

Clerk: MORRISL

DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
OF
THE TOWNHOMES AT TIPPLE DRIVE

September 26, 2019

THIS INSTRUMENT PREPARED BY:
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EXHIBITS

Exhibit "A"	Legal Description of Property
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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF THE TOWNHOMES AT TIPPLE DRIVE**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF THE TOWNHOMES AT TIPPLE DRIVE (this "Declaration") is made as of the 26th day of September, 2019, by **LIBERTY PARK JOINT VENTURE, LP**, an Alabama limited liability partnership (the "Developer").

RECITALS:

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

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

**ARTICLE I
DEFINITIONS**

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

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

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

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

Section 1.4 **Architectural Standards.** The term "Architectural Standards" shall mean the standards prepared, issued and amended from time to time by the ARC pursuant to Article IV below for the purpose of establishing policies, guidelines and minimum requirements with regard to the construction, location, landscaping, design, architectural style and elements and any other matters relating to the construction, repair, replacement and alteration of Improvements on the Lots. In addition, the term "Architectural Standards" shall include, without limitation, any additional construction and development guidelines adopted from time to time by the ARC or the Board.

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

Section 1.6 **Association.** The term "Association" shall mean The Townhomes at Tipple Drive Association, Inc., an Alabama non-profit corporation, and its successors and assigns.

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

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

Section 1.9 **Certificate of Formation.** The term "Certificate of Formation" shall mean the Certificate of Formation of the Association, as said Certificate may be amended from time to time.

Section 1.10 **Commercial Association.** The term "Commercial Association" shall mean the Liberty Park Commercial Development Area Owners' Association, Inc., an Alabama nonprofit corporation, its successors and assigns.

Section 1.11 **Commercial Covenants.** The term "Commercial Covenants" shall mean the Declaration of Protective Covenants for the Commercial Development Area at Liberty Park recorded in Book 9307, Page 4579, as amended.

Section 1.12 **Common Areas.** The term "Common Areas" shall mean and refer to all real and/or personal property, including property which the Association now or hereafter owns or otherwise acquires by lease, easement or otherwise, for the common use and enjoyment of the Owners, and which shall be the responsibility of the Association to maintain, and which shall include, without limitation, the following: (a) all roadways, alleys, and streets designated as Common Areas including Tipple Drive; (b) all signage for the Property situated on or within rights-of-way of any private or public roads within the Property (but specifically excluding any

signage located within the boundaries of any Lot unless an easement has been granted to (and accepted by) Developer or the Association for signage on such Lot), including, without limitation, informational, traffic and street signage; (c) any street or roadway and landscaping lighting situated within the right-of-way of any streets within any portion of the Property (to the extent the same are not being maintained by any Governmental Authority. the Commercial Association the Master Association); (d) all sidewalks, paths and on-street parking spaces, if any, situated within any portion of the Property (other than such areas located within the boundary lines of any Lot or which are maintained by any Governmental Authority); (e) all gates, walls, fences, Improvements, landscaping and landscaped areas situated within the rights-of-way of any private roadways within the Property, (f) all water features, storm drains and sewers, drainage and/or watershed protection or retention ponds, basins or other areas and facilities located within the Property (other than such areas located within the boundary lines of any Lot or which are maintained by any Governmental Authority); (g) all utility and irrigation lines, pipes, ducts, conduits, equipment, machinery and other apparatus and appurtenances which serve any portion of the Common Areas (which are not owned or maintained by any public or private utility providers or any Governmental Authorities); (h) any and all other areas designated on any Subdivision Record Map as a "Common Area"; and (i) any other areas or Improvements on or within the Property which are designated by Developer as Common Areas from time to time. The designation of any land and/or Improvements as Common Areas shall not mean or imply that the public at large acquires any easement of use or enjoyment or any other rights, licenses or benefits therein or to the use thereof.

Section 1.13 Common Expenses. The term "Common Expenses" shall mean and refer to all expenditures made or incurred by or on behalf of the Association, including, without limitation, those expenses described in Section 7.5 below, together with all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

Section 1.14 Declaration. The term "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for The Townhomes at Tipple Drive, together with all amendments thereto.

Section 1.15 Developer. The term "Developer" shall mean LIBERTY PARK JOINT VENTURE, LLP, an Alabama limited liability partnership, and its successors and assigns, but only if such successors or assigns acquire any portion of the Property and are designated as successor developer by Developer.

Section 1.16 Developer Control Period. The term "Developer Control Period" shall have the meaning ascribed to it in Section 9.1 hereof.

Section 1.17 Fifteenth Amendment. The term "Fifteenth Amendment" shall mean and refer to the Amended and Restated Fifteenth Amendment to Declaration of Protective Covenants for the Commercial Development Area at Liberty Park which was filed for record on April 2, 2018, and recorded in Instrument No. 2018032286, in the Office of the Judge of Probate of Jefferson County, Alabama.

Section 1.18 **Governmental Authority.** The term "Governmental Authority" shall mean and refer to any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of the Property or any Improvements thereto.

Section 1.19 **Improvement.** The term "Improvement" shall mean and refer to all dwellings, any building, structure, or planting constructed, erected or placed upon any Lot or Common Area. Improvements shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, septic tanks, roads, driveways, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs, and any other artificial or man-made changes or alterations to the natural condition of any Lot.

Section 1.20 **Individual Assessment.** The term "Individual Assessment" shall have the meaning ascribed to it in Section 6.3 hereof.

Section 1.21 **Lot.** The term "Lot" shall mean and refer to any portion of the Property upon which it is intended that a dwelling be constructed thereon. Upon the recordation of any Subdivision Record Map for any portion of the Property, each Lot indicated thereon (other than any Lots designated thereon as Common Areas or which subsequently become Common Areas) shall be deemed a Lot for purposes of this Declaration; provided, however, that a Lot may be unplatted and may be described by metes and bounds legal description.

Section 1.22 **Master Association.** The term "Master Association" shall mean the Liberty Park Master Owners' Association, Inc., an Alabama nonprofit corporation, its successors and assigns.

Section 1.23 **Member.** The term "Member" shall mean any person who is a member of the Association. Every Owner shall be a Member of the Association.

Section 1.24 **Mortgage.** The term "Mortgage" shall mean any first mortgage or other security instrument encumbering a Lot or any interest therein and which shall have been duly and properly recorded in the Probate Office.

Section 1.25 **Mortgagee.** The term "Mortgagee" shall mean the holder of any first Mortgage.

Section 1.26 **Occupant.** The term "Occupant" shall mean and include any Owner, the family members, guests, tenants, agents, employees or invitees of any Owner and their respective family members, guests, tenants, agents, employees, invitees and any other person who occupies or uses any dwelling within the Subdivision. All action or omission of any Occupant is and shall be deemed the action or omission of the Owner of such dwelling.

Section 1.27 **Owner.** The term "Owner" shall mean and refer to the record owner, including Developer, of fee simple title to any Lot, whether a corporation, partnership, proprietorship, association or other entity of any nature, including natural persons, but shall not include (i) any Mortgagee of Lot, unless and until such Mortgagee has foreclosed on its

Mortgage and purchased such Lot or dwelling at the foreclosure sale held with respect to the foreclosure of such Mortgage or accepted a deed in lieu of foreclosure or (ii) any lessee, purchaser, contract purchaser or vendor who has an interest in any Lot solely by virtue of a lease, contract, installment contract or other agreement.

Section 1.28 **Probate Office.** The term "Probate Office" shall mean and refer to the Office of the Judge of Probate of Jefferson County, Alabama, and any successors thereto which serves as the official public registry for the public recording of real estate documents in Jefferson County, Alabama.

Section 1.29 **Property.** The term "Property" shall mean and refer to the real property more particularly described on Exhibit "A" attached hereto, including all the Lots described on Exhibit "A" and all easements as reflected on the Subdivision Record Map.

Section 1.30 **Rules and Regulations.** The term "Rules and Regulations" shall mean those Rules and Regulations adopted from time to time by the Board of Directors that are deemed necessary for the enjoyment of the Property.

Section 1.31 **Single Family Unit.** The term "Single Family Unit" shall mean a group of one or more persons each related to the other by marriage or legal adoption, or a group of not more than three persons not all so related, who maintain a common household in a dwelling.

Section 1.32 **Special Assessments.** The term "Special Assessments" shall have the meaning ascribed to it in Section 6.5 hereof.

