
CERTIFICATE OF FORMATION

OF

EAGLE RIDGE TOWNHOMES OWNERS ASSOCIATION, INC.

AN ALABAMA NON-PROFIT CORPORATION

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CERTIFICATE OF FORMATION
OF
EAGLE RIDGE TOWNHOMES OWNERS ASSOCIATION, INC.
AN ALABAMA NON-PROFIT CORPORATION

The undersigned, for the purpose of forming a corporation pursuant to the provisions of the Alabama Nonprofit Corporation Law hereby adopts the following Certificate of Formation and certify as follows:

1. NAME. The name of the corporation is “**Eagle Ridge Townhomes Owners Association, Inc.**” (hereinafter referred to as the “Association”).
2. DURATION. The period of duration of the Association shall be perpetual.
3. PURPOSES. The purposes for which the Association is organized are:
 - (a) To provide for the efficient preservation of the appearance, value, and amenities of the property which is subject to the **Declaration of Covenants, Conditions and Restrictions for Eagle Ridge Townhomes** (the “Restrictive Covenants”) recorded in **Book ____**, at **Page ____** in the Office of the Judge of Probate of **Lee County, Alabama**. Capitalized terms not otherwise defined herein shall have the same meanings given to them in the Restrictive Covenants.
 - (b) To own, operate, maintain, manage, repair, and replace common areas of **Eagle Ridge Townhomes** (the “Subdivision”) as defined in the Restrictive Covenants.
 - (c) To perform and carry out the acts duties, responsibilities, and conditions delegated to the Association in the Restrictive Covenants, this Certificate of Formation and the Bylaws of the Association, and all amendments thereto.
 - (d) To own, lease, license, operate, purchase, acquire, hold, improve, develop, manage, sell, convey, transfer, exchange, release, and dispose of, either alone or in conjunction with others, real and personal property, tangible and intangible, or every kind, character, and description.
 - (e) To enforce all of the terms and provisions of the Restrictive Covenants to make, establish, and enforce reasonable rules and regulations governing the administration, operation, and management of the Subdivision.
 - (f) To make, levy, collect, and enforce Assessments, as defined in the Restrictive Covenants and to use and expend such Assessments in the manner set forth in the Restrictive Covenants.

(g) To employ personnel and contract for services, material, and labor, including contracting for the management of the common areas and all other portions of the Subdivision.

(h) To purchase and maintain insurance for such coverages, with such insurance carriers, in such amounts, at such rates, and with such deductibles as may be necessary for the protection of the Association, its property, and its officers, directors and members.

(i) To enforce any of the provisions of the Restrictive Covenants by legal and equitable actions as may from time to time be necessary.

(j) To enter into, make, and perform contracts of every kind for any lawful purpose without limit as to the amount, with any person, firm, association, partnership, limited partnership, corporation, municipality, county, state, territory, government, governmental subdivision, or body public.

(k) To operate without profit for the sole and exclusive benefit of its members.

(l) To carry on any other business in connection with the foregoing, to transact any or all lawful business for which corporations may be incorporate under the Alabama Nonprofit Corporation Law, as amended, and to have and exercise all powers necessary or convenient to effect the purposes of the Association in accordance with the subject to the terms and provisions of the Restrictive Covenants.

THIS ASSOCIATION DOES NOT CONTEMPLATE PECUNIARY GAIN OR PROFIT FOR THE MEMBERS THEREOF AND THE FUNDS OF THE ASSOCIATION, WHETHER RECEIVED BY GIFT OR OTHERWISE, REGARDLESS OF THE SOURCE THEREOF, SHALL BE EXCLUSIVELY USED IN THE PROMOTION OF THE BUSINESS OF THE ASSOCIATION, AS THE BOARD OF DIRECTORS MAY FROM TIME TO TIME DETERMINE.

4. INITIAL REGISTERED OFFICE AND AGENT. The location and mailing address of initial registered office of the Association, and the name of its initial registered agent at such address, are as follows:

Michael W. Thompson
1423 Falls Crest Drive
Auburn, Alabama 36830

5. NONSTOCK AND NONPROFIT STATUS. The Association shall have no capital stock, is not organized for profit, and does not contemplate pecuniary gain or profit to the members thereof. No part of the earnings of the Association shall inure to the benefit of any member, individual officer, or director. The Association does not contemplate the distribution of gains, profits, or dividends to members thereof and is organized solely for nonprofit purposes.

6. MEMBERS. The members of the Association shall consist of all owners of lots in the Subdivision. Membership in the Association shall be appurtenant to, and may not be separated from, ownership of a lot or dwelling.

7. DIRECTORS.

(a) Number of Directors. The affairs of the Association shall be managed by a Board of Directors. The number of Directors constituting the initial Board of Directors shall be three (3). Thereafter, the number of Directors shall be fixed in the manner provided in the Bylaws and may thereafter be increased or decreased from time to time by amendment to or in the manner provided by the Bylaws; provided, however, that (i) the number of Directors shall in no event consist of less than three (3) and (ii) no decrease in the number of Directors shall have the effect of shortening the term of any incumbent Director. Directors need not be owners of lots within the Subdivision or residents of the State of Alabama. The names and addresses of each person who is to serve as an initial Director of the Association until their successors are elected and qualified or until such Directors are removed as provided in Paragraph 7(b) of this Certificate of Formation are as follows:

Michael W. Thompson
1423 Falls Crest Drive
Auburn, Alabama 36830

William R. Herring
1415 Falls Crest Drive
Auburn, Alabama 36830

Andrew Freeman
2802 Lone Eagle Lane
Opelika, Alabama 36801

(b) Removal. The members of the Association shall have the right at any time and from time to time to remove any Director, either with or without cause, and may appoint a successor to such removed Director. Any vacancies which may thereafter arise on the Board of Directors shall be filled as provided in the Bylaws.

(c) Powers. Except as may be otherwise provided to the contrary in the Restrictive Covenants, this Certificate of Formation, or the Bylaws of the Association, all powers of the Association shall be exercised by or under authority of, and the business and affairs of the Association shall be managed under the direction of the Board of Directors.

(d) Conflicts of Interest. No contract or other transaction between the Association and one or more of its Directors or any other corporation, firm, association, or entity in which one or more of its Directors or any other corporation, firm, association, or entity in which one or more of its Directors are directors or officers or are financially interested, shall be either void or voidable because of such relationship or interest. Any Director of the Association or any corporation, firm, association, or entity of which any Director of the Association is a director or is financially interested may be a party to, or may be pecuniarily or otherwise interested in, any contract or transaction of the Association, provided such relationship or interest in such contract or transaction shall be disclosed or known to the Board of Directors at the meeting of the Board of Directors or a committee thereof which authorizes, approves, or ratifies such contract or transaction and, if such fact shall be disclosed or known, any Director so related or interested may be counted in determining a quorum

at such meeting and may vote on such matter or action with the same force and effect as if he were not so related or interested. Any Director of the Association may vote on any contract or other transaction between the Association and any affiliated corporation without regard to the fact that he is also a director of such affiliated corporation.

8. INCORPORATOR. The name and address of the incorporator is as follows:

Michael W. Thompson
1423 Falls Crest Drive
Auburn, Alabama 36830

9. DISTRIBUTION OF ASSETS UPON DISSOLUTION.

(a) Upon Dissolution of the Association, all of its assets remaining after provision for creditors and payments of all costs and expenses of such dissolution shall be distributed among the members of the Association, as tenants in common, with each member's share of the assets to be determined in accordance with its voting rights, unless otherwise agreed to the contrary in the plan of distribution.

(b) Dissolution of the Association shall be accomplished as set forth in the Alabama Nonprofit Corporation Law.

10. POWER OF PRESIDENT TO EXECUTE DOCUMENTS. The President of the Association shall have the authority to execute all instruments, documents, and contracts on behalf of the Association.

11. INDEMNIFICATION OF OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS.

(a) The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed claim, action, suit, or proceeding, whether civil, criminal, administrative, or investigative, including appeals (other than an action by or in the right of the Association), by reason of the fact that he is or was a Director, officer, employee, or agent of the Association, or is or was serving at the request of the Association as a Director, officer, partner, employee, or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by him in connection with such claim, action, suit or proceeding if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association; and, with respect to any criminal action or proceeding, had no reasonable cause to believe his conduct was unlawful. The termination of any claim, action, suit, or proceeding by judgment, order settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not of itself, create a presumption that the person did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the Association, and with respect to any criminal action or proceeding, had reasonable cause to believe that his conduct was unlawful.

(b) The Association shall indemnify any person who was or is a party or is threatened to be made a party of any threatened, pending, or complete claim, action, or suit by or in the right of the Association to procure a judgment in its favor by reason of the fact that he is or was a Director, officer, employee, or agent of the Association, or is was serving at the request of the Association as a Director, officer, partner, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association; or matter as to which such person shall have been adjudged to be liable for willful, deliberate, or wanton misconduct in the performance of his duty to the Association unless and only to the extent that the courts in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which court shall deem proper.

(c) To the extent that a Director, officer, employee, or agent of the Association has been successful on the merits or otherwise in defense of any action, suit, or proceeding referred to in Paragraphs 11(a) and (b) above, or in defense of any claim, issue, or matter therein, he shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by him in connection therewith, notwithstanding that he has not been successful on any other claim, issue, or matter in any such action, suit, or proceeding.

(d) Any indemnification under Paragraphs 11(a) and (b) above (unless ordered by a court) shall be made by the Association only as authorized in the specific case upon a determination that indemnification of the director, officer, employee, or agent is proper in the circumstances because he has met the applicable standard of conduct set forth in Paragraphs 11(a) or (b) above. Such determination shall be made (1) by the Board of Directors by a majority vote of the quorum consisting of Directors who were not parties to, or who have been wholly successful on the merits or otherwise with respect to, such claim, action, suit, or proceeding, or (2) if such a quorum is not obtainable, or even if obtainable, if a quorum of disinterested Directors so directs, by independent legal counsel in a written opinion, or (3) by a majority vote of the members of the Association.

(e) Expenses (including attorneys' fees) incurred in defending a civil or criminal claim, action, suit, or proceeding may be paid by the Association in advance of the final disposition, of such claim, action, suit, or proceeding as authorized in the manner provided in Paragraph 11(d) above upon receipt of an undertaking by or on behalf of the Director, officer, employee, or agent to repay such amount if and to the extent that it shall be ultimately determined that he is not entitled to be indemnified by the Association as authorized in this Paragraph 11.

(f) The indemnification authorized by this Paragraph 11 shall not be deemed exclusive of and shall be in addition to any other right to which those indemnified may be entitled under and statute, rule of law, provisions of this Certificate of Formation, Bylaws, agreement, vote of members or disinterested Directors, or otherwise, both as to action in his official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a Director, officer, employee, or agent and shall inure to the benefit of the heirs, executors, and administrators of such a person.

(g) The Association shall have power to purchase and maintain insurance on behalf of any person who is or was a Director, officer, employee or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of the Paragraph 11.

