



20130124010117870

01/24/2013 04:12:27 PM

Bk:RE12146 Pg:1490 Pgs:37 DECL

State of Oklahoma

County of Oklahoma

Oklahoma County Clerk

Carolynn Caudill

BIRNAM WOODS ADDITION

Covenants, Conditions and Restrictions

W1

HALL ESTILL
CHASE TOWER SUITE 2900
100 N BROADWAY
OKLAHOMA CITY, OK 73102-8865

**DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR THE BIRNAM WOODS ADDITION**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS FOR THE BIRNAM WOODS ADDITION (this “**Declaration**”) is made by Birnam Woods Development, Inc., an Oklahoma Corporation (the “**Declarant**”).

WITNESSETH:

WHEREAS, the Declarant is the owner of certain real property located in the City of Edmond, Oklahoma County, Oklahoma, which is more particularly described in Exhibit “A” attached hereto and incorporated herein by this reference (the “**Property**”), and the Declarant desires to subject the Property to the provisions of this Declaration and to develop the property as Birnam Woods Addition, a planned development and community, and to provide a method for the administration and maintenance of the Property;

NOW, THEREFORE, the Declarant hereby declares that all of the Property shall be held, transferred, sold, conveyed, leased, occupied, and used subject to the following easements, restrictions, covenants, charges, liens, and conditions which shall touch, concern and run with title to the Property and which shall be binding upon and inure to the benefit of all parties having any right, title, or interest in or to the Property, including heirs, trustees, representatives, successors, and assigns.

ARTICLE 1

DEFINITIONS

1.01 Definitions. When used in this Declaration, unless the context shall prohibit or otherwise require, the following words shall have all the following meanings and all definitions shall be applicable to the singular and plural forms of such terms:

1.01.01 “Architectural Standards Committee” or “Committee” shall mean the Architectural Standards Committee created pursuant to Section 9.02 hereof or such other body as the Declarant, its successors or assigns shall designate.

1.01.02 “Assessment” shall mean an Owner’s share of the Common Expenses, any special assessments, or other charges from time to time assessed against an Owner by the Association in the manner herein provided.

1.01.03 “Association” shall mean Birnam Woods Homeowners Association, Inc., an Oklahoma nonprofit corporation established by the Declarant.

1.01.04 “Board of Directors” or “Board” shall mean the Board of Directors of the Association, which is the governing body of the Association.

1.01.05 “Bylaws of the Association” or the “Bylaws” shall mean the Bylaws of the Association which govern the administration and operation of the Association, as the same may be amended from time to time.

1.01.06 “Certificate of Incorporation” shall mean the Certificate of Incorporation of the Association, as amended from time to time.

1.01.07 “Common Area” shall mean all real and personal property now or hereafter designated in writing by the Declarant as Common Area and conveyed to the Association or designated as such and held by the Declarant for the benefit of the Association. Such real property may include but shall not be limited to swimming pools, pool houses, roads, sidewalks, driveways, bridges, entrances, walkways, rights-of-ways, open spaces (landscaped and natural), lagoons, lakes, ponds, streams, recreational facilities and such other common areas which have been or may be designated by the Declarant as constituting Common Areas within the Development, together with such improvements thereon as may be necessary for the maintenance and upkeep of such areas. The Declarant, after the execution of this Declaration, without a vote of the members of the Association or the Board, may designate additional real property located within the Development as Common Area by the filing in the Office of the County Clerk for Oklahoma County, Oklahoma, a supplement to this Declaration so designating such additional real property as Common Area.

1.01.08 “Common Expenses” shall mean all expenditures lawfully made or incurred by or on behalf of the Association, together with all funds lawfully assessed for the creation or maintenance of reserves, pursuant to the provisions of this Declaration and the Bylaws.

1.01.09 “Declarant” shall mean Birnam Woods Development, Inc. or any successor-in-title to the entire interest of Birnam Woods Development, Inc. with respect to the Property or any party who acquires Declarant’s entire interest in the Property pursuant to the foreclosure of a Mortgage encumbering Declarant’s interest in the Property.

1.01.10 “Declarant Owner” shall mean any entity that is either 100% owned by Declarant or has identical common ownership with Declarant and which entity owns one or more Lots or Dwellings.

1.01.11 “Declaration” shall mean this Declaration of Covenants, Conditions, and Restrictions for Birnam Woods Addition and all amendments and supplements thereof filed for record in the Office of the County Clerk for Oklahoma County, Oklahoma.

1.01.12 “Development” shall mean the Property and all improvements located or constructed thereon.

1.01.13 “Dwelling” shall mean any improved property intended for use as a single-family dwelling located within the Development.

1.01.14 “Foreclosure” shall mean, without limitation, the foreclosure of a Mortgage or the conveyance of secured property by a deed in lieu of foreclosure.

1.01.15 “Lot” shall mean any unimproved portion of the Property upon which it is intended that a single-family Dwelling be constructed. A parcel of land shall be deemed unimproved and, thus, considered to be a Lot, rather than a Dwelling, until the improvements constructed thereon are sufficiently complete that a Certificate of Occupancy has been issued by the City of Edmond, Oklahoma. Upon such completion, such parcel and the improvements thereon shall collectively be considered to be a Dwelling for purposes of this Declaration.

1.01.16 “Mortgage” shall mean a mortgage, contract for deed, installment land sales contract, or other similar security instrument granting, creating, or conveying a lien upon, a security interest in, or a security title to a Lot or a Dwelling.

1.01.17 “Mortgagee” shall mean the holder of a Mortgage.