Section 1.33 **Subdivision.** The term "Subdivision" shall mean The Townhomes at Tipple Drive including the Property located on the Subdivision Record Map, as the Subdivision Record Map may be amended from time to time.

Section 1.34 **Subdivision Record Map.** The term "Subdivision Record Map" shall mean the plat of Liberty Park Townhome Village Commercial Subdivision No. 2- Resurvey No. 2, recorded as Instrument No. 2019097013 in Map Book 251, Page 3 in the Office of the Judge of Probate of Jefferson County, Alabama, and each recorded map or plat for one or more phases of The Townhomes at Tipple Drive, each as shall be recorded in the Probate Office, and any amendments or supplements thereof.

Section 1.35 **TVE Assessment.** The term "TVE Assessment" shall have the meaning set forth in the Fifteenth Amendment.

ARTICLE II

RESTRICTIONS APPLICABLE TO THE PROPERTY

Section 2.1 **General Declaration.** Developer hereby declares that the Property is and shall be subject to the easements, covenants, conditions, restrictions, charges, liens and regulations of this Declaration and the Property, any part thereof and each Lot thereof shall be held, owned, sold, transferred, conveyed, hypothecated, encumbered, leased, occupied,

built upon and otherwise used, improved and maintained subject to the terms of this Declaration, which easements, covenants, conditions, restrictions, charges, liens and regulations shall run with the title to such Property and shall be binding upon and inure to the benefit of Developer and upon all Owners and Occupants of the Property and any Lot thereof. This Declaration shall not apply to any other real property owned by Developer unless the same is subjected specifically by written instrument to this Declaration in accordance with Section 2.2 hereof. This Declaration shall be in addition to and not in derogation of covenants encumbering the Property, including the Commercial Covenants to the extent set forth in the Fifteenth Amendment.

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

Section 2.3 **Right of Developer to Modify Restrictions with Respect to Lots Owned by Developer.** With respect to any Lot owned by Developer, Developer may, by deed, contract or other instrument filed for record in the manner specified in Section 2.2 above, modify the provisions of this Declaration as the same apply to any such Lot, without the consent of the Association, or by any Owner, Occupant, or Mortgagee of any Lot or dwelling thereon.

Section 2.4 **Right of Developer to Submit Property to Future Covenants and Future Association.** Developer reserves the right, in its sole and absolute discretion and

without the consent of the Association, the Owners, Occupants, or Mortgagees of any Lot or dwelling, at any time and from time to time during the pendency of this Declaration, to submit the Property to the provisions of a to-be-formed master declaration for the proposed "Town Center" development at Liberty Park (or "The Bray") of which the Property will be a part which would supersede and replace as to such Town Center, the Commercial Covenants and specifically as to the Property, the Fifteenth Amendment as the same may hereafter exist the "Future Town Center Master Declaration"). The Future Town Center Master Declaration may contain covenants, restrictions, conditions, and easements related to the use of additional common areas and amenities including recreational amenities such as swimming pools, tennis courts, walking trails or other amenities located on any portion of the Additional Property and may require the Lot Owner and/or the Association to become a member of a to be formed master association. In no event shall Developer be obligated to submit any part of the Property to the provisions of any Future Town Center Master Declaration. Nothing contained herein shall obligate the Developer to grant use rights to the Owners for any common areas or amenities now existing or built in the future on any part of the real property owned by Developer situated adjacent to or in close proximity with the Subdivision including the Additional Property. Notwithstanding anything provided in this Declaration to the contrary, (1) the provisions of this Section 2.4 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 2.4 shall not be deemed to inure to the benefit of any transferee or purchaser of the Property or any 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 2.4 of this Declaration.

Section 2.5 **Mutuality of Benefit and Obligation.** The provisions of this Declaration are made (a) for the mutual and reciprocal benefit of each Lot within the Property and are intended to create mutual, equitable servitudes upon and in favor of each Lot, (b) to create reciprocal rights and obligations between the respective Owners, Occupants and all future and subsequent Owners and Occupants of any Lot within the Property, and (c) to create a privity of contract and estate between the Owners and Occupants, their respective heirs, successors and assigns.

Section 2.6 **Development of Property.** At any time during the Developer Control Period, Developer shall have the right to make improvements and changes to all Common Areas and to all Lots owned by Developer, including, without limitation, (a) installing and maintaining any Improvements in or to the Common Areas, (b) changing the location of the boundaries of any Lots owned by Developer or the boundaries of any of the Common Areas, (c) changing the boundaries of any portion of the Property owned by Developer including any Additional Property owned by Developer, (d) installing and maintaining any water, sanitary sewer, storm sewer and any other utility systems and facilities within any of the Common Areas, (e) converting and changing any Lots or any portion thereof owned by Developer into Common Areas, streets, roadways, paths, parks or other uses and (f) removing or exempting any portion of the Property and any Lots or Common Areas from the terms and provisions of this Declaration. The exercise by Developer of any of the rights reserved unto Developer in this Section 2.5 may be exercised by Developer without any requirement that the consent or approval of any Owners, the Association, the ARC or any Mortgagees be obtained.

Section 2.7 **Subdivision Record Map.** Developer reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, the Subdivision Record Map of the Property setting forth such information as Developer may deem necessary with regard to the Property, including, without limitation, the locations and dimensions of all Lots, Common Areas, Additional Property, public or private roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, retention ponds and drainage basins. Any such Subdivision Record Maps or any amendments thereto shall be binding on the portions of the Property indicated thereon as if such Subdivision Record Map were specifically incorporated into this Declaration. Notwithstanding anything provided to the contrary in this Declaration, the rights reserved by Developer pursuant to this Section 2.6 may be exercised by Developer without any requirement that the consent or approval of any Owners or Mortgagees be obtained (other than the Owner or Mortgagee of any Lot which is being subdivided or re-subdivided) and shall include, without limitation, the right to (a) divide and re-subdivide, combine, subdivide and re-subdivide any Lots, Common Areas and other portions of the Property owned by Developer, and (b) amend from time to time and at any time Exhibit "A" to this Declaration to reflect any such subdivision or re-subdivision of any portion of the Property, or the addition of Additional Property.

Section 2.8 **Parking Spaces.** Except as set forth herein, parking spaces within the Common Area are available on a first come first serve basis for Owners and Occupants. Parking Spaces within the Common Areas are not assigned to each Lot. Upon proper request, the Board of Directors may assign the one or more parking spaces within the Common Area to certain Owners for compliance with any law or regulation including the Americans with Disabilities Act.

ARTICLE III EASEMENTS AND USE RIGHTS

Section 3.1 **Grant of Nonexclusive Easements to Owners:** Subject to the terms and conditions of this Declaration and the Rules and Regulations from time to time established by the Association with respect to the Common Areas, Developer does hereby grant to each Owner and Occupant the nonexclusive right, privilege, and easement of access to and the use and enjoyment of the Common Areas in common with all other Owners and Occupants and their parties having a right or interest therein and their respective successors and/or assigns. Subject to the remaining terms of this Declaration, the easement and rights granted pursuant to this Section 3.1(a) are and shall be permanent and perpetual, are nonexclusive, are appurtenant to, and shall pass and run with title to each Lot.

Section 3.2 **Utility Easements.** Developer reserves for itself and the Association the right to use, dedicate and/or convey to the appropriate local authority or agency, and/or to the appropriate utility company or other companies, rights-of-way or easements on, over or under the ground to erect, maintain and use, electric and telephone poles, wires, cables, cable television, conduits, storm sewers, sanitary sewers, surface drainage, water mains and other suitable equipment for the conveyance and use of electricity, telephone equipment, gas, sewer, water, surface water drainage, cable television, or other public conveniences or utilities, on, in and over the utility easements reflected on the Subdivision Record Map or as may hereafter

appear on any plat of record of the Property subject to this Declaration, together with the right to construct within such reserved easement such swales and other surface water drainage systems as Developer shall, in its sole discretion, deem necessary.