12. Amendment. This Certificate of Formation may be amended, subject to terms and provisions of the Restrictive Covenants, by the affirmative vote of at least two-thirds (2/3) of the total votes in the Association (i.e., two-thirds [2/3] of all owners).

13. Incorporation by Reference. All of the terms, provisions, definitions, covenants, and conditions set forth in the Restrictive Covenants are hereby expressly incorporated herein by reference as if fully set forth herein. In the event of any conflict or ambiguity between the terms, provisions, definitions, covenants, and conditions set forth herein in this Certificate of Formation and the Restrictive Covenants, then the provisions of the Restrictive Covenants shall at all times control.

IN WITNESS WHEREOF, the undersigned Incorporator has executed this Certificate of Formation on the ____ day of July, 2018.

Michael W. Thompson, Incorporator

STATE OF ALABAMA
LEE COUNTY

The undersigned Notary Public in and for said County in said State, hereby certifies that Michael W. Thompson, whose name as Incorporator of Eagle Ridge Townhomes Owners Association, Inc., is signed to the foregoing Certificate of Formation, and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he executed the same voluntarily on the day the same bears date.

Given under my hand and official seal this the ____ day of July, 2018.

(NOTARY SEAL)

Notary Public: Gerald A. Mattson, Jr.
My commission expires: October 14, 2018

**BYLAWS
OF
EAGLE RIDGE TOWNHOMES OWNERS ASSOCIATION, INC.**

**ARTICLE I
THE ASSOCIATION**

SECTION 1.1 Name. The name of this Association shall be the “**Eagle Ridge Townhomes Owners Association, Inc.,**” (the “Association”), an Alabama non-profit corporation, which has been formed pursuant to the Certificate of Formation of the Association (the “Certificate of Formation”) which have been filed with the Probate Office of **Lee County, Alabama**. The provisions of these Bylaws (the “Bylaws”) are expressly subject to the terms and provisions of the **Declaration of Covenants, Conditions and Restrictions for Eagle Ridge Townhomes** recorded in the Probate Office of **Lee County, Alabama** (which, together with all amendments thereto, is hereinafter referred to as the “Restrictive Covenants”), and shall serve **Eagle Ridge Townhomes Subdivision**, as defined in the Restrictive Covenants (the “Subdivision”). Capitalized terms not otherwise defined herein shall have the same meanings given to them in the Restrictive Covenants.

SECTION 1.2 Principal Office. The principal office of the Association in the State of Alabama shall be located at **1423 Falls Crest Drive, Auburn, Alabama, 36830**. The Association may have such other Offices, either within or without the State of Alabama, as the Board of Directors may designate from time to time.

SECTION 1.3 Registered Office. The registered office of the Association required by the Alabama Nonprofit Corporation Law to be maintained in the State of Alabama shall be at **1423 Falls Crest Drive, Auburn, Alabama, 36830**.

**ARTICLE II
MEMBERS**

SECTION 2.1 Membership.

SECTION 2.1.1 Each person who is the owner of any Lot in the Subdivision (“Lot Owner”) shall be a member of the Association (hereinafter referred to as “Member”). Membership in the Association shall be appurtenant to, and may not be separated from ownership of a Lot.

SECTION 2.1.2 No Lot Owner, whether one or more persons, shall be entitled to more than one vote per Lot owned. If a Lot is owned by more than one person and if only one of those persons is present at a meeting of the Association, that person shall be entitled to cast the vote appertaining to such Lot; provided, however, that if more than one person is present, the vote appertaining thereto shall be cast only in accordance with their unanimous agreement, and, if no unanimous agreement is reached, the vote appurtenant to such Lot shall be suspended.

SECTION 2.1.3 The voting rights of the Members of the Association shall be limited to (i) approving increases or decreases in the annual assessments; and (ii) approving amendments to the Restrictive Covenants if such approval is required pursuant thereto. The voting rights of any

Member may be limited and suspended in accordance with the provisions of the Restrictive Covenants.

SECTION 2.2 Annual Meeting.

SECTION 2.2.1 The annual meeting of the Members of the Association shall be held on such date and at time as may be fixed by the Board of Directors.

SECTION 2.2.2 At the annual meeting, the Members of the Association shall, subject to the terms of Section 2.1 and 3.3 of these Bylaws, elect the Board of Directors of the Association, review and adopt the annual budget for the Association, and otherwise transact such other business as may come before such meeting.

SECTION 2.2.3 The order at the annual meeting of the Association shall be:

- (a) Calling the roll, certifying of proxies and establishing of quorum.
- (b) Proof of notice of the meeting or certificate as to waivers.
- (c) Reports of the Officers and Directors of the Association.
- (d) Election of Board of Directors of the Association.
- (e) Old business.
- (f) New business.
- (g) Adjournment.

SECTION 2.3 Special Meetings. Special meetings of the Members, for any purpose or purposes, unless otherwise prescribed by statute, may be called by the President or the Board of Directors of the Association and shall be called by the President or Secretary of the Association upon the petition of at least one-half (1/2) or more of the total votes in the Association.

SECTION 2.4 Place of Meeting. The Board of Directors may designate any place, either within or without the State of Alabama, as the place of meeting for any annual or special meeting. In the absence of any designation, all meetings shall be held at the principal office of the Association in the State of Alabama.

SECTION 2.5 Notice of Meeting. Written or printed notice stating the place, day, and hour of the meeting and, in case of a special meeting, or of a meeting which is required by statute to be held for any special purpose, or of any annual meeting at which special action is to be taken, the purpose or purposes for which the meeting is called, or the special action which is proposed to be taken, shall be delivered not less than ten (10) nor more than fifty (50) days before the date of the meeting, either personally or by mail, by or at the direction of the Board of Directors, the President, the Secretary, or the officer or persons calling the meeting, to each Member of the Association. If mailed, such notice shall be deemed to be delivered when deposited in the United States mail addressed to the Member at his address as it appears on the books of the Association, with postage there on prepaid. If given personally, such notice shall be deemed to have been delivered to the Member upon delivery of the same to the Lot of such Member.

SECTION 2.6 Quorum. Unless otherwise stated in the Restrictive Covenants, the presence in person or by proxy of Owners entitled to cast over fifty percent (50%) of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, but the required quorum at the subsequent meeting shall be the presence in person or by proxy of owners entitled to cast at least one-third (1/3) of the total votes of the Association. The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough Members to have less than a quorum.

SECTION 2.7 Proxies. At all meetings of the Members of the Association, a Member may vote either in person or by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. Such proxy shall be filed with the Secretary of the Association before or at the time of the meeting. No proxy shall be valid after eleven months from the date of its execution, unless otherwise provided in the proxy.

SECTION 2.8 Voting Members. Subject to any contrary provision of Article II or Article III of these Bylaws, each Member of the Association shall be entitled to one (1) vote for each Lot owned by such Member. No fractional voting shall be permitted. When more than one person is the owner of a Lot, the provisions in Section 2.1 of these Bylaws shall be applicable in the exercise of such voting rights. For purposes of these Bylaws, the Articles of Incorporation, and the Restrictive Covenants, the vote of a majority of the Members of the Association shall mean the vote of more than fifty percent (50%) of the total number of votes represented at a meeting, whether in person or by proxy. Unless a greater proportion is specified in these Bylaws, the Certificate of Formation, or the Restrictive Covenants and, subject to the terms and provisions of Sections 2.1 and 3.3 of these Bylaws, any matter which requires the vote of, approval, disapproval, or consent of the Members of the Association shall be deemed to have been given if a majority of the Members of the Association represented at a meeting, either in person or by proxy, affirmatively vote for, approve, disapprove, or consent to the same.

SECTION 2.9 Informal Action by Members. Any action required or permitted to be taken at a meeting of the Members of the Association may be taken without a meeting if consent in writing, setting forth the action so taken, shall be signed by all Members entitled to vote with respect to the subject matter thereof.

ARTICLE III **BOARD OF DIRECTORS**

SECTION 3.1 General Powers. The business and affairs of the Association shall be managed by or under the direction of its Board of Directors, (hereinafter referred to as the "Board").

SECTION 3.2 Number, Tenure, and Qualifications. The number of Directors of the Association shall be no less than three (3). Each Director shall hold office until his successor shall have been elected and qualified.

SECTION 3.3 Election, Removal, and Replacement of Directors. The Members of the Association shall elect, by majority vote of the Members of the Association, new members of the Board. Thereafter, the Members of the Association, by affirmative vote of a majority of the Members, shall (i) elect the members of the Board at the annual meeting of members of the Association; and (ii) have the right to remove, either with or without cause, any Director.

SECTION 3.4 Regular Meetings. A regular meeting of the Board shall be held, without further notice other than this Bylaw, immediately after, and at the same place as, the annual meeting of the Members of the Association; provided, however, that any such regular meeting may be held at any other time or place which shall be specified in a notice given as hereinafter provided for special meetings, or in a consent and waiver of notice thereof, signed by all Directors. The Board may provide, by resolution, the time and place, either within or without the State of Alabama, for the holding of additional regular meetings without other notice than such resolution.

SECTION 3.5 Special Meetings. Special meetings of the Board of Directors may be called by or at the request of the Chairman, the President or any two (2) Directors. The person or persons authorized to call special meetings of the Board of Directors may fix any place, either within or without the State of Alabama, as the place for holding any special meeting of the Board called by them.

SECTION 3.6 Notice. Notice of any special meeting shall be given either (a) by written notice at least 48 hours in advance of such meeting, delivered in person or by leaving such notice at the place of business or residence of each Director, or by depositing such notice in the United States mail, postage prepaid, addressed to each Director at his address as it appears on the records of the Association; or (b) verbally in person or by telephone at least 24 hours in advance of such meeting by communication with the Director in person or by telephone. Any Director may waive notice of any meeting. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Board of Directors need be specified in the notice or waiver of notice of such meeting.

SECTION 3.7 Quorum. A majority of the number of Directors fixed by Section 3.2 of these Bylaws shall constitute a quorum for the transaction of business at any meeting of the Board of Directors, but if less than such a majority is present at a meeting, a majority of the Directors present may adjourn the meeting from time to time without further notice. If a quorum is present when the meeting is convened, the Directors present may continue to do business, taking action by a vote of majority of quorum as fixed above, until adjournment, notwithstanding the withdrawal of enough Directors to leave less than a quorum as fixed above, or the refusal of any Director present to vote.

SECTION 3.8 Manner of Acting. The act of a majority of the Directors present at a meeting at which a quorum is present shall be the act of the Board, unless the act of a greater number is required by statute, the Articles of Incorporation, or these Bylaws.

SECTION 3.9 Action without a Meeting. Any action required or permitted to be taken at a meeting of the Board may be taken without a meeting if consent in writing, setting forth the action to be so taken, shall be signed by all of the Directors.

SECTION 3.10 Vacancies. Any vacancy occurring in the Board may be filled by the affirmative vote of a majority of the remaining Directors. In the event that there is no remaining Director, then the vacancy or vacancies occurring in the Board shall be filled by the affirmative vote of a majority of the Members of the Association. A Director elected or appointed to fill a vacancy shall be elected to serve for the unexpired term of his predecessor in office.