1.01.18 “Occupant” shall mean any Person, including, without limitation, any Owner or any guest, invitee, lessee, tenant, or family member of an Owner, occupying or otherwise using a Dwelling within the Development.

1.01.19 “Owner” shall mean one or more Persons, including Declarant, that own record title to a Lot or Dwelling and have the legal right to presently occupy such Lot or Dwelling, excluding, however, those Persons having such an interest under a Mortgage. If more than one Person holds the record title to any Lot or Dwelling, all of them shall be deemed a single record owner and shall be a single member of the Association by virtue of their ownership of the Lot or Dwelling.

1.01.20 “Person” shall mean a natural person, corporation, partnership, limited liability company, association, trust, or other legal entity or any combination thereof.

1.01.21 “Property” shall mean those tracts or parcels of land described in Exhibit “A”, together with all improvements thereon, or any portion thereof, together with all improvements thereon.

1.01.22 “Site Plan” shall mean that certain plat of Birnam Woods Addition, filed on 11/29/2012 and prepared by Red Plains Professional Inc., which is filed in Plat Book PL70, Page 29 of the Office of the County Clerk for Oklahoma County, Oklahoma, and any future revisions, amendments and subdivisions thereof or any subdivision plat for any portion of the Property as may be recorded from time to time in the Office of the County Clerk for Oklahoma County, Oklahoma.

ARTICLE 2

PLAN OF DEVELOPMENT

2.01 Plans of Development of Property. The real property which is, and shall be held, transferred, sold, conveyed, given, donated, leased and occupied subject to this Declaration, is shown and described in Exhibit “A” including, but not limited to, the Lots, Dwellings, roads,

utility systems and drainage systems along with the Common Areas and other improvements serving the Lots, Dwellings, and Common Areas to the extent the same are from time to time installed and existing. Declarant shall have the right, but not the obligation, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale, to make improvements and changes to any such Lot or Dwelling owned by the Declarant or to any Common Area, including without limitation: (i) installation and maintenance of any improvements in and to the Common Areas, including without limitation landscaping and other improvements to the entrance of the Development, (ii) changes in the location of the boundaries of any Lots, Dwellings, and designated Common Areas, (iii) installation and maintenance of any streets, water, sewer, and other utility systems and facilities, and (iv) installation of security and/or refuse facilities.

ARTICLE 3

PROPERTY RIGHTS

3.01 Owners of Lots or Dwellings. Each Lot and Dwelling shall for all purposes constitute real property which, subject to the provisions of this Declaration, may be conveyed, transferred, and encumbered the same as any other real property. Each Owner shall be entitled to the exclusive ownership and possession of his or her Lot or Dwelling subject to the provisions of this Declaration, including without limitation, the provisions of this Article 3. The ownership of each Lot or Dwelling shall include, and there shall pass with each Lot and Dwelling as an appurtenance thereto, whether or not separately described, all of the right and interest in and to the Common Areas as established hereunder, which shall include, but not be limited to, membership in the Association. Each Owner shall automatically become a member of the Association, shall remain a member thereof until such time as his or her ownership ceases for any reason, at which time his or her membership in the Association shall automatically pass to the successor-in-title to his or her Lot or Dwelling and such successor-in-title shall have such rights and obligations of membership as hereinafter set forth in Article 4.

3.02 Use and Enjoyment by Owners. Subject to the provisions of this Declaration and the rules, regulations, fees, and charges from time to time established by the Board of Directors in accordance with the Bylaws and the terms hereof, every Owner, his or her family, tenants, and guests shall have a non-exclusive right, privilege, and easement for the use and enjoyment in and to the Common Areas, such easement to be appurtenant to and to pass and run with title to each Lot and Dwelling, subject to the following provisions:

3.02.01 Borrow Money. The right of the Association to borrow money: (i) for the purpose of improving the Development, or any portion thereof, (ii) for acquiring additional Common Areas, (iii) for constructing, repairing, maintaining or improving any streets or other facilities located or to be located within the Development, or (iv) for providing the services authorized herein, and, subject to the provisions of Section 7.02 hereof, to give as security for the payment of any such loan a Mortgage or other security instrument conveying all or any portion of the Common Areas; provided, however, that the lien and encumbrance of any such security instrument given by the Association shall be subject and subordinate to any and all rights,

interest, options, licenses, easements, and privileges herein reserved or established for the benefit of Declarant, any Owner, or the holder of any Mortgage, irrespective of when such Mortgage is executed or given.

3.02.02 Reservations to Declarant. The rights and easements reserved to Declarant in this Article 3.

3.02.03 Grant and Accept Easements. The right of the Association to grant and accept easements as provided in Section 3.06 hereof and to dedicate or transfer fee simple title to all or any portion of the Common Areas to any public agency or authority, governmental authority, body politic, public service district, public or private utility, or other person; provided that any such transfer of the fee simple title must be approved by a majority of those present in Person or by proxy at a duly held meeting of the Association and by Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale.

3.02.04 Access Rights. The rights and easements reserved in Section 3.03 hereof for the benefit of the Association, its directors, officers, agents, and employees.