Section 3.3 **Additional Easements and Uses.** For so long as Developer owns any Lot, Developer, and, thereafter, the Association, on its own behalf and on behalf of all Owners, who hereby appoint Developer and/or the Association, as the case may be, irrevocably, as their attorney-in-fact for such purposes, shall have the right to grant such additional electric, telephone, water, sanitary sewer, landscaping, irrigation, security, maintenance, drainage, gas, cable television and/or other utility, recreational or service easements or facilities (subject to applicable restrictions), in any portion of the Property, and to grant access easements or relocate any existing access easements in any portion of the Property, as Developer or the Association shall deem necessary or desirable for the proper operation and maintenance of the Property, or any portion thereof, or for the general welfare of the Owners, or for the purpose of carrying out any provisions of this Declaration, provided (a) such new easements or relocation of existing easements will not, in the opinion of the Board, unreasonably interfere with any Owner's enjoyment of the portion of the Property owned by such Owner, (b) any required work is done at the sole cost and expense of the Association, and after completing such work, the Association will restore any portion of the Property which was affected to the same or as good a condition as existed immediately before the commencement of such work, and (c) following the completion of such work, the Association shall cause a survey to be made of the easement showing its location on the Property and cause the same to be recorded in the Probate Office. In furtherance of the rights granted in this Section, Developer and/or the Association may, as it deems necessary or desirable, provide for the simultaneous or concurrent use of any presently existing or additional easements by the Owners, Occupants, and the Owner's and Occupant's respective tenants, employees, guests, invitees, licensees and/or agents.

Section 3.4 **Reservation of General Access Easement.** Developer does hereby establish and reserve for itself and its successors and assigns and does hereby grant to the Association and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual non-exclusive easement appurtenant over, across, through and upon each Lot for the purposes of (a) providing ingress to and egress from each Lot for (i) inspecting each Lot and any Improvements thereon in order to determine compliance with the provisions of this Declaration and (ii) the performance of the respective duties of Developer and the Association hereunder, including, without limitation, taking any action required or permitted to be taken by Developer, the ARC and the Association pursuant to any of the terms or provisions of this Declaration; provided, however, that upon completion and occupancy of any dwelling, then the foregoing easement shall not be deemed to allow or grant any rights to Developer, the ARC or the Association to enter onto any dwelling located thereon, except in the case of emergencies, and shall be utilized only during normal business hours and then, whenever practicable, only upon advance notice to the Owner or Occupant of such Lot directly affected thereby, and (b) painting, repairs, maintenance of the exterior of the Improvements, mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within the Property; provided, however, that such easement shall not impose any duty or obligation upon Developer, the ARC or the Association to perform any of the foregoing actions.

Section 3.5 **Reservation of Easements With Respect to Common Areas.**

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

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

Section 3.6 **Common Wall Easement.** Developer does hereby establish, grant, convey and reserve, for the benefit of the respective Lots and Owners of such Lots, a non-exclusive, perpetual easement appurtenant to maintain and repair such common wall as may be located along the common property line. Each of the Owners shall have the right to maintain the common wall and make repairs to the wall, and upon reasonable prior notice, the right to enter into the Lot of the other to do so, and neither Owner shall remove the common wall, except that either Owner may, upon sixty (60) days prior notice to the other party, remove the portions of the wall of which the common wall is a part so long as the structural integrity of the portion thereof constituting a common wall is not affected. Any maintenance or repair of the common wall shall be performed in a manner so as to minimize any disturbance of the other Owner's rights to use of its Lot. Each party shall bear all risk of loss with respect to, and shall be solely responsible for maintaining insurance with respect to, its building. If the common wall is damaged by fire or other casualty, the parties shall be obligated to restore the same within a reasonable time, not to exceed one (1) year.

Section 3.7 **Vestlake Amenities.** Developer hereby grants to each Lot Owner a non-exclusive revocable license to use the pool and related amenities located in the Vestlake Subdivision (the "Vestlake Amenities") subject, however, to compliance with all rules and regulations in effect from time to time governing the use of the Vestlake Amenities including without limitation all releases of Developer, its agents, employees, successors, and assigns in connection with Lot Owner's use of the Vestlake Amenities and the sole and exclusive right of Developer to revoke said license in connection with the establishment of the Future Master Town Center Declaration and development of separate amenities in closer proximity to the Property or Additional Property. The Association shall assess each Lot Owner an amount equal to \$130.00 and shall increase 1% annually to be paid to Vestlake Communities Properties Association, Inc. for so long as the Lot Owners have the revocable license to use the Vestlake Amenities.

Section 3.8 **Additional Documents.** All Owners shall be required to execute such other documents as are necessary or convenient to effectuate the intent of this Declaration with respect to all easements which may be created pursuant to this Article III.

Section 3.9 **Limitations.** Any easements which may be created pursuant to this Article III shall be appurtenant to, and the benefits and burdens thereof shall pass along with the title to, every Lot and are further subject to the following limitations:

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

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

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

(d) Developer does hereby establish and reserve for itself and its successors and assigns and does hereby grant to the Association and its agents, employees, successors and assigns, a permanent and perpetual right and easement on, over, across, through and upon all Lots and all unimproved portions of any Lots for the purpose of taking any action necessary to effect compliance with the Architectural Standards and any watershed, soil erosion or environmental rules, regulations and procedures from time to time affecting or otherwise promulgated or instituted by any Governmental Authorities or the Board. The easement and right established, reserved and granted herein shall include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water and the right to take any other action which may be required in order to satisfy the requirements of the Architectural Standards or any Governmental Authorities, including, without limitation, any watershed, soil erosion, storm water discharge or environmental rules, regulations or procedures affecting the Property. Except in the case of an emergency situation or a perceived emergency situation, the exercise by Developer or the Association of the rights reserved or granted in this Section 3.9 shall not unreasonably interfere with the use or occupancy of any Improvement.

ARTICLE IV ARCHITECTURAL CONTROL

Section 4.1 **Architectural Control.** The board of directors of the Master Association for so long as there is a Master Association and thereafter the Board may appoint an Architectural Review Committee ("ARC") consisting of not less than three (3) and no more than seven (7) members to review and approve plans and specifications for Improvements to be constructed on the Lots or any additions, modifications or alterations thereto. Further, the ARC shall meet as often as is necessary to review and approve the plans and specifications. A majority of the members of the ARC shall constitute a quorum of the ARC and any submitted plans must be approved by at least a majority of the members present of the ARC. If the Board of Directors does not appoint an ARC, the Board shall act as the ARC.

Section 4.2 **Architectural Standards.** The ARC is hereby authorized to promulgate and amend or modify from time to time the Architectural Standards, which includes, without limitation, regulations governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, location, landscaping and design of all Improvements on any Lot, the content and manner in which plans and specifications and other documentation and information concerning the construction of any Improvements on a Lot are to be submitted to and approved by the ARC, and any other matters affecting the construction, alteration, repair or maintenance of any Improvements on any Lot. The Architectural Standards adopted by the ARC shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

Section 4.3 **Approval of Plans and Specifications.**

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

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

- (i) Plans and specifications;
- (ii) Color samples and specifications of all exterior materials and finishes or proposed changes to exterior materials and finishes;
- (iii) Site development plan prepared by a licensed surveyor; and

(iv) Such other plans, specifications or other information or documentation as may be required by the rules and regulations of the ARC;

(c) The ARC shall, in its sole discretion, determine whether the plans and specifications and other data submitted by any Owner for approval are acceptable. One copy of all plans, specifications and related data so submitted to the ARC shall be retained in the records of the ARC and the other copy shall be returned to the Owner submitting the same marked "approved," "approved as noted" or "rejected." The ARC will charge a fee, initially in the amount of \$250.00, to be paid by each Owner who submits plans and specifications to the ARC for approval of significant construction and alteration of Improvements to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained in order to approve or reject such plans and specifications and to monitor and otherwise enforce the terms hereof. The ARC may waive or increase the fee from time to time as needed. Notwithstanding anything provided herein to the contrary, an Owner may, without the necessity or requirement that ARC approval or consent be obtained, make interior improvements or alterations within his dwelling that do not affect exterior appearance of the dwelling or other Improvements in any way.

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

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

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

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

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

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

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

Section 4.4 Construction Without Approval. If (a) any Improvements are initiated, installed, maintained, altered, replaced or relocated on any Lot without ARC approval of the plans and specifications for the same, or (b) the ARC shall determine that any approved plans and specifications for any Improvements or the approved landscaping plans for any Lot are not being complied with, then, in either event, the Owner of such Lot shall be deemed to have violated this Declaration and the ARC, the Master Association, and/or the Association shall have the right to exercise any of the rights and remedies set forth in Section 4.7 below.

Section 4.5 Inspection. The ARC, the Master Association, the Association, or any agent, employee or representative thereof may at any reasonable time and from time to time enter upon and inspect any Lot or any Improvements being constructed thereon in order to determine whether the approved plans and specifications therefor are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the ARC.

