as purchased by the Owner (but excluding land, foundations, excavations and other items usually excluded from such insurance coverage).

(b) The Owner of each Townhome Lot may, at his or her expense, obtain insurance coverage for loss of or damage to any furniture, furnishings, personal effects, and other property belonging to such Owner and a Fire Liability policy.

(c) The Owner of each Townhome Lot shall, at his or her expense, obtain insurance coverage against personal liability for injury or damage to the person or property of another while within such Owner's Townhome Lot or upon the Common Areas in an amount not less than \$500,000.00. Risk of loss of or damage to any furniture, furnishings and personal property belonging to or carried on the person of the owner, or which may be stored on any Townhome Lot, or in or upon Common Areas, shall be borne by the Owner of such items. All insurance obtained by the Owner of each Townhome Lot shall, whenever such provisions shall be available, provide that the insurer waives its right of subrogation as to any claims against other Owners, the Association or Developer, and their respective servants, agents, employees and guests.

(d) The Owner of each Townhome Lot shall provide proof of insurance required to be obtained by the Owner pursuant to Sections 2(a) and (c) above to the Association at upon request by the Association.

3. Responsibilities of Association - Maintenance. The Association shall, in the discretion of the Board, without any approval of the Members being required:

(a) Maintain, construct, repair, and replace the following parts of the Improvements on the Townhome Lots unless such maintenance, construction, repair, or replacement is covered by insurance proceeds:

(i) The roofs, gutters and downspouts of the Dwellings;

(ii) All exterior painting of the Improvements on the Townhome Lot, including the painting of the exterior surfaces of the window frames and doors;

(iii) The community mailbox; and

(iv) Any private roads or alleys which are for the sole and exclusive benefit of the Owners.

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

(c) Maintain, install and replace all landscaping located within the Townhome Development including the Common Areas and the front, rear, and side yards of each Townhome Lot including: (i) replacing or removing injured and diseased trees or other cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes; and (ii) all such other acts which the Board deems necessary to preserve and protect the Property and the beauty thereof, in accordance with the general purposes specified in this Declaration. Notwithstanding anything contained in this Section 1(c) to the contrary, the Association shall not be responsible for maintaining repairing or replacing any landscaping, plants, trees or other outdoor features installed by a Lot Owner.

This instrument prepared by:

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

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

**FIRST AMENDMENT TO THE BRAY SINGLE-FAMILY RESIDENTIAL
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**THIS FIRST AMENDMENT TO THE BRAY SINGLE-FAMILY RESIDENTIAL
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS** (this
“**Amendment**”) is entered into this the 9th day of May, 2023, by **LIBERTY
PARK JOINT VENTURE, LLP**, an Alabama limited liability partnership (“**Developer**”).

RECITALS:

WHEREAS, on September 26, 2019, Developer made and entered into the Declaration of Covenants, Conditions and Restrictions of The Townhomes at Tipple Drive recorded in Instrument No. 2019101308 in the Office of the Judge of Probate of Jefferson County, Alabama as amended by the First Amendment to Declaration of Covenants, Conditions, and Restrictions of The Townhomes at Tipple Drive dated October 1, 2019, recorded as Instrument No. 2019103960 in the Office of the Judge of Probate of Jefferson County, Alabama (as amended, the “**Tipple Drive Declaration**”) with respect to twelve (12) townhome lots and the private road depicted on the Final Plat of Liberty Park Town Village Commercial Subdivision No. 2 - Resurvey No. 2, as recorded in Map Book 251, Page 3 in the Office of the Judge of Probate of Jefferson County, Alabama and being more particularly described on **Exhibit “A”** attached hereto (the “**Tipple Drive Property**”);

WHEREAS, Section 2.4 of the Tipple Drive Declaration reserved unto Developer, the right, in Developer’s sole and absolute discretion and without the consent of the Association, the Owners, Occupants, or Mortgagees of any Lot (as each of such terms are defined in the Tipple Drive Declaration) or dwelling, at any time and from time to time during the pendency of the Tipple Drive Declaration, to submit the Tipple Drive Property to the provisions of a to-be-formed master declaration for the proposed “Town Center” development at Liberty Park to be known as The Bray;

WHEREAS, on September 9, 2022, Developer made and entered into The Bray Single-Family Residential Declaration of Covenants, Conditions, and Restrictions recorded in Instrument No. 2022096861 in the Office of the Judge of Probate of Jefferson County, Alabama ("**The Bray Declaration**"); *capitalized terms used in this Amendment without definition shall have the meanings set forth in The Bray Declaration.*