3.03 Access. All Owners, by accepting title to Lots, Dwellings, lands, or other improvements conveyed subject to this Declaration, waive all rights of uncontrolled and unlimited access, ingress, and egress to and from such Lot, Dwelling, lands, or other improvements and acknowledge and agree that the means of access and ingress and egress to Lots, Dwellings, lands or improvements shall be limited to roads, sidewalks, walkways, trails, and waterways located within the Development by Declarant; provided that pedestrian and vehicular access for Owners, and their guests, and invitees to and from all Lots and Dwellings shall be provided at all times. Declarant shall have the right, within its sole discretion without the additional consent of any Owners, from time to time to relocate and change the directions, width and orientation of the roads, sidewalks, walkways, trails and waterways located within the Development; provided, however, that such relocated roads, sidewalks, walkways, trails and waterways shall provide a convenient and adequate means of access to the Lots and Dwellings within the Development. Declarant reserves the right to restrict access over all the roads within the Development as it deems appropriate, so long as Owners possess an adequate and convenient means of access to Lots and Dwellings located in the Development.

3.04 Easements for Declarant. During the period that Declarant owns any Lot or Dwelling primarily for the purpose of sale, Declarant shall have an alienable and transferable right and easement on, over, through, under, and across all Lots and the Common Areas for the purpose of constructing Dwellings, and other improvements in and to the Lots and any additional property and for installing, maintaining, repairing, and replacing such other improvements to the Property (including portions of Common Areas) as are contemplated by this Declaration or as Declarant desires, in its sole discretion, including, without limitation, any improvements or changes permitted and described by Article 2 hereof, and for the purpose of doing all things reasonably necessary and proper in connection therewith; provided in no event shall Declarant have the obligation to do any of the foregoing.

3.05 Changes in Boundaries; Additions to Designated Common Areas. Declarant expressly reserves for itself and its affiliates and successors the right to change and realign the boundaries of the designated Common Areas and any Lots or Dwellings owned by Declarant, including the realignment of boundaries between adjacent Lots and/or Dwellings owned by Declarant; provided that any such change or realignment of boundaries shall not materially decrease the acreage of the designated Common Areas and shall be evidenced by a revision of or an addition to the Site Plan which shall be recorded in the records of the County Clerk for Oklahoma County, Oklahoma. In addition, Declarant reserves the right, but shall not have the obligation, to convey to the Association at any time and from time to time any Common Areas and as an addition to the Common Areas: (i) any lakes, pond or fresh water wetlands owned by Declarant which are located on the Property and (ii) any streets, roads, or rights-of-way located within the Development.

3.06 Easements for Utilities. There is hereby reserved for the benefit of Declarant, the Association, and their respective successors and assigns, the alienable, transferable, and perpetual right and easement as well as the power to grant and accept easements to and from any public authority or agency, public service district, public or private utility or other Person, upon, over, under, and across: (i) all of the Common Areas, and (ii) all land located along the interior of and within five feet of each boundary of all Lots and all Dwellings, such lands to be bounded by the exterior boundaries of such Lots and Dwellings and by lines in the interior of such Lots and Dwellings which are exactly five feet from such exterior boundaries, for the purpose of installing, replacing, repairing, maintaining, and using master television antenna and/or cable systems, security and similar systems, and all utilities, including, but not limited to storm sewers and drainage systems and electrical, gas, telephone, cable television, water, sewer, advanced water treatment, and irrigation lines. To the extent practicable, all utility lines and facilities serving the Development and located therein shall be located underground.

3.07 Easements for Association. There is hereby reserved a general right and easement for the benefit of the Association, its directors, officers, agents, and employees, including, but not limited to, any manager employed by the Association and any employees of such manager, to enter upon any Lot or Dwelling, or any portion thereof in the performance of their respective duties. Except in the event of emergencies, this easement is to be exercised only during normal business hours and then, whenever practicable, only upon advance notice to and with permission of the Owner, or Occupant of the Lot or Dwelling directly affected thereby.

3.08 Sales and Construction Offices. Notwithstanding any provisions or restrictions herein to the contrary, there is hereby reserved for the benefit of Declarant and its affiliates, successors and assigns and other Builders approved by Declarant, the alienable and transferable right and easement in and to the Property for the construction and maintenance of signs, sales offices, construction offices, business offices, and model Dwellings, together with such other facilities as in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the completion of improvements, or sale of Lots, Dwellings, or Common Areas for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale. Declarant and other approved builders (but only with Declarant's consent) shall have the right to locate the above-described sales and construction offices within any property owned by Declarant without

the additional consent of any Owners, and any invitees of Declarant or other approved builders may park in the streets of the Property.

3.09 Maintenance and Maintenance Easement. Each Owner shall keep all shrubs, trees, grass and plantings of every kind on his or her Lot, including set back areas, planted areas between adjacent sidewalks and the street curb, if any, and any other area, including a portion of the Common Area located between the boundary line of his or her Lot or Dwelling, and the street or other property on which such Owner's Lot or Dwelling abuts, neatly trimmed, properly cultivated and free of trash, weeds and other unsightly material, and shall take appropriate steps to prevent and retard erosion of such Owner's Lot or Dwelling including, but not limited to, maintenance of any drainage and environmental easement which may exist on a portion of such Lot or Dwelling; provided, however, that such Owner shall not be responsible for maintenance of any area as to which Declarant or the Association has assumed, pursuant to this Declaration or otherwise in writing, the responsibility for maintenance. If an Owner fails to perform the maintenance described above, Declarant, the Association, or their authorized agents shall have the right at any reasonable time to enter upon any Lot or Dwelling of an Owner to plant, replace, maintain, and locate thereon, and take such measures as may be reasonably necessary to perform such maintenance and to prevent or retard erosion, and the cost thereof shall be assessed to the Owner as hereafter provided. The cost of such maintenance shall be a personal liability of the Owner. The Owner shall reimburse the Association or Declarant for the cost of such maintenance immediately upon being given notice in writing of the cost thereof. In the event reimbursement is not made to the Association or Declarant within three (3) days after such notice to the Owner, then the cost of such maintenance shall become a lien on the Owner's Lot or Dwelling, which lien may be enforced by the Association in the same manner as provided in the Declaration for enforcement of delinquent Assessments.