Section 4.6 **Limitation of Liability.** Notwithstanding anything provided herein to the contrary, neither Developer, the ARC, the Association, nor any agent, employee, representative, member, shareholder, partner, joint venturer, officer or director thereof, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered which may be claimed, paid or incurred by any Owner or any other person on account of (a) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this Article IV, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) any failure to approve or disapprove any plans, drawings, specifications or other data submitted by any Owner for approval pursuant to the provisions of this Article IV, (d) any construction or performance of any work related to such plans, drawings and specifications, (e) any bodily injuries (including death) to any Owner, Occupant or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner or Occupant, or any damage to any Improvements or the personal property of any Owner, Occupant or his family members, guests, employees, servants, agents, invitees or licensees of such Owner or Occupant, which may be caused by, or arise as a result of any defect, structural or otherwise, in any Improvements or the plans and specifications therefore or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, underground mines, tunnels or other geological formations or conditions on or under any Lot) and (f) any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner or Occupant arising out of or in connection with the use and occupancy of any Lot or any Improvements situated thereon.

Section 4.7 **Enforcement and Remedies.** In the event any of the provisions of this Article IV are breached or are not otherwise being complied with in all respects by any Owner or Occupant or his family members, guest, invitees, agents, employees or contractors of any Owner or Occupant, then any Owner, the ARC, the Master Association, and the Association shall each have the right, but not the obligation, at their option to (a) enjoin any further construction, repair, replacement or alteration on any Lot and require the removal or correction of any work in place which does not comply with the plans and specifications approved by the ARC for such Improvements, and/or the ARC, the Master Association, and the Association shall each have the right, but not the obligation, at their option to (b) through their designated agents, employees, representatives and independent contractors, enter upon such Lot and take all action necessary to extinguish such violation or breach and/or (c) levy a fine (in an amount to be determined by the Board of Directors of the Association and set forth in the Rules and Regulations) against the Owner or Occupant which fine shall constitute a lien against the Lot. All costs and expenses incurred by the ARC or the Association in enforcing any of the provisions of this Article IV, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other persons involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the ARC or the Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provision of this Article IV, shall be paid by such Owner, shall constitute an individual Assessment to such Owner and, if the same is not paid when due, shall become a lien on the Lot as provided for in Article VI below and be subject to foreclosure as provided for therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the

ARC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or hereunder.

Section 4.8 Subsurface Conditions.

(a) The Property is located in an area which includes underground mines or other geological formations or conditions which may result in surface subsidence. Approval of the submitted plans and specifications by the ARC as herein provided shall not be construed in any respect as a representation or warranty of the ARC and/or the Developer and/or the Master Association to the Owner submitting such plans and specifications. It shall be the sole responsibility of the Owner to determine the suitability and adequacy of the surface and subsurface conditions of the Lot for the construction of any and all Dwellings or other Improvements thereon.

(b) Neither the ARC and its individual members, not the Master Association and its members, nor the Developer and its partners, agents and employees and the officers, directors, agents and employees of its partners (both in its capacity as a Developer as herein defined and as the owner or prior owner of any minerals subjacent to the Property), shall be liable to any Owner or Occupant, or the successors, assigns, licensees, lessees, employees and agents of any Owner or Occupant, for loss or damage on account of injuries to any parcel of the Property, to any buildings, Improvements, dwellings or other structures now or hereafter located upon any parcel of the Property, or on account of any past or future injuries to any Owner, Occupant, or any other person in or upon any parcel of the Property, which are caused by, or arise as a result of soil and/or subsurface conditions, known or unknown (including, without limitation, underground mines or other geological formations or conditions) under or on the Property.

**ARTICLE V
RESTRICTIONS**

Section 5.1 Rules and Regulations of the Association. The Association is authorized to promulgate, amend and enforce Rules and Regulations concerning the operation and use of the Property; provided that such Rules and Regulations are not contrary to or inconsistent with the Covenants or Certificate of Formation. A copy of the Rules and Regulations shall be furnished by the Board of Directors to each Owner prior to the time they become effective. All present and future Owners and Occupants of the Lots and any person who uses any part of the Property in any manner, are subject to, and shall comply with the provisions of the Covenants and the Rules and Regulations. The acquisition, rental or occupancy of a Lot or the use of any part of the Property by any person shall constitute his agreement to be subject to and bound by the provisions of this Declaration and the Rules and Regulations, and such provisions shall be deemed to be enforceable as equitable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Lot, as though such provisions were recited and stipulated in full in each and every deed of conveyance or lease thereof. The Association may promulgate enforcement provisions for violation of any Rule or Regulation by an Owner or Occupant, his family members, guests, invitees, lessees or renters, including the payment of fines for such violations.

Section 5.2 **Restrictions on Use.** The use of the Property is subject to the following restrictions:

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

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

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

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

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

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

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

(h) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Lot. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed from or on any part of the Common Areas. The Common Areas shall be kept clear of rubbish, debris and other unsightly materials.

(i) No one shall use or permit to be brought into any Lot or upon any of the Common Areas and facilities any inflammable oils or fluids such as gasoline, kerosene, naphtha

or benzene, or other explosives or articles deemed extra hazardous to life, limb or property, without the written consent of the Board of Directors of the Association.

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

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

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

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

Section 5.3 **Landscaping.**

(a) The Association shall be responsible for the cost of installation, replacement and maintenance of all landscaping on the Lot including the lawn, shrubs, trees, and other plants. Any enclosed courtyard area on a Lot shall be maintained, repaired and replaced by the Owner.

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

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

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

Section 5.4 **Exterior Lighting.** All exterior lighting, including, without limitation, free standing lighting and utility (e.g., flood) lights, must be of a design and in a location approved by the ARC.

Section 5.5 **Exterior Materials and Finishes.** No exterior materials and finishes of any Improvement on any Lot may be changed except with the prior written approval of the Association. All wood surfaces utilized on the exterior of any dwelling, including windows and doors, shall be painted or stained at all times in colors approved by the Association.

Section 5.6 **Fences.** No fences, including but not limited to chain link, vinyl coated, wire or above ground electric fences, shall be permitted on the Property other than those built by the Developer pursuant to the development plan, if any.

Section 5.7 **Windows, Window Treatments and Doors.**

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

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

Section 5.8 **Mailboxes.** Mailboxes shall be maintained for the Lot as installed by the Developer. Mailboxes shall contain only the name and address of the Owner or Lot. No further inscription, paintings, ornaments or artistry shall be allowed on the mail boxes.

Section 5.9 **Outdoor Furniture and Recreational Facilities.**

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

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

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

Section 5.10 **Trash, Rubbish and Nuisances.**

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

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

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

Section 5.11 **Recreational Vehicles and Machinery and Equipment.**

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

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

Section 5.12 **Signage.** A maximum of two (2) signs, in size and color to be approved by the ARC, may be posted on a Lot upon a single sign slab approved by the ARC, at a height not to exceed five (5) feet from the ground level advertising the Lot for sale, or during the construction of such dwelling, containing information identifying the builder of such dwelling. No other signage, banners, flags, or advertising posters shall be allowed without obtaining ARC approval. The location of such signage shall be established by the ARC but in no event shall any signage authorized by this section or which may be approved by the ARC be attached, nailed or otherwise adhered to any tree or other plant life on a Lot.

Section 5.13 **Construction of Improvements.**

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

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

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

(d) When any Owner submits to the ARC plans and specifications for construction of Improvements in accordance with Article IV above, the name of the building contractor selected by such Owner for construction of such Improvement shall also then be submitted to the ARC; however, if the identity of the building contractor is not known at that time, then the name of the building contractor will be submitted when determined prior to construction. The ARC shall have the right, in its sole discretion, to approve or disapprove of any building contractor so selected by such Owner. Each building contractor approved by the ARC in accordance with this Section 5.14(d) will be required to remit to the ARC a refundable damage/clean up deposit (the "Deposit") in an amount established by the ARC or the ARC. Should such building contractor damage or fail to properly clean up the Property or Common Areas as required herein, or any supplemental rules or regulations promulgated by the ARC, the ARC may, in its sole discretion, initiate appropriate action to remediate any such condition at such building contractor's expense. The cost of any such remediation shall be deducted from the Deposit and any amount expended by the ARC in excess of the Deposit in remediating such condition shall be billed to such building contractor. Within thirty (30) days of the completion of any improvement, the ARC shall refund to such building contractor any unexpended portion of the deposit.