SECTION 3.11 Compensation. By resolution of the Board, each Director may be paid his or her expenses, if any, of attendance at each meeting of the Board. No such payment shall preclude any Director from serving the Association in any other capacity and receiving compensation therefor.

SECTION 3.12 Committees.

SECTION 3.12.1 The Board, by resolution adopted by a majority of the Board, may designate from among the Members, one or more committees, each committee to consist of one or more resolution, shall have and may during intervals between the meetings of the Board, exercise all the authority of the Board, except that no such committee shall have the authority of the Board in reference to issuing capital stock, amending the Certificate of Formation, adopting a plan of merger or consolidation, filling vacancies in the Board, or amending the Bylaws of the Association. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board. The designation of any such committee and the delegation thereto of authority shall not operate to relieve the Board, or any member thereof, of any responsibility imposed upon it or him by law.

SECTION 3.13 Resignations. Any Director of the Association may resign at any time either by oral tender of resignation at any meeting of the Board or by giving written notice thereof to the Secretary of the Association. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified in the notice, the acceptance of such resignation shall not be necessary to make it effective.

SECTION 3.14 Participating in Meetings by Conference Telephone. Members of the Board or any committee designated thereby may participate in a meeting of such Board or committee by means of a conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other at the same time and participation by such means shall constitute presence in person at such meeting.

ARTICLE IV
OFFICERS

SECTION 4.1 Principal Officers. The Principal Officers of the Association shall be elected by the Board and shall include a President, a Vice-President, a Secretary, and a Treasurer; and may, at the discretion of the Board, also include a Chairman of the Board and such other officers as may be designated from time to time. Any number of offices may be held by the same

person, except for the offices of President and Secretary. None of the Principal Officers need be Directors of the Association; however, a person can serve as both an Officer and Director.

SECTION 4.2 Election of Principal Officers; Term of Office. The Principal Officers of the Association shall be elected annually by the Board at the first meeting of the Board held after each annual meeting of the Members. If the election of Principal Officers shall not be held at such meeting, such election shall be held as soon thereafter as may be convenient. Each Principal Officer shall hold office until his or her successor shall have been duly elected and qualified or until his or her death or until he or she shall resign or shall have been removed in the manner hereinafter provided. If the Board shall fail to fill any principal office at an annual meeting, or if any vacancy in any principal office shall occur, or if any principal office shall be newly created, such principal office may be filled at a regular or special meeting of the Board.

SECTION 4.3 Subordinate Officers, Agents, and Employees. In addition to the Principal Officers, the Association may have such other subordinate officers, agents and employees as the Board may deem advisable; each of whom shall hold office for such period and have such authority and perform such duties as the Board, the Chairman of the Board, the President, or any officer designated by the Board, may from time to time determine. The Board at any time may appoint and remove, or may delegate to any Principal Officer the power to appoint and to remove, any subordinate officer, agent, or employee of the Association.

SECTION 4.4 Delegation of Duties of Officers. The Board may delegate the duties and powers of any Officer of the Association to any other Officer or to any Director for a specified period of time for any reason that the Board may deem sufficient.

SECTION 4.5 Removal of Officers or Agents. Any Officer or agent of the Association may be removed by the Board at any time, either with or without cause, and the Board may appoint a successor to such removed Officer and agent. Election or appointment of any Officer shall not itself create contract rights.

SECTION 4.6 Resignations. Any Officer may resign at any time by giving written notice of resignation to the Board, the Chairman of the Board, the President, or the Secretary. Any such resignation shall take effect upon receipt of such notice or at any later time specified therein. Unless otherwise specified in the notice, the acceptance of a resignation shall not be necessary to make the resignation effective.

SECTION 4.7 Vacancies. A vacancy in any office, the holder of which is elected or appointed by the Board, because of death, resignation, removal, disqualification, or otherwise, may be filled by the Board for the unexpired portion of the term of such office. A vacancy in any other office for any reason shall be filled by the Board, or any committee, or Officer to whom authority for the appointment, removal, or filling of vacancies may have been delegated by these Bylaws or by resolution of the Board.

SECTION 4.8 Chairman of the Board. The Chairman of the Board, who must be a member of the Board, shall preside at all meetings of the Members of the Association and of the

Board at which he is present. The Chairman of the Board shall have other powers and perform such other duties as may be assigned to him from time to time by the Board.

SECTION 4.9 President. The President shall, in the absence of the Chairman of the Board, preside at all meetings of the Association and of the Board at which he is present. The President shall be the chief executive officer of the Association and, subject to the control of the Board, shall have general supervision over the business and affairs of the Association. The President shall have all powers and duties usually incident to the office of the President, except as specifically limited by resolution of the Board. The President shall have such other powers and perform such other duties as may be assigned to him from time to time by the Board.

SECTION 4.10 Vice-President. The Vice-President shall, in the absence of the President, shall serve in place of the President, and shall perform any other acts as requested by the President.

SECTION 4.11 Secretary. The Secretary shall act as secretary of all meetings of the Members of the Association and of the Board at which he is present, shall record all the proceedings of all such meetings in a minute book to be kept for that purpose, shall have supervision over the giving and service of the notices of the Association, and shall have supervision over the care and custody of the records and seal of the Association. The Secretary shall be empowered to affix the corporate seal to documents, the execution of which on behalf of the Association under its seal is duly authorized, and when so affixed may attest the same. The Secretary shall have all powers and duties usually incident to the office of Secretary, except as specifically limited by a resolution of the Board. The Secretary shall have such other powers and perform such other duties as may be assigned to him from time to time by the Board or the President.

SECTION 4.12 Treasurer. The Treasurer shall have general supervision over the care and custody of the funds and over the receipts and disbursements of the Association and shall cause the funds of the Association to be deposited in the name of the Association in such banks or other depositories as the Board may designate. The Treasurer shall have all powers and duties usually incident to the office of the Treasurer except as specifically limited by a resolution of the Board. The Treasurer shall have such other powers and perform such other duties as may be assigned to him from time to time by the Board or the President.

SECTION 4.13 Salaries. The Officers of the Association shall not be entitled to any salaries or other compensation except for expenses incurred on behalf of the Association which shall be reimbursed.

ARTICLE V

FISCAL MATTERS AND BOOKS AND RECORDS

SECTION 5.1 Fidelity Bonds. The Board may require that any contractor or employee of the Association handling or responsible for Association funds furnish an adequate fidelity bond. The premium for any such bond shall be paid by the Association and shall constitute a common expense.

SECTION 5.2 Books and Records Kept by Association. The Association shall keep detailed, complete, and accurate financial records, including itemized records of all receipts and disbursements, shall keep detailed minutes of the proceeds of all meetings of the members and of the Board and committees having any of the authority of the Board, and shall keep such other books and records as may be required by law or necessary to reflect accurately the affairs and activities of the Association. The Association shall keep at the office of the Association a record giving the names and addresses of the Directors and all Members of the Association, which shall be furnished by each owner pursuant to Section 5.10 of these Bylaws.

SECTION 5.3 Inspections. The books, records, and papers of the Association shall at all times during reasonable business hours be subject to inspection by any Member or his agent or attorney for any proper purpose. True and correct copies of the Certificate of Formation, these Bylaws, the Restrictive Covenants, and all rules and regulations of the Association with all amendments thereto, shall be maintained at the principal registered offices of the Association and copies thereof shall be furnished to any Member on request on payment of a reasonable charge therefor.

SECTION 5.4 Contracts. The Board may authorize any Officer or Officers, or agent or agents of the Association, in addition to the Officers so authorized by the Restrictive Covenants and these Bylaws, to enter into any contract or execute and deliver any instrument in the name of, or on behalf of the Association, and such authority may be general or confined to specific instances.

SECTION 5.5 Checks, Drafts, etc. All checks, drafts, or orders for the payment of money, notes, or other evidences of indebtedness issued in the name of the Association, shall be signed by such Officer or Officers, or agents of the Association, and in such manner as shall from time to time be determined by resolution of the Board. In the absence of such determination by the Board, such instruments shall be signed by the Treasurer of the Association.

SECTION 5.6 Deposits. All funds of the Association shall be deposited from time to time to the credit of the Association in such banks, trust companies, or other depositories as the Board may select.

SECTION 5.7 Gifts. The Board may accept, on behalf of the Association, any gift, contribution, bequest, or devise for the general purposes, or for any special purpose, of the Association.

SECTION 5.8 Fiscal Year. The fiscal year of the Association shall be the calendar year.

SECTION 5.9 Annual Statements. No later than four (4) months after the close of each fiscal year, the Board shall prepare or cause to be prepared a balance sheet showing in reasonable detail the financial condition of the Association as of the close of its fiscal year and an income and expense statement showing the results of its operations during the fiscal year. Such statements may, in the discretion of the Board, be audited statements. Upon receipt of written request, the Treasurer promptly shall mail to any Member copies of the most recent such balance sheet and income and expense statement on payment of a reasonable charge therefor.

SECTION 5.10 Notices. Each Member shall be obligated to furnish to the Secretary of the Association, the address, if other than the Lot of such Member, to which any notice or demand to the owner under the Restrictive Covenants or these Bylaws is to be given, and if no address other than such Lot shall have been designated, all such notices and demands shall be mailed or delivered to such Lot.

SECTION 5.11 Payment of Taxes on Common Areas and Insurance Premiums. The Board shall, to the extent funds are available, cause payment to be made, in a timely manner, of all taxes assessed either against the common areas or Association property as well as all insurance premiums related thereto.

ARTICLE VI **INSURANCE**

SECTION 6.1 Types of Coverage. The Association shall maintain in effect at all times as a common expense the types of insurance coverage required by the Restrictive Covenants or the Certificate of Formation, any workmen=s compensation, or other insurance required by law, and such other insurance as the Board may from time to time deem appropriate. The Board shall review the amount and terms of such insurance annually.

SECTION 6.2 Damage or Destruction to Common Areas. Immediately after any damage or destruction by fire or other casualty to all or any part of the common areas covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance, and, in any such event, the Board shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction means repairing or restoring the damaged property to substantially the same condition in which it existed prior to the fire or other casualty. The Association shall promptly commence and complete the repair and restoration of any portions of the common areas damaged by any such fire or casualty. If the insurance proceeds, if any, for such damage or destruction are not sufficient to defray the cost thereof, and such deficiency cannot be appropriated from a reserve fund as may have been established for such a purpose, the Board may levy a special assessment against all Members, without the necessity of a vote or the consent of approval of any of the Members, as provided in the Restrictive Covenants, to provide funds to pay such excess costs of repair or reconstruction. Such special assessment shall be levied against all the Members equally in the same manner as annual assessments are levied, and additional special assessments may be made at any time during or following the completion of any repair or reconstruction. Any and all sums paid to the Association under and by virtue of such special assessments shall be held by and for the benefit of the Association together with the insurance proceeds, if any, for such damage or destruction. Such insurance proceeds and assessments shall be disbursed by the Association in payment for such repair or reconstruction as is established by the Board. Any proceeds remaining after defraying such costs shall be retained by and for the benefit of the Association. If it is determined by the Board that the damage or destruction for which the insurance proceeds are paid shall not be repaired or reconstructed, such proceeds shall be retained by and for the benefit of the Association, and the ruins of the common areas damaged or destroyed by fire or other casualty shall be cleared and the common areas left in a clean, orderly, safe, and sightly condition.