3.10 Environmental Easement. There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across all Lots and all unimproved portions of Dwellings for the purpose of taking any action necessary to effect compliance with environmental rules, regulations or procedures from time to time promulgated or instituted by the Board of Directors or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides and herbicides.

3.11 Wells and Effluent. There is hereby reserved for the benefit of Declarant and its affiliates, agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement: (i) to pump water from lakes, ponds, waterways (natural and man-made), basins, water dependent structures, and other bodies of water located within the Development for the purpose of irrigating any portions of the Development, (ii) to drill, install, locate, maintain, and use wells, pumping stations, water towers, siltation basins and tanks, and related water and treatment facilities and systems within the Common Areas and/or effluent available lands within the Development for irrigation of the Common Areas and property owned by Declarant, or (iii) to spray or locate any treated sewage effluent within the Common Areas, or upon any Lot or upon unimproved portions of any Dwelling. Except as set forth above, the pumping of water

from any pond, lake or other body of water within the Development for any purpose other than fire fighting is prohibited without the express written permission of the Declarant.

3.12 No Partition. There shall be no judicial partition of the Development or any part thereof, nor shall any Person acquiring any interest in the Development or any part thereof seek any such judicial partition unless the Development has been removed from the provisions of this Declaration.

ARTICLE 4

MEMBERSHIP

4.01 Voting. The Association shall have two (2) classes of voting membership:

(a) Class A. Class A members shall consist of all Owners of Lots or Dwellings not owned by Declarant or a Declarant Owner. Class A members shall be entitled to one (1) vote for each Lot or Dwelling owned.

(b) Class B. The sole class B member shall be the Declarant, who shall be entitled to five (5) votes for each Lot or Dwelling owned by Declarant or a Declarant Owner. Upon sale of a Lot or Dwelling by Declarant or a Declarant Owner to a third party, the Owner of such Lot or Dwelling shall become a class A member with respect to such Lot or Dwelling. Class B shall cease and be converted to a Class A membership with respect to all Lots or Dwellings owned by Declarant or a Declarant Owner upon the earlier of the occurrence of any of the following events: (i) Declarant in its sole discretion so determines and notifies the Association in writing; (ii) Ninety (90) days following the date Declarant or Declarant Owners have sold all Lots which they hold primarily for sale; or (iii) January 1, 2022.

4.02 Membership. Membership shall be appurtenant to and may not be separated from ownership of any Lot or Dwelling, and ownership of a Lot or Dwelling shall be the sole qualification for such membership. In the event that record title to a Lot or Dwelling is transferred or otherwise conveyed, the membership in the Association which is appurtenant thereto shall automatically pass to such transferee. The foregoing is not intended to include Mortgagees or any other Persons who hold an interest merely as security for the performance of an obligation, and the giving of a security interest shall not terminate or otherwise affect an Owner's membership in the Association. Where a Mortgagee or other Person holding an interest in a Dwelling or Lot as security for the performance of an obligation acquires title to such Lot or Dwelling through a Foreclosure, such Mortgagee or other transferee shall be deemed to have membership in the Association upon acquiring title to such Lot or Dwelling. No Owner, whether one or more Persons, shall have more than one membership per Lot or Dwelling. In the event of multiple Owners of a Lot or Dwelling, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership, including the right to vote and to hold an office in the Association, may be exercised by a member, but in no event shall more than one vote be cast or more than one office held for each Lot or Dwelling (excluding the Class B member). When more than one Person holds an interest in any Lot or Dwelling, the vote for

such Lot or Dwelling shall be exercised as those Owners of such Lot or Dwelling determine and notify the Secretary or an Assistant Secretary of the Association prior to any meeting. In the absence of such notice, the vote appurtenant to such Lot or Dwelling shall be suspended in the event more than one Person seeks to exercise it. Such a suspended vote shall be counted for the purpose of calculating a quorum, but such a suspended vote shall not be cast with regard to voting matters of the Association until the Persons owning such Lot or Dwelling determine how such vote shall be cast and so advise the Secretary or Assistant Secretary of the Association.

ARTICLE 5

MAINTENANCE

5.01 Responsibilities of Owners. Unless specifically identified herein as being the responsibility of the Association, all maintenance and repair of Lots and Dwellings, together with all other improvements thereon or therein and all lawns, landscaping, and grounds on and within a Lot or Dwelling shall be the responsibility of the Owner of such Lot or Dwelling. Each Owner shall be responsible for maintaining his or her Lot or Dwelling, as the case may be, in a neat, clean, and sanitary condition, and such responsibility shall include the maintenance and care of all exterior surfaces of all Dwellings, buildings, and other structures and all lawns, trees, shrubs, hedges, grass, and other landscaping. As provided in Section 5.03 hereof, each Owner shall also be obligated to pay for the costs incurred by the Association for repairing, replacing, maintaining, or cleaning any item which is the responsibility of such Owner and which such Owner fails or refuses to discharge. Except for the Declarant, no Owner shall: (i) place any improvement on any Lot or Dwelling unless plans for such improvement have been first approved, in writing, by the Committee in accordance with the Building Guidelines and as provided in Article 9 hereof, (ii) decorate, change, or otherwise alter the appearance of any portion of the exterior of a Dwelling, building or other improvement or the landscaping, grounds, or other improvements within a Lot unless such decoration, change, or alteration is first approved, in writing, by the Committee in accordance with the Building Guidelines and as provided in Article 9 hereof, or (iii) do any work which, in the reasonable opinion of the Committee, would jeopardize the soundness and safety of the Development, reduce the value thereof, or impair any easement or hereditaments thereto, without in every such case obtaining the written approval of the Committee and the Declarant so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale.