Section 5.14 **Swimming Pools.** Outdoor hot tubs, reflecting ponds, saunas, whirlpools, or lap pools shall not be constructed, installed or maintained on any Lot.

Section 5.15 **Traffic Regulations.** The Association shall be entitled to make and enforce any traffic Rules and Regulations it deems appropriate, including the right to levy fines for the violation thereof. In the event of any conflict between the provisions of the laws of the State of Alabama and the traffic Rules and Regulations promulgated by the Association, the more restrictive shall govern.

Section 5.16 **Lease of Lots.** Entire Lots or any dwelling thereon may be leased by the Owners; provided, however, that any such lease and the rights of any tenant thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable Rules and Regulations relating to the lease and rental of Lots or any dwelling and to enforce the same directly against such tenant or other Occupant by the exercise of such remedies as the Board deems appropriate; provided, however, that no restrictions shall be imposed which shall have the individual or cumulative effect of prohibiting or materially impairing the rental or lease of Lots or any dwelling. No individual rooms may be rented. Further, all leases must be in writing, with a copy provided to the Association upon request by the Association. This restriction on use shall be a covenant running with each Lot, creating a burden on each single Lot and Owner for the benefit of every other Lot and Owner. No lease shall be for less than six (6) months and no more than one (1) Single Family Unit per Lot or two (2) people per bedroom of any dwelling on a Lot shall occupy a Lot. Notwithstanding anything contained in this Section to the contrary, each Owner shall be responsible for the actions of his tenants and the Occupants and nothing herein or in any such lease shall relieve an Owner of his obligations under the Covenants. The provisions of this Section shall not be applicable to the Developer who is irrevocably empowered without any limitation at all times, whether for permanent or temporary occupancy to sell, lease or rent Lots, or any dwelling or other Improvement thereon, for any period and under any terms to any lessees or purchasers or transferees with the right to take any action necessary to consummate the

sale or rental of said Lots, including, but not limited to, the right to maintain model Lots with any Improvements thereon, post signs, have employees in the offices maintained on the Property, use the Common Areas and show Lots and any Improvements thereon to prospective tenants or purchasers. Sales and rental office signs and all items pertaining to the rental or sale of Lots shall not be considered Common Areas and shall remain the property of the Developer.

Section 5.17 **Right of Access.** Each Owner or Occupant grants a right of access to his Lot to the Association, and any other person authorized by the Association for the purpose of making inspections and for the purpose of correcting any condition originating on his Lot and threatening other Lots, Common Areas, or for the purpose of performing installations, alterations or repairs to the mechanical or electrical services or other Common Areas within his Lot, if any, or to correct any condition which violates the provisions of any Mortgage covering another Lot, or to enforce any provision of the Covenants, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner or Occupant. In case of an emergency, such right of entry shall be immediate whether the Owner is present at the time or not. Each Owner further grants a right of access to his Lot to the Developer or his agent, or other authorized representative who is not Developer's agent, for the purpose of making all repairs required by any warranty delivered to the Owner at the closing of his Lot. To the extent that damages inflicted on the Common Areas or any Lot through which access is taken, the Owner or the Association, if it caused the same, shall be liable for the prompt repair thereof.

Section 5.18 **Limitation of Liability.** The Association shall not be liable for any failure of water or power supply, telephone, security, fire protection or other service to be obtained by the Association or paid for out of the Common Expense funds, for problems resulting from the operation or lack of operation of sewer lines servicing the Property, or for injury or damage to a person or property caused by the natural elements or resulting from electricity, water, snow or ice which may leak or flow from any portion of the Common Areas or from any wire, pipe, drain, conduit, appliance or equipment, however, this provision does not relieve the Association from maintenance responsibility or for damage to the Lots arising from or related to water intrusion from the Common Areas on account of maintenance or lack thereof. The Association shall not be liable to the Owner of any Lot for loss or damage, by theft or otherwise, of articles which may be stored upon any of the Common Areas. No diminution or abatement of the Common Expense assessments, as herein elsewhere provided, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or to any Lot, or from any action taken by the Association to comply with any law or ordinance or with the order or directive of any municipal or other Governmental Authority or judicial authority or for the dispossession of the Owner by reason of fire or other casualty, except to the extent covered by insurance.

Section 5.19 **Enforcement.** If a determination is made by the ARC or Board that any of the restrictions in this Article V or the Architectural Standards are being or have been violated upon any Lot, then the ARC shall so notify the Owner in writing, specifying the violation. If within fifteen (15) days from such notification, the ARC shall make a second determination that sufficient progress has not been made to remedy the violation, the ARC may itself, direct such actions to be taken as shall be necessary or appropriate to remedy such violation, including, without limitation, those remedies set forth in Section 4.7 herein. The

Owner shall be liable for the cost and expense of all such actions, including legal fees, and the ARC may treat all such costs and expenses therefor as a charge which shall become a lien against the Lot. The Association and/or the ARC may initiate a proceeding at law or in equity.

Section 5.20 **Failure of the Association to Insist on Strict Performance; No Waiver.** Failure of the Association to insist in any one or more instances upon the strict performance of any provision of the Covenants, or to exercise any right or option herein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment from the future performance of such term, covenant, condition or restriction, but such term, covenant, condition or restriction shall remain in full force and effect. The receipt by the Association of any assessment from an Owner with knowledge of the breach of any covenant hereof shall not be deemed to be a waiver of such breach and no waiver by the Association of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Board of Directors of the Association.

Section 5.21 **Use by Developer.** Subject to the rights of the Mortgagees hereunder, neither the Owners nor the Board of Directors of the Association nor their use of the Property or application of these Covenants shall interfere with completion of Improvements, sales of the Lots, construction of Improvements or development of the Property. Subject to the rights of the Mortgagees hereunder, the Developer may make such use of the unsold Lots and the Common Areas as may facilitate such completion and sale, including, but not limited to, maintenance of a sales office, management office and model units, the showing of the Property and the Lots therein, the display of signs, balloons, banners and marketing materials thereon and therein and the holding of sales and promotional activities thereon. These rights exist so long as Developer holds any Lot in the Property for sale in the ordinary course of business. The Developer expressly reserves the right to lease any Lot which it may own in the Property on such terms as it may deem proper and desirable and may transfer Lots subject to such lease.

Section 5.22 **Common Areas.** The Developer shall convey to the Association, the title to the Common Areas as shown on the Subdivision Record Map for the benefit and use of the Owners. The Association shall assess the Common Areas in the name of the Association for tax purposes, improve and maintain the Common Areas and obtain and maintain liability insurance coverage on the Common Areas in the name of the Association.

Section 5.23 **Compliance with Governmental Regulations.** Each Owner and Occupant shall at all times comply with all applicable laws, ordinances, statutes, rules, regulations, requirements and code provisions of the Governmental Authorities.

Section 5.24 **Additional Regulations.** In addition to the restrictions set forth in these Covenants, the (i) Association shall have the right, in its sole discretion, from time to time and at any time to adopt, modify and amend the Rules and Regulations in order to impose such other, further or different requirements or restrictions which shall be binding on all Owners and Lots, including the adoption of additional or different requirements or restrictions which shall be binding on all Owners and Lots, including the adoption of additional or more specific requirements and restrictions governing the improvement and use of any Lot, and (ii) the Association shall have the right from time to time and at any time to adopt, modify and amend

such Rules and Regulations as the Association, in its sole discretion, determines to be in the best interests of all Owners, which Rules and Regulations shall be binding on all Owners and Lots.

ARTICLE VI ASSOCIATION AND ASSESSMENTS

Section 6.1 **Association.** Every Owner of a Lot shall be a member of the Association. The Association shall be a member of the Master Association.