SECTION 6.3 Condemnation of Common Areas. Whenever all or any part of the common areas of the Subdivision shall be taken by any authority having the power of condemnation or eminent domain, or is conveyed in lieu thereof by the Board, the award made or collected for such taking or sale in lieu thereof shall be payable to the Association and shall be disbursed or held as follows:

(a) If the taking or sale in lieu thereof involves a portion of the common areas on which improvements have been constructed, then the Association shall restore or replace such improvements so taken, to the extent practicable, on the remaining lands included in the common areas which are available therefor, in accordance with the plans approved by the Board. If the award is not sufficient to defray the cost of such repair and replacement and such deficiency cannot be appropriated from a reserve fund as may have been established for such purpose, the Board may levy a special assessment against all Members, as provided in the Restrictive Covenants, to provide funds to pay such excess costs of repair or reconstruction. Such a special assessment shall be levied against all Members equally in the same manner as annual assessments are levied, and additional special assessments may be made at any time during or following the completion of any repair or reconstruction. If the Board determine that such improvements are not to be repaired or restored, the award or proceeds shall be retained by and for the benefit of the Association to be used as provided in the Restrictive Covenants.

(b) If the taking or sale in lieu thereof does not involve any improvements to the common areas, or if there are net funds remaining after any such restoration or replacement of such improvements is completed, then such award or net funds shall be retained by and for the benefit of the Association.

ARTICLE VII **INDEMNIFICATION**

SECTION 7.1 Indemnification. The Association shall to the fullest extent permitted by applicable law, indemnify any person (and their heirs, executors, and administrators of such person), who, by reason of the fact that he is or was a Director, Officer, employee, or agent of the Association, or is or was serving at the request of the Association as a Director, Officer, partner, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise, was or is a party or is threatened to be made a party to:

(a) any threatened, pending, or completed claim, action, suit, or proceeding, whether civil, criminal, administrative, or investigative, including appeals (other than an action by or in the right of the Association), against expenses (including attorney's fees), judgments, fines, and amounts paid in settlement actually and reasonably incurred by such person in connection with any such claim, action, suit, or proceeding; or

(b) any threatened, pending, or completed claim, action, suit, or proceeding by or in the right of the Association to procure a judgment in its favor, against expenses (including attorneys' fees) actually and reasonably incurred by him in connection with the defense or settlement of such action, suit or proceeding. Any indemnification by the Association pursuant hereto shall be made

only in the manner and to the extent authorized by the Articles of Incorporation and applicable law and any such indemnification shall not be deemed exclusive of any other rights to which those seeking indemnification may otherwise be entitled.

SECTION 7.2 Indemnification Insurance. The Association shall have the power and authority to purchase and maintain insurance on the behalf of any person who is or was a Director, Officer, employee, or agent of the Association or is or was serving at the request of the Association as a Director, Officer, partner, employee, or agent of another corporation, partnership, joint venture, trust, or other enterprise against any liability asserted against him and incurred by him in such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under applicable law.

ARTICLE VIII

GENERAL PROVISIONS

SECTION 8.1 Waiver of Notice. Whenever any notice is required to be given under any provision of law, the Certificate of Formation, or these Bylaws, a waiver thereof in writing signed by the person or persons entitled to such notice, whether before or after the time stated therein, shall be equivalent to the giving of such notice. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the Members, the Board, or the members of a committee established by the Directors need be specified in any written waiver of notice unless otherwise required by these Bylaws. Attendance of a Director at a meeting of the Board shall constitute a waiver of notice of such meeting, except where a Director attends a meeting for the express purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 8.2 Incorporation by Reference. All of the terms, provisions, definitions, covenants, and conditions set forth in the Restrictive Covenants and Certificate of Formation are hereby expressly incorporated herein by reference as if fully set forth herein. In the event of any conflict or ambiguity between these terms, provisions, definitions, covenants, and conditions set forth herein in these Bylaws and in the Restrictive Covenants, then the provisions of the Restrictive Covenants shall at all times control.

SECTION 8.3 Power of Directors to Amend. The Board shall have the right, power, and authority to alter, amend or repeal the Bylaws of the Association or adopt new Bylaws for the Association at any regular or special meeting of the Board. Furthermore, the Members of the Association, by the affirmative vote of at least two-thirds (2/3) of the total votes in the Association, may alter, amend, or repeal the Bylaws of the Association or adopt new Bylaws for the Association at any annual meeting or at a special meeting called for such purpose.

SECTION 8.4 Seal. The Board may, but shall not be obligated to, provide a corporate seal which shall be circular in form and have inscribed thereon the name of the Association, the state of incorporation, and such other words as the Board may prescribe; provided, however, that the use of the seal of the Association on any contract or agreement shall not be required to evidence the validity, authenticity, or approval of such contract or agreement.

SECTION 8.5 Pronouns and Plurals. All personal pronouns used in these Bylaws, 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.

The foregoing Bylaws have been adopted on this ____ day of July, 2018.

Witness my hand and seal this the ____ day of July, 2018.

Michael W. Thompson, President

Attest:

William R. Herring, Secretary

**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS FOR
EAGLE RIDGE TOWNHOMES**

This **DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR EAGLE RIDGE TOWNHOMES** is made as of the ____ day of **July, 2018**, by **Gulf South Development Group, LLC** ("Developer").

RECITALS:

Developer is the owner of the Property, as described in Section 1.19 below, and desires to own, develop, improve, lease, and sell the Property for residential housing purposes, subject to certain easements, covenants, conditions, restrictions, requirements, and obligations in order to protect the value and desirability of the Property and to have a flexible and reasonable method for the administration and maintenance of the Property.

Developer has heretofore caused or shall cause the Association, as defined in Section 1.04 below, to be formed as an Alabama nonprofit corporation for the purposes of managing and maintaining the harmonious nature of the landscaping and exterior appearance of the Development, establishing annual budgets therefor and paying all costs and expenses incurred by the Association in connection therewith, making Assessments, as defined in Section 1.03 below, and otherwise taking all action which the Association is authorized to undertake hereunder.

NOW, THEREFORE, Developer does hereby declare that all of that certain real property situated in **Lee County, Alabama**, which is more particularly described in ***Exhibit A*** attached hereto and incorporated herein by reference shall be held, developed, improved, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, covenants, conditions, restrictions, charges, liens, and regulations, which shall be binding upon and inure to the benefit of all parties acquiring or having any right, title, or interest in any portion of the Property described in ***Exhibit A*** attached hereto and any of the Additional Property, as described in Section 1.01 below (but only to the extent Developer submits any portion of the 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 the Declaration, the following terms shall have the meanings set forth below, which meanings shall be applicable to both the singular and plural forms of such terms:

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 Development) 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.

1.02 Articles of Incorporation. The term “Articles of Incorporation” shall mean and refer to the Articles of Incorporation of the Association and all amendments thereto.

1.03 Assessment. The term “Assessment” shall mean the annual and special assessments and any other charges assessed against an Owner by the Association pursuant to Article VIII hereof.

1.04 Association. The term “Association” shall mean **EAGLE RIDGE TOWNHOMES OWNERS ASSOCIATION, INC.**, an Alabama nonprofit corporation.

1.05 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 Articles of Incorporation and Bylaws.

1.06 Bylaws. The term “Bylaws” shall mean and refer to the bylaws of the Association, as the same may be amended from time to time.

1.07 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 8.04(e) below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

1.08 Declaration. The term “Declaration” shall mean and refer to this **DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR EAGLE RIDGE TOWNHOMES** and all amendments thereto.

1.09 Developer. The term “Developer” shall mean **Gulf South Development Group, LLC**, its successors and assigns.

1.10 Development. The term “Development,” with an initial capital letter, shall mean and refer to the Property and all Improvements thereon and any of the Additional Property submitted to the provisions of this Declaration pursuant to Section 2.02 hereof.

1.11 Governmental Authority. The term “Governmental Authority” shall mean any and all city, county, state, and federal governmental or quasi-governmental agencies, bureaus, departments, divisions, or regulatory authorities having jurisdiction over any portion of the Development.

1.12 Improvement. The term “Improvement,” with an initial capital letter, shall mean and refer to any building, structure, or device constructed, erected, or placed upon any Lot which in any way affects the exterior appearance of any Lot, including the Town Home erected thereon. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, patios, underground utilities, driveways, walkways, paving, curbing, trees, shrubbery, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural condition of any Lot.

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

1.14 Lot. The term “Lot,” with an initial capital letter, shall mean and refer to each of Lots 1-9, as shown on the Subdivision Plat.

1.15 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 any interest therein and which shall have been duly and property recorded in the Office of the Judge of Probate of Lee County, Alabama.

1.16 Mortgagee. The term “Mortgagee,” with an initial capital letter, shall mean and refer to the holder of any Mortgage and shall include any Institutional Mortgagee.

1.17 Occupant. The term “Occupant” shall mean and include any Owner, the family members, guests, tenants, agents, employees, and invitees of any Owner and their respective family members, guests, tenants, agents, employees, invitees, and any other person who occupies or uses any Town Home within the Development. All actions or omissions of any Occupant is and shall be deemed the action or omission of the Owner of such Lot.

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

1.19 Property. The term “Property,” with an initial capital letter, shall mean and refer to that certain real property situated in **Lee 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.

1.20 Subdivision Plat. The term “Subdivision Plat” with an initial capital letter, shall mean and refer to the subdivision plat for **Eagle Ridge Townhomes** recorded in **Plat Book** __, at **Page** __, in the Office of the Judge of Probate of **Lee County, Alabama**.

1.21 **Town Home.** The term "Town Home" with an initial capital letter, shall mean and refer to the Improvements constructed on any Lot which is intended to be used for residential dwelling.

ARTICLE II

Property Subject to the Declaration

2.01 **General Declaration.** Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens, and regulations of this Declaration and the Property, any part thereof, and each Lot and Town Home shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied, built upon, and otherwise used, improved, and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens, and regulations shall run with the title to the Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any Lot and Town Home thereof.