5.02 Association's Responsibility. Except as may be herein otherwise specifically provided, the Association shall maintain and keep in good repair all portions of the Common Areas, which responsibility shall include the maintenance, repair, and replacement of: (i) all walks, trails, lakes, ponds, streets, front gates, parking lots, landscaping, landscaped areas, and other improvements situated within the Common Areas, and (ii) such security systems and utility lines, pipes, plumbing, wires, conduits, and related systems which are a part of the Common Areas and which are not maintained by a public authority, public service district, public or private utility, or other Person. It shall be the sole responsibility of the Association to maintain any structures located on the Common Area. The Association shall not be liable for injury or damage to any Person or property: (A) caused by weather conditions or by any Owner or any

other Person not acting as either an agent or employee of the Association, (B) resulting from any rain or other surface water which may leak or flow from any portion of the Common Areas, or (C) caused by any pipe, plumbing, drain, conduit, appliance, equipment, security system, or utility line or facility, the responsibility for the maintenance of which is that of the Association, becoming out of repair, nor shall the Association be liable to any Owner for loss or damage, by theft or otherwise, of any property of such Owner which may be stored in or upon any portion of the Common Areas or any other portion of the Property. No diminution or abatement of Assessments, fees, or charges shall be claimed or allowed by reason of any alleged failure of the Association to take some action or to perform some function required to be taken or performed by the Association under this Declaration, or for inconvenience or discomfort arising from the making of improvements or repairs which are the responsibility of the Association, or from any action taken by the Association to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, the obligation to pay such Assessments, fees, and charges being a separate and independent covenant on the part of each Owner.

5.03 Failure by Owners to Maintain. In the event that Declarant or the Board of Directors determines that: (i) any Owner has failed or refused to discharge properly his or her obligations with regard to the maintenance, cleaning, repair, or replacement of items for which he or she is responsible hereunder, or (ii) the need for maintenance, cleaning, repair, or replacement which is the responsibility of the Association hereunder is caused through the willful or negligent act of an Owner, his or her family, tenants, guests, or invitees, and is not covered or paid for by insurance in whole or in part, then, in either event, Declarant or the Association, except in the event of an emergency situation, may give such Owner written notice of Declarant's or the Association's intent to provide such necessary maintenance, cleaning, repair, or replacement, at the sole cost and expense of such Owner and setting forth with reasonable particularity the maintenance, cleaning, repairs, or replacement deemed necessary. Except in the event of emergency situations, such Owner shall have fifteen (15) days within which to complete maintenance, cleaning, repair or replacement in a good and workmanlike manner, or in the event that such maintenance, cleaning, repair, or replacement is not capable of completion within said fifteen (15) day period, to commence said maintenance, cleaning, repair, or replacement and diligently proceed to complete the same in a good and workmanlike manner. In the event of emergency situations or the failure of any Owner to comply with the provisions hereof after such notice, Declarant or the Association may provide (but shall not have the obligation to so provide) any such maintenance, cleaning, repair, or replacement at the sole cost and expense of such Owner and said cost shall be added to and become a part of the Assessments to which such Owner and his or her Lot or Dwelling are subject and shall become a lien against such Lot or Dwelling. In the event that Declarant undertakes such maintenance, cleaning, repair or replacement, the Association shall promptly reimburse Declarant for Declarant's costs and expenses.

ARTICLE 6

INSURANCE AND CASUALTY LOSSES

6.01 Insurance. The Board of Directors or its duly authorized agents shall have the authority to and shall obtain insurance for the improvements in the Common Areas, in such form as the Board deems appropriate, for the benefit of the Association, insuring all insurable improvements in and to the Common Areas against loss or damage by fire or other hazards, including, without limitation, extended coverage, flood, vandalism, and malicious mischief, such coverage to be in an amount sufficient to cover the full replacement cost (without depreciation but subject to such deductible levels as are deemed reasonable by the Board) of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board or its duly authorized agents shall have the authority to and shall obtain and continue in effect a public liability policy covering all the Common Areas and all damage or injury caused by the negligence of the Association, its members, directors, officers, or any agents. Such public liability policy shall provide such coverages as are determined to be necessary by the Board of Directors. The Board or its duly authorized agents shall have the authority and shall obtain: (i) workers' compensation insurance to the extent necessary to comply with any applicable laws, and (ii) such other types and amounts of insurance as may be determined by the Board to be necessary or desirable. All such insurance coverage obtained by the Board of Directors shall be written in the name of the Association, and the costs of all such coverage shall be a Common Expense. Exclusive authority to adjust losses under policies obtained by the Association and hereafter in force with respect to the Development shall be vested in the Board of Directors. Insofar as permitted by law, to the extent the Board determines insurance coverage is necessary, the Association shall be required to make every effort to secure insurance policies with the provisions hereinafter set forth. It shall be the individual responsibility of each Owner of a Lot or Dwelling at his or her own expense to provide, as he or she sees fit, public liability, property damage, title, and other insurance with respect to his or her Lot or Dwelling.