Section 6.2 **Affirmative Covenant to Pay Assessments.** Each Owner, by acceptance of a deed for a Lot, whether or not it should be so expressed in such deed, shall be obligated and hereby covenants and agrees to pay to the Association (or to an independent entity or agency which may be designated by the Association to receive such monies), in the manner set forth herein: (i) Annual Assessments or charges levied each year by the Association which Annual Assessments shall include the assessments levied against the Property by the Master Association, if any, (ii) the TVE Assessments which may be levied against the Lots by the Commercial Association, (iii) Special Assessments for capital improvements, such Assessments to be established and collected as hereinafter provided, and (iv) Individual Assessments which may be levied against any Lot and the Owner thereof as a result of such Owner's or Occupant's failure to comply with the terms of this Declaration, the Rules and Regulations adopted by the Board, or as a result of damage caused by an Owner or Occupant. Notwithstanding the foregoing, Lots owned by Developer, shall not be subject to any Assessment by the Association. The Annual Assessments, Special Assessments and Individual Assessments, together with interest, late charges, costs and reasonable attorneys' fees, shall also be a charge on each Lot and shall be a continuing lien upon each Lot against which such Assessment is made, which lien may be enforced in the manner hereinafter provided. Each such Assessment, together with interest, late charges, costs and reasonable attorneys' fees shall also be the personal obligation of the person who was the Owner of such Lot at the time when the Assessment fell due or was due.

Section 6.3 **Purpose of Assessments.** The Assessments levied by the Association shall be used exclusively for the preservation of the appearance, value and amenities of the Property, and in particular for the improvement, preservation, maintenance and administration of the Common Areas (including, without limitation, the payment of Common Expenses under Article VII below) and of any easement in favor of the Association and/or the Owners/Occupants, as well as for such other purposes as are properly undertaken by the Association. No profit, gain, or other benefit is to be derived by the Association from the Assessments, but, instead, such funds shall be expended only as agent for the Owners, and no part of the net earnings of the Association shall inure (other than by acquiring, constructing or providing management, maintenance, and care of the Common Areas) to the benefit of any individual.

Section 6.4 **Individual Assessment.** Any expenses incurred by the Association in enforcing any of the provisions of this Declaration against any specific Owner or Occupant shall be deemed an Individual Assessment against such Owner and the respective Lot owned by such Owner. Any expenses incurred by the Association as a result of damage caused by an Owner or Occupant shall be levied against the Owner and his Lot as an Individual

Assessment. Any expenses incurred by the Association as a result of maintaining, repairing and/or replacing those portions of the Improvements located on the Lots shall be levied against the Owner and his Lot as an Individual Assessment. Such Individual Assessment shall be levied by the Association and shall be specified in a notice to the Owner, which notice shall also specify the due date for payment of the same.

Section 6.5 **Annual Assessments.** The Association shall levy Annual Assessments in such amounts as are necessary to meet the Common Expenses (as defined in Article VII below) and such other recurring or projected expenses as the Board of Directors of the Association may deem appropriate. The Annual Assessment for the Subdivision shall commence on January 1 of each year, and shall be paid in advance.

Section 6.6 **Special Assessments.** In addition to the Annual Assessments specified in Section 6.4 above, the Association may levy, at any time, one or more Special Assessments for the purpose of defraying, in whole or in part the cost of any construction, reconstruction, repair or replacement of Improvements upon the Common Areas, provided that any such Assessment must have the assent and approval of (a) at least 51% of the Owners who are voting in person or by proxy at a meeting duly called for this purpose, and (b) to the extent Developer is the Owner of any Lot in the Subdivision, the approval of Developer.

Section 6.7 **Special Meeting.** Written notice of any meeting called for the purpose of taking any action authorized under Section 6.5 above shall be sent to all Owners not less than fourteen (14) days but no more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Owners, either in person or by proxy, entitled to cast 51% or more of all votes in the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirements and the required quorum at the subsequent meeting shall be one-half of the required quorum at the preceding meeting.

Section 6.8 **Amount of Assessments.** Both Annual and Special Assessments must be fixed at a uniform rate for all Lots within the Subdivision, and shall commence upon the closing of the sale of the Lot from the Developer to a third party purchaser, and shall be due and payable in such manner as established by the Board of Directors of the Association. The Board of Directors of the Association shall fix the amount of the Annual Assessment against each Lot at least thirty days in advance of each Annual Assessment period. Written notice of the Annual Assessment shall be sent to every Owner. The due date for the payment of Annual Assessments shall be established by the Board of Directors in such notice (but such due date shall be, at a minimum, thirty days from the date of such notice).

Section 6.9 **Certificate.** The Association shall, upon written demand by Owner or Mortgagee and for a reasonable charge, furnish a certificate signed by an officer or agent of the Association setting forth whether the Assessment on a Lot has been paid. A properly executed certification of the Association as the status of the Assessment on a Lot is binding upon the Association as of the date of its issuance.

Section 6.10 **Effect of Non-Payment of Assessments; Liens; Remedies.**

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

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

expenses of such sale and of all proceedings in connection therewith, including fees and expenses of Foreclosing Party's attorneys; (b) then to the repayment of the lien granted herein; and (c) finally the remainder, if any, shall be paid to such parties as are legally entitled to it, after deducting any expenses incurred in ascertaining the identity of such parties, or as may otherwise be provided by law.

Section 6.11 **Damages.** In addition to the rights and remedies set forth above, if any Owner or Occupant (or any Owner's or Occupant's contractor, family members, guests or invitees) shall violate or attempt to violate any of the covenants and restrictions set forth herein, then Developer, the Association, the ARC, or any Owner, jointly and severally, shall each have the right to prosecute proceedings at law for the recovery of damages against such Owner as a result of such violations and/or maintain a proceeding in equity against such Owner to enjoin such violation; provided, however, that the rights and remedies set forth herein shall be deemed to be cumulative of all other rights and remedies available at law or in equity. In any such proceedings, Developer, the Association, the ARC or any Owner, jointly and severally, shall be entitled to recover all costs and expenses, including reasonable attorneys' fees, incurred by any of them in such proceedings, as well as interest on all unpaid amounts as specified in Section 6.9 above. The failure of Developer, the Association, the ARC or any Owner to institute proceedings for any one (1) or more violations of this Declaration shall not constitute approval of the same or be construed as a waiver of any right of action contained herein for past or future violations of said Declaration.

ARTICLE VII MAINTENANCE AND INSURANCE

Section 7.1 Responsibilities of Owners -Maintenance.

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

(i) The fixtures and equipment in any dwelling or Improvement, including the refrigerator, stove and all other appliances; drains, sinks, plumbing and plumbing fixtures and connections serving only the Lot; electrical panels, wiring, outlets and electric fixtures within the Lot; interior doors, interior surfaces of the window frames, screening and glass; and interior surface of all exterior doors; all wall and ceiling materials such as sheetrock and wall coverings including paint, wallpaper and light coverings; and all floor coverings, including carpeting, hardwood, vinyl and ceramic tile within any dwelling or Improvement.

(ii) The plumbing, heating, air conditioning and electrical systems serving only that Lot, whether located within or without the boundary of that Lot, including the fuse boxes, wiring, flues, and all other plumbing, electrical, gas or mechanical systems. In the event any such system or a portion thereof is within another Lot or requires access to another Lot, the repair, maintenance or replacement thereof shall be performed by the Association, and the cost thereof shall constitute an assessment against the Owner responsible therefore.

(b) Each Owner agrees as follows:

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

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

(iii) Not to make, or cause to be made, repairs to any plumbing, heating, ventilation or air conditioning systems required to be maintained by him under subparagraph 7.01(a)(ii), except by licensed plumbers, electricians or heating and air conditioning professionals authorized to do such work by the Association or its delegate;

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

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

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

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

Section 7.2 **Responsibilities of Owners - Insurance.**

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

replacement cost of the Improvements thereon as purchased by the Owner (but excluding land, foundations, excavations and other items usually excluded from such insurance coverage).

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

Section 7.3 **Responsibilities of Association - Maintenance.** The Association shall, in the discretion of the Board, without any approval of the Members being required:

(a) Maintain, install, reinstall, construct, repair, and replace the following parts of the Improvements on the Lots:

(i) The roof of the dwelling;

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

(iii) The maintenance, repair and replacement of the exterior doors and windows of the dwelling or Improvements located on the Lots.

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

(c) Maintain, install and replace all landscaping located within the Property including the Common Areas and the front, rear, and side yards of each Lot;

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

(e) Replace or remove injured and diseased trees or other cover to the extent that the Board deems necessary for the conservation of water and soil and for aesthetic purposes whether located on the Property; and

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

(g) Maintain, repair and replace the exterior of the Improvements located on the Lots including exterior paint, brick, wood, fixtures, and the roofs of the Improvements.