2.02 **Additional Property.** Developer reserves the right, in its sole and absolute discretion, at any time and from time to time during the pendency of this Declaration, to add and submit any Additional Property to the provisions of this Declaration and, to the extent any of the Additional Property is specifically submitted to the terms and provisions of this Declaration by Developer, then any such Additional Property shall constitute part of the Property. Additional Property may be submitted to the provisions of this Declaration by an instrument executed by Developer, or by an entity affiliated with or under the common control of Developer or the individual members of Developer, in the manner required for the execution of deeds and recorded in the Probate Office of **Lee County, Alabama**, which instrument shall be deemed an amendment to this Declaration (which need not be consented to or approved by any Owner, Occupant, or Mortgagee of any Lot) and shall (a) refer to this Declaration stating the book and page number in the Probate Office of Lee County, Alabama, where this Declaration is recorded, (b) contain a statement that such Additional Property is conveyed subject to the provisions of this Declaration or only specified portions thereof, (c) contain an exact description of such Additional Property and (d) state such other or different covenants, conditions, and restrictions as the Developer, in its sole discretion, shall specify to regulate and control the use, occupancy, and improvement of such Additional Property. From and after the date on which an amendment to this Declaration is recorded in the Probate Office of Lee County, Alabama, 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 Town Homes within the Additional Property which are added and submitted to the Declaration so that there shall continue to be one vote in the Association per Lot within the Development. 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 Development. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.02 may not be abrogated, modified, rescinded, supplemented, or amended, in whole or in part, without the prior written consent of Developer and (2) the rights reserved by Developer pursuant to this Section 2.02 shall not be deemed to inure to

the benefit of any transferee or purchaser of the Additional Property or any portion thereof, unless Developer, in its sole discretion, transfers and conveys to such transferee or purchaser the rights reserved herein by express reference to Section 2.02 of this Declaration.

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

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

2.05 Subdivision Plat. Developer reserves the right to record, modify, amend, revise, and otherwise add to, at any time and from time to time, the Subdivision Plat setting forth such information as Developer may deem necessary with regard to the Development, including, without limitation, the locations and dimensions of all Lots, utility easements, drainage easements, access easements, and set-back line restrictions. Any such subdivision plats or 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, Developer may at any time or from time to time divide and redivide, combine and resubdivide any Lots owned by Developer.

ARTICLE III Easements

3.01 Reservation of Easement for Utilities. Developer does hereby establish and reserve for itself, the Association and their respective heirs, successors, and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through, and upon all portions of the Property which are reasonably necessary for the purpose of installing, erecting, replacing, relocating, maintaining, and operating all utilities necessary or convenient for the use of any portion of the Development, including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water, and sewer services, storm drains and sewers, drainage systems, lines, pipes, conduits, equipment, machinery, and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of the Development. The easements established and reserved herein shall include the right to cut and remove trees, undergrowth, and shrubbery, to grade, excavate, or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair,

operation, and replacement of all such utility services and the systems, equipment, and machinery used to provide the same. Notwithstanding anything provided in this Section 3.01 to the contrary, (i) the utilization of any of the easements and rights established and reserved pursuant to this Section 3.01 shall not unreasonably interfere with the use or occupancy of any Town Home situated on any Lot and (ii) Developer shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service which may utilize any of the easements and rights reserved and established pursuant to this Section 3.01 to take reasonable action to repair any damage caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved herein.

3.02 Reservation of Maintenance Easement. Subject to the terms and provisions of Section 7.02 below, Developer does hereby establish and reserve for itself, the Association and their respective agents, employees, heirs, successors, and assigns a permanent and perpetual right and easement to enter upon any Lot for the purpose of installing and/or maintaining the landscaping on each Lot and the exterior of each Town Home, including but not limited to painting, replacing roofing shingles (or reroofing, as necessary), and removing trash, so as to maintain the uniform appearance of the Development; provided, however, that such easement shall not impose any duty or obligation upon Developer or the Association to perform any of the foregoing actions.

3.03 Reservation of Environmental Easement. Developer does hereby establish and reserve for itself, the Association, and their respective agents, employees, heirs, successors, and assigns a permanent and perpetual right and easement on, over, across, and upon all Lots and all unimproved portions of any Town Home for the purpose of taking any action necessary to effect compliance with any watershed, soil erosion, or environmental rules, regulations, and procedures from time to time promulgated or instituted by any Governmental Authorities or the Board. The easement and right established and reserved herein shall include, without limitation, the right to implement erosion control 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 any Governmental Authorities. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved in this Section 3.03 shall not unreasonably interfere with the use or occupancy of any Town Home situated on any Lot.

3.04 Reservation of Sidewalk/Walkway Easement. Developer does hereby establish and reserve for itself, the Association, each Town Home owner, and their respective agents, employees, heirs, successors, and assigns a permanent and perpetual right and easement on, over, across, and upon all the sidewalks and walkways located on the Lots.

ARTICLE IV

Association

4.01 Membership. The Owner of each Lot shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot; provided, however, that (a) Developer shall be deemed a member of the Association and shall have one (1) vote for each Lot owned by Developer in the Development, (b) in the event any Lot is

owned by more than one (1) person, then the Owner of such Lot shall designate only one (1) representative to serve as a member of the Association who shall exercise all voting rights attributable to the Lot 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 of its Mortgage and title to such encumbered Lot is vested in Mortgagee pursuant to a duly recorded deed. The transfer or conveyance of fee title to any Lot (other than by a Mortgage as security for the payment of an obligation) shall automatically include the transfer of all membership rights of such Owner in the Association with respect to the Lot transferred and conveyed, notwithstanding any failure of the transferor to endorse to his transferee any certificates, assignments, or other evidence of such membership. Membership or the rights and benefits in the Association may not be transferred, assigned, conveyed, or otherwise alienated in any manner separate and apart from the ownership of a Lot. Each member of the Association shall at all times comply with the provisions of this Declaration, the Articles of Incorporation, the Bylaws, and all rules and regulations which may from time to time be adopted by the Board or the members of the Association.

4.02 Board. The Board shall have the rights and duties set forth in the Articles of Incorporation and the Bylaws. Developer hereby retains and shall have the right to appoint or remove, with or without cause, any member or members of the Board and any officer or officers of the Association until such time as Developer no longer is the Owner of any Lot within the Development. Each Owner, by acceptance of a deed to or other conveyance of a Lot, vests in Developer such authority to appoint and remove members of the Board and officers of the Association as provided by this Section 4.02.

4.03 Voting Rights. Subject to the rights reserved to Developer in the Articles of Incorporation and Bylaws and the rights of the Association to suspend any Owner's voting rights or privileges in the Association pursuant to Section 11.01 below, the Owner of each Lot shall be entitled to one (1) vote in any matters 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. Such voting rights shall continue to apply to each Lot upon the addition of any of the Additional Property to this Declaration. Each Owner, by acceptance of a deed or other conveyance to a Lot, consents and agrees to the dilution of his voting interest in the Association by virtue of the re-subdivision 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 otherwise, shall more than one vote be allowed for any one Lot. Fractional voting shall not be permitted. For purposes of this Section 4.03, Developer shall be deemed to be the Owner of and entitled to all voting rights attributable to any Lots or Town Homes owned by Developer.

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 Articles of Incorporation and the Bylaws. The Association may exercise any other right or privilege granted to it expressly by this Declaration or by law, together with every other right or privilege 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. In the event of any conflict, ambiguity, or inconsistency between the *Code of Alabama*, this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted by the Association, then the provisions of the *Code of Alabama*, this Declaration, the Articles of Incorporation, the Bylaws, and any rules and regulations adopted by the Association, in that order, shall prevail and each Owner, by acceptance of a deed or other conveyance to a Lot, covenants and agrees to vote in favor of and execute any amendments as may be necessary to remove or alleviate any such conflict, ambiguity, or inconsistency. The powers of the Association shall include, but not be limited to, (i) the power to purchase one or more Lots and/or Town Homes and any other real or personal property, whether tangible or intangible, and to hold, lease, mortgage, sell, and otherwise convey the same, (ii) subject to the provisions of this Section 4.04, the right to borrow money for the purpose of providing any of the services authorized herein, and (iii) the right to arrange with any of the Governmental Authorities or any public or private utilities or others, for the furnishing of trash collection, water, sewer, and/or security services for the Lots and Town Homes. Except as otherwise specifically provided to the contrary herein, in the Articles of Incorporation or in the Bylaws, the powers and authority granted to the Association may be exercised by the Board, acting through the officers of the Association, without further consent or action on the part of the Owners.

4.05 Agreements. Subject to the conditions, restrictions, and other provisions of this Declaration, all agreements, actions, and determinations lawfully authorized by the Board shall be binding upon all Owners, their heirs, executors, personal representatives, administrators, successors, and assigns and all others having any interest in the Development. In performing its responsibilities hereunder, the Association, through the Board, shall have the right and authority to delegate to such persons of its choice such duties of the Association as may be determined by the Board. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of any portion of the Development, whether such personnel are furnished or employed directly by the Association or by independent contract with the Association. All costs and expenses incurred incident to the employment of a manager of the Development shall be a Common Expense. During the term of any such management agreement entered into by the Association with a third party, such manager may, if authorized by the Board, exercise all the powers and shall be responsible for the performance of all of the duties of the Association, excepting any of such powers or duties specifically and exclusively reserved to the Board or the officers of the Association by the Declaration, the Articles of Incorporation, or the Bylaws. Such manager may be an individual, corporation, or other legal entity and may be bonded in such manner as the Board may require, with the costs of such bond to be a Common Expense. In addition to the foregoing, the Association may pay for, and the Board may hire and contract for, such legal and accounting services as are necessary or desirable in connection with the operation of the Development, or the enforcement of this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations of the Association.

4.06 Management by Developer or its Affiliates. Developer or any affiliate thereof may be employed as the manager of the Association and the Development for so long as Developer owns any Lot within the Development, at such compensation and on such terms as would be usual, customary, and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern United States of the size, quality, and nature of the Development. Each Owner, by acceptance of a deed to or other conveyance of a Lot, shall be deemed to ratify the provisions of this Section 4.06 and specifically be deemed to have approved any such management agreement entered into by the Association and Developer or any affiliate thereof.

4.07 Rules and Regulations. The Board may establish and enforce reasonable rules and regulations governing the use of all Lots and Town Homes. Without limiting the foregoing, the Board may adopt rules and regulations which shall govern the enforcement of all of the terms and provisions of this Declaration, and any rules and regulations adopted by the Board and such other matters. Copies of such rules and regulations shall be binding upon all Owners and Occupants until and unless such rule or regulation is specifically overruled, canceled, or modified by the Board or by the majority vote of the total votes of the Association at any regular or special meeting of the Association; provided, however, that no such rules or regulations may be overruled, canceled, or modified unless such action is also approved by Developer for so long as Developer owns any Lot in the Development.

4.08 Indemnification. The Association shall and does hereby indemnify, defend, and agree to hold each and every officer, agent, representative, and member of 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 such officer, agent, representative, or member of the Board in connection with any action, suit, or other proceedings (including the settlement of any suit or proceedings if approved by the Board) to which such person may be made a party by reason of being or having been an officer, agent, representative, or member of the Board of the Association. The officers, agents, representatives, and members of the Board of the Association 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 officers, agents, representatives, and members of the Board of the Association 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 officer, agent, representative, and member of the Board harmless from 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 officer, agent, representative, or member of the Board of the Association may be entitled, including anything provided to the contrary contained in the Articles of Incorporation or the Bylaws. The Association shall maintain adequate general liability and officers and directors liability insurance in order to fulfill its obligations under this Section 4.08 and the costs of such insurance shall constitute a Common Expense.