6.02 Damage or Destruction to Lots or Dwellings. In the event of damage or destruction by fire or other casualty to any Lots or Dwellings and in the further event that the Owner of such Lot or Dwelling responsible for the repair and replacement thereof, as the case may be, elects not to repair or rebuild the damaged or destroyed Lot or Dwelling, such Owner making such election shall promptly clear away the ruins and debris of any damaged improvements or vegetation and leave such Lot or Dwelling in a clean, orderly, safe, and attractive condition. Should such Owner elect to repair or rebuild such Lot or Dwelling or other improvement, such Owner shall repair or rebuild such Lot or Dwelling or other improvements to substantially the same condition as existed prior to such fire or other casualty and in accordance with all applicable Building Guidelines, standards, restrictions, and provisions of this Declaration and the Committee (including, without limitation, Article 9 hereof). All such work or repair or construction shall be commenced promptly following such damage or destruction and shall be carried through diligently to conclusion.

ARTICLE 7

ADMINISTRATION

7.01 Common Areas. The Association, subject to the rights of Declarant and the rights and duties of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Areas and all improvements thereon (including furnishings and equipment related thereto) and shall keep the same in a good, clean, attractive, and sanitary condition, order, and repair, pursuant to the terms and conditions thereof. Except to the extent otherwise required by the provisions of the applicable laws relating to nonprofit corporations, this Declaration, the Bylaws, or the Certificate of Incorporation, the powers herein or otherwise granted to the Association may be exercised by the Board of Directors, acting through the officers of the Association, without any further consent or action on the part of the Owners.

7.02 Duties and Powers. The duties and powers of the Association shall be those set forth in the provisions of the applicable laws relating to nonprofit corporations, this Declaration, the Bylaws, and the Certificate of Incorporation, together with those reasonably implied to effect the purposes of the Association; provided, however, that if there are conflicts or inconsistencies between such laws, this Declaration, the Bylaws, or the Certificate of Incorporation, the provisions of the laws, this Declaration, the Bylaws, or the Certificate of Incorporation, in that order, shall prevail, and each Owner of a Lot or Dwelling by acceptance of a deed or other conveyance therefor, grants to the Board a power of attorney to vote in favor of such amendments as will remove such conflicts or inconsistencies. The Association may exercise any other right or privilege given to it expressly by this Declaration or by law, together with every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. Such powers of the Association shall include, but shall not be limited to, the power to purchase or otherwise receive title to one or more Lots, Dwellings, or Common Areas and to hold, lease, mortgage, sell, and convey the same. Such powers include, but shall not be limited to, arranging with governmental agencies, public service districts, public or private utilities, or others, as a Common Expense or by billing directly to Owners of Lots and Dwellings, to furnish trash collections, water, sewer, and/or security service or a security guard for the Common Areas and/or the Lots, and/or Dwellings. Notwithstanding the provisions of this Declaration to the contrary, unless and until Declarant relinquishes the right to appoint and remove members of the Board as provided under Section 11.01, as long as Declarant or any Declarant Owner shall own any Lot or Dwelling primarily for the purpose of sale, the Association shall not, without the consent of Declarant, borrow money or pledge, mortgage, or hypothecate all or any portion of the Common Areas.

7.03 Agreements. Subject to the prior approval of Declarant as long as Declarant or any Declarant Owner owns a Lot or Dwelling primarily for the purpose of sale, all agreements and actions lawfully authorized by the Board of Directors shall be binding upon all Owners, their heirs, legal representatives, successors, and assigns, and all others having an interest in the Development or the privilege of possession and enjoyment of any part of the Development, and,

in performing its responsibilities hereunder, the Association, through its Board of Directors, shall have the authority to delegate to Persons of its choice such duties of the Association as may be determined by the Board of Directors. In furtherance of the foregoing and not in limitation thereof, the Association may obtain and pay for the services of any Person or entity to manage its affairs or any part thereof, to the extent it deems advisable, as well as such other personnel as the Association shall deem necessary or desirable for the proper operation of the Development, whether such personnel are furnished or employed directly by the Association or by any Person or entity with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be a Common Expense. During the term of such management agreement, such manager may, if authorized by the Board of Directors, exercise all of the powers and shall be responsible for the performance of all the duties of the Association, excepting any of those powers or duties specifically and exclusively reserved to the directors, officers, or members of the Association by this Declaration or the Bylaws. Such manager may be an individual, corporation, or other legal entity, as the Board of Directors shall determine, and may be bonded in such a manner as the Board of Directors may require, with the cost of acquiring any such bond to be a Common Expense. In addition, the Association may pay for, and the Board of Directors may hire and contract for, such legal, accounting and other professional services as are necessary or desirable in connection with the operation of the Development or the enforcement of this Declaration, the Bylaws, or the rules and regulations of the Association.

7.04 Personal Property and Real Property for Common Use. The Association, through action of its Board of Directors, may acquire and hold tangible and intangible personal property and real property and may dispose of the same by sale or otherwise. All funds received and title to all properties acquired by the Association and the proceeds thereof, after deducting therefrom the costs incurred by the Association in acquiring or selling the same, shall be held by and for the benefit of the Association.

7.05 Rules and Regulations. As provided in Article 10 hereof, the Association, through its Board of Directors, may make and enforce reasonable rules and regulations governing the sale of the Lots, and Dwellings, which rules and regulations shall be consistent with the rights and duties established by this Declaration.

ARTICLE 8

ASSESSMENTS

8.01 Purpose of Assessments. The Assessments for Common Expenses provided for herein shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment of the Owners and Occupants of the Development and maintaining the Development and improvements therein, all as may be more specifically authorized from time to time by the Board of Directors.