Section 7.4 **Responsibilities of Association - Common Area Expenses.** The following are certain expenses with respect to the Common Areas which are hereby declared to be Common Expenses which the Association is obligated to collect by Assessment and which Owners are obligated to pay as provided in Article VI hereof; provided, however, that the enumeration below of these expenses shall in no way limit the Association from considering other expenses incurred in managing the Association or any part of the Common Areas and/or the Property as expenses subject to collection by assessment:

(a) **Maintenance and Repair of Common Areas:** The cost and expense to keep and maintain the Common Areas in good repair and in a clean and attractive condition, if any, including the charges in Section 7.4 of this Declaration, as well as the following charges:

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

(ii) Sanitary sewer and storm sewer lines within private drives, but not located within the boundaries of any Lot, if applicable;

(iii) Gas bills of the Association, if any;

(iv) Water bills and sprinkler systems for use on the Common Areas;

(v) Any insurance for the Common Areas;

(vi) Any management fees, accounting fees, and legal expenses incurred by the Association;

(vii) Maintenance costs of all detention ponds and storm water drainage areas, if applicable;

(viii) Such other matters which involve the use of the Common Areas as determined by the Association; and

(ix) Tree removal as provided in Section 7.3(d) above.

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

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

(d) Utilities. The utilities serving the Common Areas only shall be separately metered and paid by the Association as a Common Expense. The Association shall have authority, however, with regard to any utility, to use a common meter, pay the cost of such utilities used or consumed in the Lots, and have the costs thereof apportioned among the Lots based upon the Common Expense liability, use of the utility, or any other formula the Association may deem appropriate.

(e) Insurance. The Association shall obtain and maintain at all times for the Property the following insurance:

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

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

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

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

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

Section 7.5 Reserves. The Association may establish reserves for the payment of Common Expenses in the future.

Section 7.6 Interested Transactions. The Association may obtain materials and/or services from Developer and/or any of its Affiliates and/or any Members in connection with the management of the Association or any part of the Common Areas as herein contemplated; provided that the compensation for such materials and/or services is, in the opinion of the Association, comparable with the compensation of any non-affiliated third party

providing similar materials and/or services which can be reasonably made available to the Association.

ARTICLE VIII

ENFORCEMENT OF PROTECTIVE COVENANTS, DEFAULTS AND REMEDIES

Section 8.1 **Covenants Running with the Land.** The covenants set forth in this Declaration shall constitute a servitude in and upon the Property and shall run with the Property and inure to the benefit of and be enforceable by Developer, its designated successors and assigns, the Association, or by any Owner and its respective heirs, successors and assigns, for a term of fifty years from the date this Declaration is recorded, after which time the said protective covenants provided for herein shall automatically be extended for successive periods of ten (10) years, unless an agreement which has been signed by Owners who own two-thirds or more of the then existing Lots of the Property, agreeing to terminate or modify this Declaration, has been recorded in the Probate Office.

Section 8.2 **Remedies for Default.** The existence of any breach or default hereunder by any person or entity subject to the terms, conditions, covenants and restrictions of this Declaration shall give Developer, its successors or assigns, any Owner, and/or their respective heirs, successors and assigns, and the Association, in addition to all other remedies specified therein, the right to proceed at law or in equity to compel compliance with the terms of this Declaration and to prevent the violation or breach of any of them; provided, this Declaration shall be recorded for the benefit of Developer, the ARC, the Association, the Owners and their respective Mortgagees, and the Occupants, and by such recording, no other adjoining property owner or third party shall have any right, title or interest whatsoever in the Property or its operation and continuation, in the enforcement of any of the provisions of this Declaration or the right to consent to or approve any amendment or modification to this Declaration.

Section 8.3 **Nature of Remedies: Waiver.** All rights, remedies and privileges granted to Developer, the ARC, the Association, the Owners, their respective heirs, successors and assigns, and the Occupants pursuant to the provisions of this Declaration shall be deemed to be cumulative, and the exercise of any one or more of them shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same, or any other party, from pursuing such other and/or additional rights, remedies or privileges as may be available to such party at law or in equity. The failure at any point in time to enforce any covenant or restriction shall in no event be deemed a waiver of the right thereafter to enforce any such covenant or restriction.

Section 8.4 **Attorneys' Fees and Costs.** All fees, costs and expenses, including attorneys' fees through all appellate levels, in connection with the Association's duty to enforce all of the protective covenants and other terms contained in or imposed by this Declaration, and all Rules and Regulations adopted pursuant to the Certificate of Formation, by the Bylaws or this Declaration may be assessed against the Owner in violation of this Declaration.

Section 8.5 **No Reverter.** No restriction or provision herein is intended to be, or shall be construed as, a condition subsequent or as creating any possibility of a reverter

ARTICLE IX PERIOD OF DEVELOPER CONTROL

Section 9.1 **Developer Control.**

(a) Notwithstanding any provision contained herein to the contrary, until sixty (60) days following the date that the Developer has sold and no longer retains ownership of any of the Lots currently within or subsequently submitted to the Liberty Park PUD, or until the Developer elects to terminate its control of the Association, whichever is earlier (such period of time being referred to herein as the "Developer Control Period"), the Developer shall have the exclusive right to appoint and remove the members of the Board of Directors of the Association and the members of the ARC (unless appointed by the Master Association) and the right to amend this Declaration, the Certificate of Formation, and the Bylaws of the Association.

(b) Notwithstanding the provisions of Section 9.1(a) above, no Assessments shall be imposed by the Association against the Developer as the Owner of an unsold Lot until the construction of the dwelling and other Improvements upon the Lot is completed.

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

ARTICLE X AMENDMENT OF DECLARATION

Section 10.1 **Amendment by Association.** During the Developer Control Period, this Declaration may be amended by Developer in Developer's sole discretion. Following the expiration of the Developer Control Period, an amendment to this Declaration may be proposed by the Board of Directors or by written instrument signed by the Owners of not less than one-fourth (1/4) of the Lots within the Property. Such proposed amendment or amendments shall be considered at a meeting of the Owners after written or printed notice of such meeting, stating the time and place thereof, and providing information regarding the proposed amendment or amendments in reasonably detailed form, shall be mailed to the Owners not less than ten days nor more than thirty days, before the date set for such meeting. If mailed, such notice shall be deemed to be properly given when deposited in the United States mail, addressed to each Owner at the street address of its Lot (or such other address as the Lot Owner may provide to the Association in writing with a request to receive notices at such address), the postage thereon being prepaid. Any Owner may, by written waiver of notice signed by such Owner, waive such notice, and such waiver whether before or after the holding of the meeting, shall be deemed equivalent to the giving of such notice to such Owner. At such meeting, the amendment or amendments proposed must be approved by the affirmative vote of Owners who own not less than two-thirds of the total Lots of the Property in order for such amendment or amendments to become effective. Thereupon, such amendment or amendments to the Declaration shall be transcribed and certified by the Board as having been duly adopted and the original or executed copy of such amendment or amendments so certified and executed with the same formalities as a deed shall be recorded in the Probate Office, within twenty days from the date on which the same

became effective, such amendment or amendments to specifically refer to the recording identifying this Declaration. At any meeting held to consider such amendment or amendments, the written vote of any Owner shall be recognized if such Owner is not in attendance in person or by proxy at such meeting, provided such written vote is delivered to the Board at or prior to such meeting.

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

ARTICLE XI GENERAL PROVISIONS

Section 11.1 **Deeds Subject to Covenant.** Each deed for the sale of a Lot in the Subdivision will be subject to the terms and conditions of this Declaration regardless whether the deed contains a reference to this Declaration.

Section 11.2 **Obligation of Owner to Build or Restore.** In the event an Improvement on any Lot within the Property is damaged or destroyed in whole or in part, the Owner shall be obligated to repair or replace those portions of the Improvement for which the Owner is responsible for repairing or replacing within a reasonable time not to exceed one (1) year from the date of such damage or destruction and such repair or replacement of such structure shall be in accordance with the covenants and restrictions set forth in this Declaration. Further, all debris resulting from such damage or destruction must be removed and the Lot restored to a slightly condition with reasonable promptness, but not later than ninety (90) days after such damage or destruction.

Section 11.3 **No Trespass.** Whenever the Association, Developer, the ARC and their respective agents, employees, representatives, successors and assigns, are permitted by this Declaration to enter upon or correct, repair, clean, maintain or preserve or do any other action within any portion of a Lot or dwelling, the entering thereon and the taking of such action shall not be deemed a trespass.

Section 11.4 **Notices.** Any notice required to be sent to any Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by United States mail, postage prepaid, return receipt requested, to the street address of the Lot owned by such Owner or at such other address designated by Owner in writing to the Board, except for meeting notices as provided in the Bylaws.