ARTICLE V

Architectural Standards

5.01 The Development is a zero lot line development and is intended to remain harmonious as to landscaping and design of all Town Homes and other Improvements on any Lot, including the color scheme, finish, proportions, and style of architecture. Accordingly, no Improvement may be constructed on any Lot and no alterations or additions may be made to any Town Home without the prior written consent of the Board. In the event any of the provisions of this Article V 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 Association shall have the right, at their option, to (a) enjoin any further construction on any Lot and require the removal or correction of any work in place which does not comply with the provisions hereof or plans and specifications approved by the Association for such alteration and/or (b) through their designated agents, employees, representatives, and independent contractors, enter upon such Lot and take all action necessary to extinguish such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article V, 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 Association in causing any Owner or such Owner's contractors, agents, or invitees to comply with the terms and provisions of this Article V, shall be paid by such Owner, shall constitute an individual Assessment to such Owner pursuant to Section 8.06 below and, if the same is not paid when due, shall be subject to the lien provided for in Section 8.09 below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Association may exercise at law or in equity or any of the enforcement rights specified herein.

ARTICLE VI

Use Restrictions

6.01 **Use Restrictions.** Except as otherwise provided to the contrary herein, each Lot and Town Home shall be used for residential purposes only, and no trade or business of any kind may be carried on in or from any Lot or Town Home; provided, however, that any Additional Property may be used for attached or detached town houses, condominiums, duplexes, zero-lot-line homes, and cluster or patio homes for residential dwelling purposes. The use of any portion of a Town Home as an office by an Owner or Occupant shall not be considered a violation of this covenant, if such use does not create regular customer, client, or employee traffic. The leasing or rental of a Town Home for residential purposes only shall not be considered a violation of this covenant for so long as such leasing or rental is in compliance with applicable City of **Opelika, Alabama**, municipal ordinances, regulations and zoning, **however, in no event may a Town Home be leased to, or occupied by, more than two (2) unrelated persons.**

6.02 Landscaping. The Association shall maintain and replace, as necessary, all landscaping in the front yard of the Town Houses and the sidewalks within the Development, and no Owner or Occupant may plant additional flowers, trees, bushes, hedges or shrubbery planting, nor any vegetable, herb, or similar gardens, without the prior written consent of the Association. No bird baths, fountains, reflectors, flagpoles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses, or other fixtures and accessories shall be placed or installed within any Lot, unless approved by the Association. Seasonal or holiday decoration (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be promptly removed from each Lot as soon as such holiday passes.

6.03 Roofing. Maintenance and replacement of the roofing shingles of each Town Home, which are conjoined across property lines, shall remain uniform to the extent reasonably possible, however the repair or replacement of roofing shingles shall be the sole responsibility of the Owner of each Town House. No projection of any type, including but not limited to solar or other energy collection panel, equipment, or device, shall be installed or maintained on any Lot, including, without limitation, the roof of any Town Home without the prior written consent of the Association.

6.04 Exterior Lighting. Replacement of exterior light bulbs are the responsibility of Owners of a Lot or Town Home, however, no additional exterior lighting for any Town Home, including without limitation, free standing lighting and utility (e.g., flood) lights, may be installed, without the approval and/or prior written consent of the Association as to type of bulbs used for replacement.

6.05 Exterior Materials and Finishes; Maintenance. The exterior building material and finishes for each Town Home in the Development are intended to remain harmonious. Accordingly, no change may be made to any exterior colors, including, without limitation, the color of roof shingles, brick, stone, stucco, wood, trim, cornices, eaves, railings, doors, and shutters without the prior written consent of the Association. The Association shall be solely responsible for the regular maintenance of the exterior of all Town Homes.

6.06 Parking. As constructed, each Lot or Town Home will provide designated spaces for parking for two (2) automobiles. All automobiles owned or used by the Owner or Occupant of any Town Home and their respective family members shall be parked in spaces designated for each Town Home.

6.07 Fences. As it is intended that no Lot or any portion thereof will be enclosed no fence shall be constructed on any Lot without the prior written approval of the Association. Chain link fences shall not be allowed or approved. Maintenance for any fences that are approved shall be the sole responsibility of the Owner.

6.08 Windows, Window Treatments, and Doors. The Developer intends to construct each Town Home with uniform doors and windows, which will provide a harmonious design within the Development, and no alteration or replacement thereof shall be permitted without the prior written approval of the Association. No burglar bars, screen doors or metal doors with glass fronts (e.g. storm doors) may be installed without the prior written consent of the Association. Reflective glass shall not be permitted on the exterior of any Town Home, and no foil or other reflective material shall be installed on any windows or used for sunscreens, blinds, shades, or other purposes. Appropriate window treatments shall be used on all windows and the view of same from the exterior of the Town Home must be neutral color (e.g. white, off-white, cream). Sheets, bed linens, blankets, and paper or plastic bags are not appropriate window treatments.

6.09 Mailboxes. The initial mailbox shall be provided by the Developer and contain only the address of the Lot. Any replacement mailbox is the responsibility of the Owner and shall be identical to the initial mailbox supplied by the Developer in all respects and requirements, including location thereof, unless otherwise approved by the Association.

6.10 Utility Meters and HVAC Equipment. All electrical, gas, telephone, and cable television meters, to the extent practicable, shall be located at the rear of all Town Homes. All exterior heating, ventilating, and air conditioning compressor units and equipment shall be located at the front of a Town Home and be screened by landscaping installed and maintained by the Association. No window mounted heating or air conditioning units or window fans shall be permitted.

6.11 Satellite Dishes and Antennae. No satellite, radio antenna, radio receiver, or other similar device or aerial shall be attached to or installed on any Lot or any other portion of the Development, unless the type and location of same is approved by the Association.

6.12 Outdoor Furniture, Recreational Facilities, and Clotheslines. No furniture, children's toys, swing sets, jungle gyms, trampolines or other recreational equipment shall be placed, kept, installed, maintained, or located in or on the front yards of any Lot. Basketball backboards shall not be affixed to the Town Home without the prior written consent of the Association. Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot. No clothing, rugs, or other items shall be hung or allowed to remain on any railing, fence, or wall.

6.13 Pets and Animals. No more than a total of two (2) dogs, weighing less than seventy-five (75) pounds each, and/or cats may be kept and maintained on a Lot. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. No structure or area for the care, housing, or confinement of any pet shall be constructed or maintained on any part of the Lot without the prior written consent of the Association, as to size, type and location. Each Owner shall be liable to the Association for the costs of repairing any damage to the landscaping within the Development caused by the pet of such Owner or Occupant. The Board shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Development, including the right to assess fines for violations of such rules and regulations.

6.14 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 Development nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Lot which would render any portion thereof unsanitary, unsightly, offensive, or detrimental to persons using, occupying, or owning any other Lots or Town Homes within the Development. Noxious or offensive activities shall not be carried on, in or from any Lot, and each Owner and Occupant shall refrain from any act or use of a Lot which would cause disorderly, unsightly, or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Development or be in violation of any law, statute, ordinance, rule, regulation, or requirement of any Governmental Authority. 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 other portion of the Development. Any Owner or Occupant or any of the respective family members, guests, invitees, agents, employees, or contractors of such Owner or Occupant who dumps, places, or allows trash or debris to accumulate on his Lot or Town Home shall be liable to the Association for all costs incurred by the Association to remove the same.

(b) Trash, garbage, and any other refuse or waste shall not be kept on any Lot except in sanitary containers. A central trash collection container shall be provided for the trash of all Town Homes.

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

6.15 Recreational Vehicles and Machinery and Equipment. Mobile homes, motor homes, trailers of any kind, campers, lawn mowers, tractors, tools, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery, or equipment shall not be stored or allowed to remain on any Lot unless approved by the Association; and the Board shall have the right to adopt rules and regulations with respect to same.

6.16 Signage. No signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any Town Home or elsewhere on any portion of any Lot, without the express written permission of the Association; provided however, that the Developer may display such signs as it deems necessary and appropriate to promote the development and sales of the town homes therein, and provided further that one "for rent" or "for sale" sign may be placed on the Lot without permission from the Association.

6.17 Temporary Structures. No temporary house, trailer, shack, tent, barn, shed, or other outbuilding or structure of any kind shall be permitted, constructed, installed, or allowed to remain on any Lot; provided, however, that the foregoing shall not be deemed to prohibit temporary structures for social functions as may be permitted by the rules and regulations adopted by the Association.

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

6.19 Additional Regulations. In addition to the restrictions set forth in this Declaration, the Association shall have the right from time to time and at any time to adopt, modify, and amend such rules and regulations as the Board, in its sole discretion, determines to be in the best interests of all Owners, which rules and regulations shall be binding on all Owners, Lots, and Town Homes.

6.20 Variances. The Association, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to the provisions of Article V above and this Article VI with respect to any Lot. Any variance request submitted to the Association shall be in writing.

6.24 Enforcement and Remedies. In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all aspects by any Owner or Occupant or the respective family members, guests, invitees, agents, employees, or contractors of any Owner or Occupant, then the Association shall have the right, at its option, to (a) enjoin such violation or noncompliance and/or (b) through their designated agents, employees, representatives, and independent contractors enter upon such Lot and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this 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 any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the Association in connection therewith (i) shall be paid by such Owner who has violated or breached any of the provisions of this Article VI, (ii) shall constitute an individual Assessment to such Owner pursuant to Section 8.06 below and, (iii) if the same is not paid when due, shall be subject to the lien provided for in Section 8.09 below, and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of Association set forth herein shall not be deemed exclusive of any other rights and remedies which the Association may exercise at law or in equity or any of the enforcement rights specified herein.

ARTICLE VII

Maintenance Responsibilities

7.01 Responsibilities of Owners.

(a) Unless specifically identified herein as being the responsibility of the Association, the repair or restoration of all Lots, Town Homes and all other Improvements situated thereon or therein shall be the responsibility of the Owner of each Lot; provided, however, that no exterior changes, alterations, or Improvements shall be made to any Lot or Town Home without first obtaining the prior written approval of the same from the Association.

(b) No Owner shall (i) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Town Home or the landscaping, grounds, or other improvements within a Lot unless such decoration, change, or alteration is first approved, in writing, by the Association or (ii) do any work which, in the reasonable opinion of the Association would jeopardize the soundness and safety of any other Town Home within the Development, reduce the value thereof, or impair any easement or hereditament thereto, without in every case obtaining the prior written approval of the Association.

7.02 Responsibilities of Association.

(a) Except as may be otherwise provided herein to the contrary, the Association shall, to the extent it has received sufficient sums from the Owners through Assessments, maintain the landscaping in the front yards of the Town Houses and all sidewalks located thereon. Said responsibility shall include the maintenance, repair, and replacement of all landscaped areas in said front yards, including all lawns, trees, shrubs, hedges, grass, and other landscaping situated within or upon any Lot. The Association shall not be liable for injuries or damage to any person or property (1) caused by the elements, act 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 landscaped area maintained by the Association, or (3) resulting from theft, burglary, or other illegal entry onto any Lot. No diminution or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Association to take some action or perform some function required to be taken by or performed by the Association hereunder or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association or from any action taken by the Association to comply with any requirements of the Governmental Authorities.