8.02 Creation of Lien and Personal Obligation of Assessments. Each Owner of a Lot or Dwelling, by acceptance of a deed or other conveyance thereof, whether or not it shall be so expressed in such deed or conveyance, is deemed to covenant and agree to pay to the

Association: (i) annual Assessments to be established and collected as provided in Section 8.03 hereof, (ii) special Assessments to be established and collected as provided in Section 8.05 hereof, (iii) individual or specific Assessments against any particular Lot or Dwelling, which are established pursuant to the terms of this Declaration, including, but not limited to, as may be imposed against such Lot or Dwelling, in accordance with Article 10 hereof. Any such Assessments, together with late charges, simple interest at eighteen percent (18%) per annum, and court costs and attorneys' fees incurred to enforce or collect such Assessments, shall be an equitable charge and a continuing lien upon the Lot or Dwelling, the Owner of which is responsible for payment. Each Owner shall be personally liable for Assessments coming due while he or she is the Owner of a Lot or Dwelling, and his or her grantee shall take title to such Lot or Dwelling subject to the equitable charge and continuing lien therefor, but without prejudice to the rights of such grantee to recover from his or her grantor any amounts paid by such grantee therefore. In the event of co-ownership of any Lot or Dwelling, all of such co-owners shall be jointly and severally liable for the entire amount of such Assessments. Assessments shall be paid in such manner and on such dates as may be fixed by the Board of Directors; provided that, unless otherwise provided by the Board, the annual Assessments shall be paid in advance at the beginning of the fiscal year of the Association. The Declarant shall not pay any Assessments for Lots or Dwellings owned by Declarant.

8.03 Computation of Annual Assessments. It shall be the duty of the Board at least thirty (30) days prior to the Association's annual meeting to prepare a budget covering the estimated Common Expenses during the coming year, such budget to include a capital contribution or reserve account if necessary for the capital needs of the Association. The Board shall cause a copy of the budget and the proposed total of the annual Assessments to be levied against Lots and Dwellings for the following year to be delivered to each Owner at least fifteen (15) days prior to such meeting. The budget and the annual Assessments shall become effective unless disapproved at the annual meeting by either: (i) Declarant, as long as Declarant has the authority to appoint and remove directors and officers of the Association pursuant to Article 11, or (ii) a vote of a majority of the votes of the Owners in Class A and Class B, if applicable, who are voting in Person or by proxy at such meeting. Notwithstanding the foregoing, in the event the proposed budget is not approved or the Board fails for any reason to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided herein, the budget and annual Assessments in effect for the then current year shall be increased in proportion by the greater of either ten (10%) percent of the budget and annual Assessments for the previous year or by the percentage increase, if any, of the Consumer Price Index (all Urban Consumers, United States City Average, All Items 1982-1984=100, or its successor index) over the preceding year, and such increased budget shall be implemented for the succeeding year, until a new budget shall have been approved as provided above. If any budget at any time proves inadequate for any reason, then the Board may call a meeting of the Association for the approval of a special Assessment as provided in Section 8.05 hereof. The Owner of each Lot or Dwelling shall pay annual Assessments, if any, beginning on January 1, 2013. Class A members shall pay an amount not less than \$ 650.00 per lot or Dwelling.

8.04 Common Expenses. The Common Expenses to be funded by the annual Assessments may include, but shall not necessarily be limited to, the following: (i) Management fees and expenses of administration, including legal and accounting fees; (ii) Utility charges for utilities serving the Common Areas and charges for other common services for the Development, including trash collection and security services, if any such services or charges are provided or paid by the Association; (iii) The cost of any policies of insurance purchased for the benefit of the Association as required or permitted by this Declaration, including fire, flood, and other hazard coverage, public liability coverage, and such other insurance coverage as the Board of Directors determines to be in the interests of the Association; (iv) The expenses of maintenance, operation, and repair of those portions of the Common Areas which are the responsibility of the Association under the provisions of this Declaration; (v) The expenses of maintenance, operation, and repair of other amenities and facilities serving the Development, the maintenance, operation, and repair of which the Board from time to time determines to be in the best interest of the Association; (vi) The expenses of the Committee which are not defrayed by plan review charges; (vii) Ad valorem real and personal property taxes assessed and levied against the Common Areas; (viii) The expenses for conducting recreational, cultural, or other related programs for the benefit of the Owners and their families, tenants, guests, and invitees; (ix) Such other expenses as may be determined from time to time by the Board of Directors to be Common Expenses, including, without limitation, taxes and governmental charges not separately assessed against Lots or Dwellings; (x) The expenses of maintenance, operation, repair and reconstruction of any and all roadways, pathways, trails, lakes, waterways and landscaped areas within the Property and additional property which have not been designated as Common Areas but which have been conveyed to, and accepted by, the Association; (xi) All expenses associated with the acquisition and employment of individuals or entities supplying security services to the Association on behalf of the Owners of Lots and Dwellings within the Development; and (xii) The establishment and maintenance of a reasonable reserve fund or funds: (a) for maintenance, repair, and replacement of those portions of the Common Areas which are the responsibility of the Association and which must be maintained, repaired, or replaced on a periodic basis; (b) to cover emergencies and repairs required as a result of casualties which are not funded by insurance proceeds; and (c) to cover unforeseen operating contingencies or deficiencies arising from unpaid Assessments or liens, as well as from emergency expenditures and other matters, all as may be authorized from time to time by the Board of Directors.