Section 11.5 **Severability.** Invalidation of any provision or provisions hereof by judgment or court order shall in no way affect any other provisions, all of which shall remain in full force and effect.

Section 11.6 **Governing Law.** Should any dispute or litigation arise between any of the parties whose rights or duties are affected or determined by this Declaration as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Alabama.

Section 11.7 **Captions.** The captions and titles of the various articles and Sections in this Declaration are for convenience of reference only, and in no way define, limit or describe the scope or intent of this Declaration.

Section 11.8 **Usage.** Whenever used herein the singular shall include the plural and the singular, and the use of any gender shall include all genders.

Section 11.9 **Conflict.** If any irreconcilable conflict shall exist, or hereafter arise, with respect to the interpretation of any provisions of this Declaration, and any covenant of a Lot, then the provisions of this Declaration shall prevail.

Section 11.10 **Effective Date.** This Declaration shall become effective upon its recordation in the Probate Office.

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26th **IN WITNESS WHEREOF**, Developer has caused this Declaration to be executed on the day of September, 2019.

DEVELOPER:

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

By: Drummond Company, Inc.,
an Alabama corporation
Its Manager

By: J. Michael Tracy
J. Michael Tracy
Its Chief Executive Officer

STATE OF ALABAMA)

COUNTY OF JEFFERSON)

I, Carolyn W. Childers a Notary Public in and for said County, in said State, hereby certify that **J. MICHAEL TRACY** whose name as Chief Executive Officer of DRUMMOND COMPANY, INC., an Alabama corporation, as Manager of **LIBERTY PARK JOINT VENTURE, LLP**, an Alabama limited liability partnership is signed to the foregoing instrument, and who is known to me, acknowledged before me on this day that being informed of the contents of said instrument, he, in such capacity and with full authority, executed the same voluntarily for and as the act of said corporation, acting in its capacity as aforesaid.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this, the 26th day of September, 2019.

Carolyn W. Childers
Notary Public

[SEAL]

My Commission Expires: 12-01-2019



EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

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

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF THE TOWNHOMES AT TIPPLE DRIVE**

Dated: October 1, 2019

This instrument prepared by:

Melinda E. Sellers
Burr & Forman LLP
420 North 20th Street
Birmingham, Alabama 35203
(205) 251-3000

**FIRST AMENDMENT TO
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
OF TOWNHOMES AT TIPPLE DRIVE**

STATE OF ALABAMA)
JEFFERSON COUNTY)

THIS FIRST AMENDMENT to the Declaration of Covenants, Conditions And Restrictions of Townhomes at Tipple Drive ("First Amendment") is made this 2nd day of October, 2019, by **LIBERTY PARK JOINT VENTURE, LLP**, an Alabama limited liability partnership (the "Developer") for the purpose of amending the Declaration of Covenants, Conditions and Restrictions of Townhomes at Tipple Drive as filed in the Office of the Judge of Probate of Jefferson County, Alabama on September 26, 2019, in Instrument No. 2019101308 (the "Declaration").

W I T N E S S E T H:

WHEREAS, the Declaration was filed on September 26, 2019, for the purpose of establishing a plan of development, improvement and use for certain real property situated in Jefferson County, Alabama known as Townhomes at Tipple Drive (the "Property");

WHEREAS, the Developer is the Owner of all of the property submitted to the Declaration and as shown on the Liberty Park Townhome Village Commercial Subdivision No. 2- Resurvey No. 2, recorded as Instrument No. 2019097013;

WHEREAS, the Developer, pursuant to Article X, Section 10.1 of the Declaration, desires to amend and restate Article V, Section 5.16 of the Declaration as set forth in detail below.

NOW THEREFORE, upon the recording hereof, the Developer does hereby amend the Declaration as follows:

1. The Developer, pursuant to Article X, Section 10.1, does hereby amend and restate Article V, Section 5.16 of the Declaration to provide as follows:

Section 5.16 Restrictions on Leasing of Lots. It is intended that the dwellings on the Lots shall be occupied by the Owners thereof and not be sold to investors who intend to lease the same for investment/rental purposes. Therefore, leasing of the Lots, any dwelling thereon, or any individual room in a dwelling shall be prohibited unless the prior written consent of the Master Association is first obtained, so long as the Property is subject to the Master Association and thereafter, the prior written consent of the Board of Directors of the Association. Consent of the Master Association or Association (as applicable) shall not be unreasonably withheld to any written request for a lease of a dwelling due to a financial hardship on the Owner thereof. Any such lease, if permitted by the Master Association or Association (as applicable) and the rights of any tenant thereunder are hereby made expressly subject to the power of the Association to prescribe reasonable Rules and Regulations relating to the lease and rental of Lots or any dwelling and to enforce the same directly against such tenant or other Occupant by the exercise of such remedies as the Board deems appropriate. No individual rooms may be rented. Further, any such lease must be in writing, with a copy provided to

the Association upon request by the Association. This restriction on use shall be a covenant running with each Lot, creating a burden on each single Lot and Owner for the benefit of every other Lot and Owner. No lease shall be for less than six (6) months and no more than one (1) Single Family Unit per Lot or two (2) people per bedroom of any dwelling on a Lot shall occupy a Lot. Notwithstanding anything contained in this Section to the contrary, each Owner shall be responsible for the actions of his tenants and the Occupants and nothing herein or in any such lease shall relieve an Owner of his obligations under the Covenants. The provisions of this Section shall not be applicable to the Developer who is irrevocably empowered without any limitation at all times, whether for permanent or temporary occupancy to sell, lease or rent Lots, or any dwelling or other Improvement thereon, for any period and under any terms to any lessees or purchasers or transferees with the right to take any action necessary to consummate the sale or rental of said Lots, including, but not limited to, the right to maintain model Lots with any Improvements thereon, post signs, have employees in the offices maintained on the Property, use the Common Areas and show Lots and any Improvements thereon to prospective tenants or purchasers. Sales and rental office signs and all items pertaining to the rental or sale of Lots shall not be considered Common Areas and shall remain the property of the Developer.

2. It is the intention of the parties that the provisions of this First Amendment to Declaration are severable, so that if any provision is invalid or void under any applicable federal, state or local law or ordinance, decree, order, judgment or otherwise, the remainder shall be unaffected thereby.

3. This First Amendment to Declaration has been executed by the undersigned and filed in the Office of the Judge of Probate of Jefferson County, Alabama for the purpose as stated above. Except for the aforesaid, the terms and conditions of the Declaration shall continue to be in full force and effect without any other changes whatsoever.

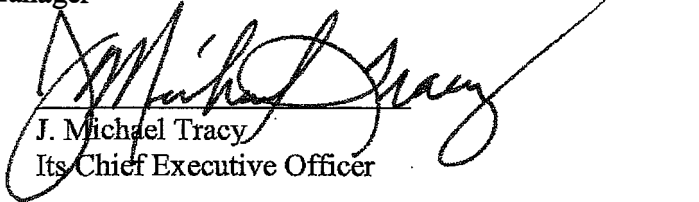
4. Capitalized terms as used herein shall have the same meaning as they are defined in the Declaration, unless the context clearly indicates a different meaning therefore.

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IN WITNESS WHEREOF, the Developer has executed this First Amendment to the Declaration on this 2nd day of October, 2019.

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

By: Drummond Company, Inc.,
an Alabama corporation,
its Manager

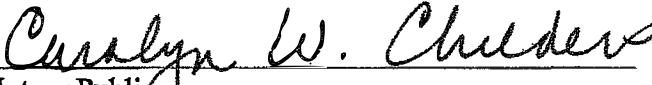
By: 
J. Michael Tracy
Its Chief Executive Officer

STATE OF ALABAMA)

JEFFERSON COUNTY)

I, the undersigned, a Notary Public in and for said County in said State, hereby certify that J. Michael Tracy whose name as Chief Executive Officer of **DRUMMOND COMPANY, INC.**, an Alabama corporation, Manager of **LIBERTY PARK JOINT VENTURE, LLP**, an Alabama limited liability partnership, is signed to the foregoing First Amendment to Declaration, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing First Amendment to Declaration, he, as such member, and with full authority, executed the same voluntarily on the date the same bears date.

Given under my hand and official seal of office this 2nd day of October, 2019.


Notary Public

[NOTARY SEAL]

My Commission Expires: 12-01-2019