(b) In the event that the Board of the Association determines that (i) any maintenance, cleaning, repair, or replacement for which the Association is responsible hereunder is caused by the willful or negligent act of an Owner or Occupant, or their respective family members, guests, 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 Association with respect thereto, then, in either event, the Association, in addition to the exercise of any of the rights and remedies set forth in this Declaration, may give such Owner written notice of the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen (15) day period, to commence such maintenance, cleaning, repair, or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any Owner to comply with the provisions hereof after such notice, the Association may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner and said cost shall be a personal obligation of such Owner, shall constitute an individual Assessment to such Owner, and shall be subject to the lien and foreclosure rights granted pursuant to Section 8.09 below.

ARTICLE VIII

Assessments

8.01 Assessments and Creation of Lien. Each Owner of a Lot, 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 8.04 below, (b) special Assessments, to be established and collected as provided in Section 8.05 below, and (c) individual Assessments against any particular Lot which are established or assessed pursuant to the terms of this Declaration, including, but not limited to, any fines as may be levied or imposed against such Lot in accordance with the provisions herein. All Assessments, together with late charges and interest as provided in Section 8.09(a) below, and all court costs and attorneys' fees incurred by the Association to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon each Lot for which the Owner thereof is responsible for the payment of the same, which lien may be enforced in the manner provided in Section 8.09(c) below. Each Owner shall be personally liable for the payment of all Assessments coming due while he is the Owner of a Lot and his grantee shall take title to such Lot subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his 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 8.09(a) below, court costs, and attorneys' fees incurred with respect thereto by the Association, shall also be a personal obligation of the person who was the Owner of the Lot at the time such Assessments and other costs and charges were assessed or incurred. In the event of co-ownership of any Lot, all of the co-Owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of the 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 or Town Home.

8.02 Purpose of Assessments. The annual and special Assessments provided for herein shall be used for the general purposes of promoting the health, safety, welfare, common benefit, and enjoyment of the Owners and Occupants of the Development and otherwise for the general upkeep and maintenance of the Development.

8.03 Uniform Rate of Assessments.

(a) Both annual and special Assessments, as described in Sections 8.04 and 8.05 below, shall be assessed against each Lot in the Development at a uniform rate, with the Owner of each Lot being required to pay his pro rata portion of such annual and/or special Assessments, as determined by a fraction, the numerator of which shall be the total Lots owned by such Owner and the denominator of which shall be the total number of Lots in the Development at the time such annual or special Assessment is levied. Each Lot shall be subject to equal annual and special Assessments.

(b) Notwithstanding anything provided in Section 8.03(a) above to the contrary, in the event any Additional Property is added to the Development, then the Lots within the Additional Property shall be subject to the same annual or special Assessments then being paid by the Owners of all other Lots in the Development, subject to proration as provided in Section 8.08 below.

8.04 Computation of Annual Assessments.

(a) Notwithstanding anything provided to the contrary in this Declaration, the initial annual Assessment for each Lot, which shall be prorated and due at closing, shall be **One Thousand Two Hundred and no/100 Dollars (\$1,200.00)**, payable in equal monthly installments due on the first day of each month. The foregoing shall not limit or restrict any special Assessments levied pursuant to Section 8.05 below (with the approval of a majority of the Owners as provided therein) or any individual Assessments levied in accordance with the provisions of Section 8.06 below.

(b) Commencing with the fiscal year of the Association which begins on January 1, 2019 (i.e., from January 1, 2019, through December 31, 2019, which period is hereinafter referred to as the "Base Year"), and annually thereafter, the Board of the Association shall determine and approve annually an annual budget covering the estimated Common Expenses for the Development for the upcoming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The amount set forth in such budget shall constitute the aggregate amount of annual Assessments for the then applicable year and each Owner shall pay his pro rata share of the same as provided in Section 8.03 above. A copy of the budget setting forth the amount of annual Assessments to be levied against the Lots and Town Homes for the following year shall be delivered to each Owner.

(c) In the event the budget for any year after the Base Year results in the Owners being liable for the payment of annual Assessments the increase of which exceed (without regard to proration or adjustment as provided in Section 8.08 below) the greater of either (i) ten percent (10%) of the annual Assessments payable for the entire immediately preceding calendar year or (ii) the percentage increase in the United States Consumer Price Index or any successor index thereto for January of the current year over the index for January of the Base Year (i.e., January 2016) then the budget and the amount of the annual Assessments shall be presented for approval of the Owners at the annual meeting of the Association and must be approved by the vote of a majority of the Owners who are voting in person or by proxy at such meeting. In the event the amount of the annual Assessments does not exceed the limitations set forth above or until such time as a majority of the Owners have approved such increase in the amount of the annual Assessments, then the budget approved by the Board for the then current fiscal year shall be implemented, subject to the restrictions and limitations set forth above on the amount of increase in annual Assessments. **The limitations on increases in the amount of annual assessments provided in this Section 8.04(c) shall not be applicable to the Base Year; accordingly, the actual annual Assessments for each Lot and Town Home for the Base Year may exceed \$1,200.00 per annum increased by the greater of (1) ten percent (10%) or (2) the percentage increase in CPI from the preceding calendar year.**

(d) 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 may call a meeting of the Association for the purpose of approving special Assessments as provided in Section 8.05 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.

(e) 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 the Association;

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

(iv) The Lot and Town Home regular maintenance responsibilities of the Association as specified herein;

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

(vi) All other fees, costs, and expenses incurred by the Association in accordance with the terms and provisions of this Declaration or which the Board, in its sole discretion, determines to be appropriate to be paid by the Association, including, without limitation, taxes and governmental charges not separately assessed against Lots or Town Homes; and

(vii) The establishment and maintenance of a reasonable reserve fund(s) (1) for inspections, maintenance, repair, and replacement of items which are the Association's responsibility hereunder (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.

8.05 Special Assessments. In addition to the annual Assessments and the Special Assessments authorized herein, the Board of the Association may levy in any year special Assessments for Common Expenses or any extraordinary costs incurred by the Association; provided, however, that any such special Assessments shall be approved by a majority of the votes of the Owners who are voting in person or by proxy at the meeting called for the purpose of adopting special Assessments. 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 8.03 above.

8.06 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by any Owner or Occupant, or the respective family members, agents, guests, employees, invitees, or contractors of any Owner or Occupant, shall be specially assessed against such Owners and their respective Lots. The individual Assessments provided for in this Section 8.06 shall be levied by the Board and the amount and due date of such Assessment shall be specified by the Board in a notice to such Owner. The provisions of this Section 8.06 shall apply, without limitation, to any individual Assessments levied pursuant to any other provision hereof.

8.07 Notice of Meetings and Quorum.

(a) Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized in this Article VIII shall be sent to all Owners not less than ten (10) days nor more than fifty (50) days in advance of such meetings. With respect to annual meetings, the presence in person or by proxy of Owners entitled to cast over 50% of all the votes of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement but the required quorum at the subsequent meeting shall be the presence in person or by proxy of Owners entitled to cast at least one-third ($\frac{1}{3}$) of the total votes of the Association. At such time as a quorum is obtained, the vote of a majority of the Owners who are voting in person or by proxy at such meeting shall be required to approve any matter in which all of the members of the Association are entitled to vote, including any increase in the amount of annual Assessments in excess of the limitations specified in Section 8.04(c) above.

(b) With respect to all other meetings of the members of the Association, including, specifically, meetings pursuant to which special Assessments are to be levied upon each Lot pursuant to Section 8.05 above, there shall be no specific requirement establishing a quorum and the vote of a majority of the Owners who are voting in person or by proxy at any such special meeting shall be binding on all of the members of the Association.

8.08 Date of Commencement of Assessments. The annual Assessments provided for herein shall commence as to each Lot on the day on which such Lot is conveyed to a person other than Developer and shall be due and payable in such manner and on such schedule as may be established from time to time by the Board of the Association. Annual Assessments and any outstanding

special Assessments shall be adjusted for each Lot according to the number of days then remaining in the month in which such Lot is conveyed. Annual and special assessments for Lots within any portion of the Additional Property hereafter submitted to the terms of this Declaration shall commence with respect to each such Lot on the date on which such Lot is conveyed to a person other than Developer, subject to proration according to the number of days then remaining in the month in which such Assessments commence. Notwithstanding anything provided herein to the contrary, Developer shall not be responsible for the payment of annual or special Assessments on any Lots which it owns in the Development.

8.09 Effect of Non-Payment; Remedies of the Association.

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

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

(i) The Association may commence and maintain a suit at law against an Owner to enforce such charges and obligations for Assessments, and any such judgment rendered in any such action shall include the late charge and interest at the Applicable Rate, as specified in Section 8.09(a) above, together with attorneys' fees, court costs, and all other expenses paid and incurred by the Association in collecting such unpaid Assessments; and/or

(ii) The Association may enforce the lien created pursuant to Section 8.01 above in the manner hereinafter provided.

(c) There is hereby created a continuing lien on each Lot and Town Home, with power of sale, which secures the payment to the Association of any and all Assessments levied against or upon such Lot, all late charges and interest at the Applicable Rate assessed pursuant to Section 8.09(a) above and all attorneys' fees, court costs, and all other expenses paid or incurred by the Association in collecting any Assessments. If any Assessments remain unpaid for more than sixty (60) days,

then the Association, through its Board or any officer or authorized representative thereof, may, but shall not be obligated to, make written demand on such defaulting Owner, which demand shall state the date and amount of delinquency. Each default shall constitute a separate basis for a demand and claim of lien, but any number of defaults may be included in a single demand. If such delinquency is not paid in full within ten (10) days after the giving of such demand or, even without giving demand, the Association may file a claim of lien and perfect its lien against the Lot of such delinquent Owner, which claim shall be executed by any member of the Board of the Association or any officer of the Association, contain the following information, and be recorded in the Probate Office of Lee County, Alabama:

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

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

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

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

ARTICLE IX

Party Wall, Casualty, Condemnation, and Insurance

9.01 Party Wall

(a) *General Rules of Law to Apply.* Each wall which is built as a part of the original construction of the Town Homes upon the Property and placed on the dividing line between the Lots shall constitute a party wall, and, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(b) *Sharing of Repair and Maintenance.* The cost of reasonable repair and maintenance of a party wall shall be shared equally by the Owners who make use of the wall.

(c) *Destruction by Fire or Other Casualty.* If a party wall is destroyed or damaged by fire or other casualty, the Owners who have use of the wall shall contribute equally to the cost of the restoration thereof; provided, however, that any Owner shall have the right to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions.

(d) *Weatherproofing.* Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) *Right to Contribution Runs With Land.* The right of any Owner to contribution from any other Owner under this Section shall be appurtenant to the land and shall pass to such Owner's successors in title.