NOW, THEREFORE, for good and valuable consideration, upon the recording hereof, Developer, pursuant to Article X, Section 10.02 of The Bray Declaration, does hereby amend The Bray Declaration as follows:

1. **Additional Property.** Developer hereby submits the Tipple Drive Property to The Bray Declaration. Contemporaneously herewith, Developer is filing of record a termination of the Tipple Drive Declaration. Accordingly, effective as of the date hereof, the Tipple Drive Property will henceforth become a part of the Property subject to the terms and conditions of The Bray Declaration rather than the Tipple Drive Declaration and each Tipple Drive Owner will become a member of the Bray Single-Family Residential Property Owners' Association, Inc., an Alabama non-profit corporation (the "**Bray Association**") in lieu of the Tipple Drive Association and the Commercial Association (each as defined in the Tipple Drive Declaration). Upon submission of the Tipple Drive Property to the Bray Declaration pursuant to this Amendment, (i) all references in the Bray Declaration to the "Tipple Drive Association," the "Tipple Drive Owner," and "Tipple Drive Property" shall be moot and of no further force and effect; (ii) the Tipple Drive Property will be deemed a Townhome Development subject to the Townhome Covenants set forth in this Bray Declaration; and (iii) each Owner of a Lot within The Tipple Drive Property shall automatically become a member of the Bray Association.

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

3. **Governing Law.** This Amendment shall be governed by the laws of the State of Alabama.

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

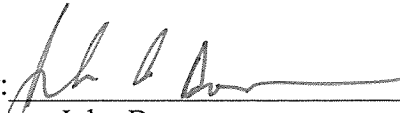
5. **Conflict.** If any irreconcilable conflict shall exist, or hereafter arise, with respect to the interpretation of any provisions of this Amendment, and any covenant of a Lot, then the provisions of this Amendment shall prevail.

6. **Effective Date.** This Amendment shall become effective upon its recordation in the Office of the Judge of Probate of Jefferson County, Alabama.

[Signature on following page]

IN WITNESS WHEREOF, the undersigned has caused this Amendment to be executed by its duly authorized officer on the day and year first above written.

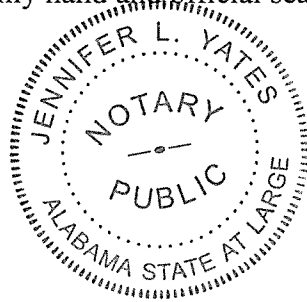
LIBERTY PARK JOINT VENTURE, LLP,
an Alabama limited liability partnership

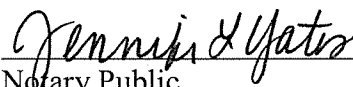
By: 
John Bonanno
Its: President

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that John Bonanno, whose name as President of LIBERTY PARK JOINT VENTURE, LLP, an Alabama limited liability partnership, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability partnership.

Given under my hand and official seal this 9th day of May, 2023.




Notary Public
My commission expires: 5/7/2024

[SEAL]

EXHIBIT A

Legal Description

Lots 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, and 15, and the private drive known as Tipple Drive as shown in Instrument No. 2019097013 on the Liberty Park Town Village Commercial Subdivision No. 2- Resurvey No. 2 recorded in Map Book 251, Page 3, in the Probate Office of Jefferson County, Alabama.

This instrument prepared by:

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

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

**SECOND AMENDMENT TO THE BRAY SINGLE-FAMILY RESIDENTIAL
DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS**

**THIS SECOND AMENDMENT TO THE BRAY SINGLE-FAMILY
RESIDENTIAL DECLARATION OF COVENANTS, CONDITIONS, AND
RESTRICTIONS** (this "**Amendment**") is entered into this the 18th day of May, 2023, by
LIBERTY PARK JOINT VENTURE, LLP, an Alabama limited liability partnership
("**Developer**").

RECITALS:

WHEREAS, on September 9, 2022, the Developer recorded the Bray Single-Family Residential Declaration of Covenants, Conditions, and Restrictions in Instrument No. 2022096861 (the "**Declaration**") for the purpose of establishing a single-family community containing attached and detached residential homes on the Property located within a sustainable live, work and play community known as The Bray at Liberty Park, located in Vestavia Hills, Jefferson County, Alabama; and

WHEREAS, the Declaration has been amended and/or supplemented by the following instruments: (i) the First Amendment dated May 9, 2023, recorded as Instrument Number 2023046904 in the Probate Office of Jefferson County, Alabama; and

WHEREAS, in order to preserve and protect the stated use of the Property as a single-family residential community Developer desires to amend the Declaration to add additional restrictions related to the leasing of Dwellings.

NOW, THEREFORE, for good and valuable consideration, upon the recording hereof, Developer does hereby amend the Declaration as follows:

1. All capitalized terms used herein without definition shall have the meanings set forth in the Declaration.

2. Pursuant to the authority granted to Developer in Article X, Section 10.02 of the Declaration, Developer hereby amends and restates Article VI, Section 6.01 of the Declaration as follows:

Section 6.01 **USE RESTRICTIONS; RESTRICTIONS ON LEASING.**

(a) Each Lot and Dwelling shall be used for single-family residential purposes only; provided, however, that any portion of the Property may be used for Common Areas to the extent approved by either Developer or the Association. Any portion of the Property may be developed and used for attached or detached townhouses, condominium units, duplexes, zero-lot-line homes and cluster, patio and garden homes and other types of residential dwelling purposes as allowed by the PUD Plan and as may be approved by the ARC.

(b) No trade or business may be carried on in or from any Lot or Dwelling; provided, however, that (i) the use of any portion of a Dwelling as an office by an Owner shall not be considered a violation of this covenant if such use does not create regular customer, client or employee traffic and (ii) the foregoing shall not be applicable to any live/work units (*i.e.*, structures which provide for office and retail uses on the lower floors of a building and residential uses on upper floors) within any of the Town Center, as such term is defined in the PUD Plan.

(c) The leasing or rental of a Dwelling is discouraged and in no event will any so called "rental program" or purchase, operation or management of multiple Dwellings for rental purposes be allowed (whether by an individual or by any corporation, association, partnership, limited liability company, joint venture, trust, estate or other entity or organization, or a combination of any such entities under common ownership or control); provided, however, that the foregoing restriction on rental program leasing shall not apply to the first Owner who has either (i) acquired a Dwelling from Clayton Properties Group, Inc., a Tennessee corporation, as of the Recording Date or (ii) entered into a contract to purchase a Dwelling from Clayton Properties Group, Inc., a Tennessee corporation, as of the Recording Date, but the foregoing restriction on rental program leasing shall apply to the successors and assigns of such Owner and such Dwellings. All leases of a Dwelling, to the extent permitted under this Declaration, must be for the entire Dwelling, must be in writing, and must be for a minimum lease term of at least six (6) months. Overnight and short-term rentals are strictly prohibited. Notice of any lease must be provided by the Owner to the Association within ten (10) days of execution of the lease. Each lease must incorporate the provisions of the Declaration by reference and each tenant must be provided with a copy of the Declaration and the Bylaws and all amendments thereto. Tenants shall comply with the Declaration and the Bylaws, and Owner shall be held responsible for such tenant compliance, or any non-compliance.

(d) In no event shall any of the Lots be used for trailers and mobile homes; provided, however, that with ARC approval, construction trailers may be located on any of the Property during the construction of Improvements on the Property.

3. **Clerical Correction.** Section 10.02 is hereby amended to correct a clerical error by deleting the words and number "Sections 2.08 and 6.28" from the 12th and 13th lines, and inserting in lieu thereof "Sections 2.10 and 6.27."

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

5. **Governing Law**. This Amendment shall be governed by the laws of the State of Alabama.

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

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

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

[Signature on following page]

IN WITNESS WHEREOF, the undersigned has caused this Amendment to be executed by its duly authorized officer on the day and year first above written.

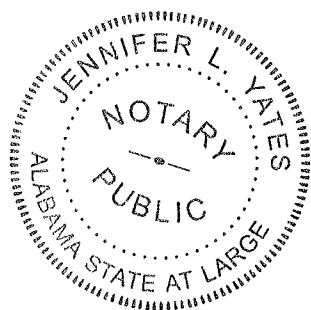
LIBERTY PARK JOINT VENTURE, LLP,
an Alabama limited liability partnership

By: *John Bonanno*
John Bonanno
Its: President

STATE OF ALABAMA)
JEFFERSON COUNTY)

I, the undersigned authority, a Notary Public in and for said County in said State, hereby certify that John Bonanno, whose name as President of LIBERTY PARK JOINT VENTURE, LLP, an Alabama limited liability partnership, 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, as such officer and with full authority, executed the same voluntarily for and as the act of said limited liability partnership.

Given under my hand and official seal this 18th day of May, 2023.



Jennifer Yates
Notary Public
My commission expires: 5/7/2024

[SEAL]