9.02 Damage or Destruction to Lots and Town Homes. In the event of any fire or other casualty which damages or destroys any portion of any Lot, then the Owner of such damaged Lot shall promptly repair and otherwise restore such Lot to the condition to which the same existed immediately prior to such fire or other casualty; provided, however, that any such restoration or repair with respect to party walls shall be subject to compliance with all of the terms and provisions set forth 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.

9.03 Condemnation of Lots or Town Homes. In the event that all or any portion of a Lot is taken as a result of, in lieu of, or in anticipation of the exercise of the right of eminent domain, condemnation, or by private purchase in lieu thereof, then, to the extent practicable, the Owner of such Lot shall promptly repair, reconstruct, rebuild, and otherwise restore the remaining portions of the Lot as nearly as practicable to the condition to which the same existed immediately prior to such taking; provided, however, that any such restoration shall be subject to all of the terms and conditions set forth herein and all then applicable rules, regulations, statutes, and ordinances of the Governmental Authorities. In the event the restoration of such Lot is impracticable or would otherwise violate any of the terms and provisions of this Declaration, then such Owner shall promptly clear away any remaining Improvements damaged or destroyed by such taking and shall leave such Lot and any remaining Improvements thereon in a clean, orderly, safe, and sightly condition. If such taking or sale in lieu thereof includes all or any part of a party wall, 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 Owners so affected by such taking; provided, however, that the Owners of any Lot which is subject to any such taking may mutually agree on the amount of such apportionment, which mutual agreement shall be binding on said Owners.

9.04 Insurance.

(a) 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 Lot and Town Home. The Board may require all Owners to carry public liability insurance with respect to their respective Lots and Town Homes and to furnish copies or certificates thereof to the Association. Each Owner, by acceptance of a deed or other instrument conveying any interest in any Lot, does hereby waive and release Developer, the Association, and their respective agents, employees, representatives, partners, shareholders, members, officers, and directors, from any and all liabilities or damage covered by (or which should be covered by) fire and casualty (e.g., homeowner's and/or builder's

risk) insurance and general liability insurance which any Owner maintains, even if such loss or damage has been caused by the fault or negligence of any of the foregoing persons or parties.

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

(c) The Board shall have the right and authority to obtain workman's compensation insurance, employer's liability insurance, and all other types of insurance required by law, including, without limitation, errors and omissions and directors and officers liability insurance coverage, in such amounts, with such insurance carriers, at such costs, and with such deductibles as the Board, in its sole discretion, may determine. The cost of insurance coverage authorized hereunder and written in the name of the Association shall be a Common Expense. To the extent the same may be obtained at a nominal cost, all such policies shall contain a waiver of subrogation clause pursuant to which the insurer waives any claims against the Association, the members of the Board, and all officers, agents, and employees of the Association.

ARTICLE X

Term and Amendments

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 fifty (50) years from and after the date hereof, after which time this Declaration shall be automatically renewed and extended for successive and continuous periods of ten (10) years each, unless, at any time after fifty (50) years from the date hereof, an agreement executed by the Owners of at least two-thirds ($\frac{2}{3}$) or more of the Lots within the Development agreeing to terminate or modify this Declaration has been recorded in the Probate Office of Lee County, Alabama; provided, however, that the 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.

10.02 **Amendment by Developer.** For so long as Developer owns any Lot within the Development, Developer may amend this Declaration by a written instrument filed and recorded in the Probate Office of Lee County, Alabama, without obtaining the approval of any Owner or Mortgagee; provided, however, that except as otherwise provided in Section 10.04 below, (a) in the event any amendment proposed by Developer materially and adversely alters or changes any Owner's rights to the use and enjoyment of his Lot or materially and adversely affects the title to any Lot, then such amendment shall be valid only upon the written consent thereto by fifty percent (50%) of all of the Owners (including Developer who shall have the voting rights attributable to any Lots or Town Homes owned by Developer) or (b) in the event any such proposed amendment by Developer would materially and adversely affect the title and interest of any Institutional

Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Institutional Mortgagees affected thereby. Any amendment 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 of Lee County, Alabama. Each Owner, by acceptance of a deed or other conveyance to a Lot, and each Mortgagee, by acceptance of a Mortgage on any Lot, agrees to be bound by all amendments permitted by this Section 10.02 and further agrees that, if requested to do so by Developer, such Owner and Mortgagee will consent to the amendment of this Declaration or any other instrument relating to the Development if such amendment is (i) necessary to bring any provision hereof into compliance or conformity with the provisions of any law, ordinance, statute, rule, or regulation of any applicable Governmental Authority or the judicial decision of any state or federal court, (ii) necessary to enable any reputable title insurance company to issue title insurance coverage with respect to any Lots or Town Homes, (iii) required by any Institutional Mortgagee in order to enable such Institutional Mortgagee to make a Mortgage loan on any Lot, or (iv) necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on any Lots or Town Homes within the Development.

10.03 Amendments by Association. Amendments to this Declaration, other than those authorized by Section 10.02 above, shall be proposed and adopted by the Association in the following manner:

(a) At any annual or special meeting of the members of the Association, an amendment to this Declaration may be proposed by either the Board of the Association or by any Owners present in person at such meeting. Any such proposed amendment must be approved by the Owners holding at least two-thirds ($\frac{2}{3}$) of the total votes in the Association; provided, however, that (i) any amendment which materially and adversely affects the security, title, or interest of any Institutional Mortgagee must be approved by such Institutional Mortgagee, (ii) during any period in which Developer owns a Lot in the Development, then Developer must approve such proposed amendment, and (iii) to the extent the proposed amendment affects any of the matters described in Section 10.04 below, then the provisions of Section 10.04 below shall be applicable to such proposed amendment.

(b) Any and all amendments which have been approved in accordance with the provisions of Section 10.03(a) above shall be executed by all parties whose consent to the same is required, including the Owners holding at least two-thirds ($\frac{2}{3}$) of the total votes in the Association; provided, however, that in the alternative, the sworn statement of the President of the Association or by the Chairman of the Board stating unequivocally that the agreement of the requisite number of Owners was lawfully obtained may be attached to and incorporated into such amendment without joinder of any Owners. Any such amendment shall be effective upon recording of the same in the Probate Office of Lee County, Alabama.

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 consent or approval be effective unless the same is consented to in writing by Developer. The consent of Developer to any such proposed amendment may be withheld in the sole discretion of Developer, with or without any reason.

ARTICLE XI

Enforcement

11.01 Authority and Enforcement. In addition to the provisions of Sections 5.13, 6.21, 6.22(a), 6.33, 7.02(b), and 8.09 above, in the event any Owner or Occupant or their respective agents, contractors, or invitees violates any of the provisions of this Declaration, the Articles of Incorporation, the Bylaws, or any rules and regulations adopted by the Board of the Association from time to time, the Board shall have the power to (i) impose reasonable monetary fines which shall constitute an equitable charge and a continuing lien upon the Lot and Town Home and shall be a personal obligation of such Owner which is guilty of such violation, or (ii) suspend an Owner's right to vote in the Association, and the Board shall have the power to impose all or any combination of any of the foregoing sanctions. Any such suspension of rights may be for the duration of the infraction.

11.02 Procedure. In the event any of the terms or provisions of this Declaration, the Articles of Incorporation, 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 or suspend voting 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 which demand shall specify:

(i) The alleged violation;

(ii) The action required to abate such violation; and

(iii) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one or if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Articles of Incorporation, the Bylaws, or any of the rules and regulations of the Association may result in the imposition of sanctions. The foregoing procedure shall only be applicable to the enforcement rights specified in Section 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.

11.03 Nonexclusive 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.

ARTICLE XII

Miscellaneous Provisions

12.01 Control by Developer. NOTWITHSTANDING ANYTHING PROVIDED TO THE CONTRARY IN THIS DECLARATION, THE ARTICLES OF INCORPORATION, THE BYLAWS OR IN ANY OTHER DOCUMENT OR INSTRUMENT RELATING TO THE DEVELOPMENT, DEVELOPER HEREBY RETAINS THE RIGHT TO APPOINT AND REMOVE ANY MEMBER OR MEMBERS OF THE BOARD OF THE ASSOCIATION AND ANY OFFICER OR OFFICERS OF THE ASSOCIATION AS PROVIDED BY AND FOR THE PERIOD OF TIME SET FORTH IN SECTION 4.02 ABOVE. Each Owner, by acceptance of a deed or other conveyance of any interest in a Lot, agrees that Developer shall have the authority to appoint and remove members of the Board and officers of the Association in accordance with the foregoing provisions of this Section 12.01 and the provisions of Section 4.02 above. At such time as Developer no longer owns any interest in any Lot within the Development, a special meeting of the Association shall be called within a reasonable time thereafter at which time the Owners shall elect a new Board which shall undertake the responsibilities of the Board, and Developer shall deliver all books, accounts, and records of the Association, if any, which Developer has in its possession.

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

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

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.

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.

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

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 ambiguity shall be resolved in favor or to the advantage of one party as opposed to another in interpreting any ambiguity or conflict contained herein.

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.

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 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.

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

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

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

12.13 Reservation of Rights. Notwithstanding anything provided herein to the contrary, no sale, transfer, conveyance, lease, pledge, encumbrance, or other hypothecation of any Lot by Developer

to a third party shall constitute or be deemed 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 is transferring to any such third party.

12.14 Standards for Review. Whenever in this Declaration, Developer, 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 or the Association, as the case may be.

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

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

**Gulf South Development Group, LLC
1423 Falls Crest Drive
Auburn, Alabama 36830**

or to such other address as the Association 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 addresses as Developer may notify the Association.

12.17 Assignment. Subject to the provisions of Section 12.13 above, Developer shall each have the right to assign any and all of the rights, powers, reservations and duties contained herein to any person or entity who shall thereupon have the same rights, power, reservations, and duties as Developer.

12.18 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, conformity, or otherwise, which may be reasonably requested by Developer or the Association for the purpose of or in connection with clarifying, amending, or otherwise consummating any of the transactions and matters herein.

12.19 No Waiver. All rights, remedies, and privileges granted to Developer and the Association pursuant to the terms and provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of such rights, remedies, or privileges shall not be deemed to constitute an election of remedies nor shall it preclude the party exercising the same, or any other party, from

pursuing such other and/or additional rights, remedies, or privileges as may be available to such party at law or in equity. The failure at any time to enforce any covenant or restriction set forth herein shall in no event be deemed a waiver of the right thereafter to enforce such covenant or restriction.

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

GULF SOUTH DEVELOPMENT GROUP, LLC
an Alabama limited liability company,

By: _____ (L.S.)
Michael W. Thompson, Its Manager

STATE OF ALABAMA
LEE COUNTY

I, Gerald A. Mattson, Jr., a Notary Public in and for said County in said State, hereby certify that Michael W. Thompson, whose name as Manager of Gulf South Development Group, LLC, an Alabama limited liability company, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, he, as such Manager and with full authority, executed the same voluntarily for and as act of said limited liability company.

Given under my hand this the ____ day of **July, 2018**.

NOTARY SEAL

Notary Public: Gerald A. Mattson, Jr.
My commission expires: October 14, 2018

Prepared by:
Gerald A. Mattson, Jr.
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