8.05 Special Assessments. In addition to the annual Assessments authorized above, the Association, acting through its Board of Directors, may levy, in any assessment year, special Assessments for Common Expenses, applicable to that year only; provided that, any such Assessments shall be approved by: (i) Declarant, as long as Declarant or any Declarant Owner owns any Lot or Dwelling primarily for the purpose of sale, and (ii) by a majority vote of the Owners who are entitled to vote in Person or by proxy in Class A and Class B at a meeting duly called for this purpose in accordance with the provisions of Section 8.07 hereof. The Board of Directors may make such special Assessments payable in installments over a period which may, in the Board's discretion, extend in excess of the fiscal year in which adopted. Such special Assessments are to be prorated among the Lots and Dwellings as provided with respect to annual Assessments.

8.06 Individual Assessments. Any expenses of the Association occasioned by the conduct of less than all of the Owners or by the family, tenants, agents, guests, or invitees of any Owner shall be specially assessed against such Owners and their respective Lots or Dwellings. The individual Assessments provided in this Section 8.06 shall be levied by the Board of Directors, and the amount and due date of such Assessments so levied by the Board shall be as specified by the Board.

8.07 Notice of Meeting and Quorum. Written notice of the annual meeting of the Association, as well as any other meeting called for the purpose of taking any action authorized under this Article 8, shall be sent to all Owners not less than fifteen (15) days or more than forty-five (45) days in advance of such meetings. With respect to annual meetings, the presence of Owners or proxies entitled to cast over one-half ($\frac{1}{2}$) of all the votes in Class A and Class B of the Association shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be the presence in person or by proxy of Owners having one-third ($\frac{1}{3}$) of the total votes of Class A and Class B of the Association. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

8.08 Liens. All sums assessed against any Lot or Dwelling pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges, and interest as provided herein, shall be secured by an equitable charge and continuing lien on such Lot or Dwelling in favor of the Association. Such liens shall be superior to all other liens and encumbrances on such Lot or Dwelling except only for: (i) liens of ad valorem taxes, and (ii) liens for all sums unpaid on a prior Mortgage or on any Mortgage of Declarant, or its affiliates, successors, or assigns, and all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument.

8.09 Effect of Nonpayment: Remedies of the Association. Any Assessment or charge of an Owner or any portion thereof that is not paid when due shall be considered delinquent. Any Assessment or charge that is delinquent for a period of more than ten (10) days after the date when due shall incur a later charge in an amount as may be determined by the Board from time to time, but not to exceed five percent (5%) of the amount due, and shall also commence to accrue simple interest at the rate of eighteen percent (18%) per annum. A lien and equitable charge as herein provided for each Assessment or charge shall attach simultaneously as the same shall become due and payable, and if an Assessment or charge has not been paid within thirty (30) days, the entire unpaid balance of the Assessment or charge may be accelerated at the option of the Board and be declared due and payable in full. The continuing lien and equitable charge of such Assessment or charge shall include any late charge established by the Board of Directors, as provided above, interest on the principal amount due at the rate of eighteen percent (18%) per annum and all costs of collection (including reasonable attorneys' fees and court costs), and any other amounts provided or permitted hereunder or by law. In the event that the Assessment or charge remains unpaid after sixty (60) days from the original due date, the Association may, as the Board shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided in this Article shall be in favor of the Association, and each Owner, by his or her acceptance of a deed or other conveyance to a Lot or Dwelling vests in the

Association, and its agents the right and power to bring all actions against him or her personally for the collection of such Assessments and charges as a debt and/or to foreclose the aforesaid lien in the same manner as other liens for the improvement of real property. The Association shall have the power to bid on the Lot or Dwelling at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. No Owner may waive or otherwise escape liability for the Assessments and charges provided herein, including by way of illustration but not limitation, non-use of the Common Areas or abandonment of his or her Lot or Dwelling, and an Owner shall remain personally liable for Assessments, charges, interest, and late charges which accrue prior to a sale, transfer, or other conveyance of his or her Lot or Dwelling.

8.10 Certificate. The Treasurer, Assistant Treasurer or the manager of the Association shall, within ten (10) days of a written request and upon payment of such fee as is from time to time determined by the Board of Directors, furnish to any Owner or Mortgagee which requests the same, a certificate in writing signed by said Treasurer, Assistant Treasurer, or manager setting forth whether the Assessments and charges for which such Owner is responsible have been paid and, if not paid, the outstanding amount due and owing, together with accrued interest, and other penalty charges. Such certificate shall be conclusive evidence, against all but such Owner, of payment of any Assessments and charges stated therein to have been paid.

8.11 Assessments Against Declarant or Declarant Owners. Notwithstanding anything contained herein, neither the Declarant nor any Declarant Owner shall be required to pay any Assessments for any Lot, Dwelling or for any Common Areas owned by Declarant or any Declarant Owner.

ARTICLE 9

ARCHITECTURAL STANDARDS AND USE RESTRICTIONS

9.01 Purpose. In order to preserve the natural setting and beauty of the Development, to establish and preserve a harmonious and aesthetically pleasing design for the Development, and to protect and promote the value of the Development, the Lots, Dwellings, and all improvements located therein or thereon shall be subject to the restrictions set forth in this Article 9. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees to be bound by the provisions of this Article 9.

9.02 Architectural Standards Committee. The Board of Directors shall establish the Architectural Standards Committee, hereinafter the “Committee” of not less than three (3) Owners. Upon the recording of this Declaration, the Declarant or the Declarant’s designated representative, at its option, shall serve as the initial Committee and shall continue to function and administer the provisions of this Declaration until all of the Lots are sold and construction has been completed on all such Lots, at which time the Board of Directors shall establish a separate Committee as provided in this Section 9.02. During the tenure of the designees of Declarant as the Committee, the Committee shall possess all of the rights and powers and shall undertake all of the obligations and duties as set forth in this Article 9; provided, however, that at the Declarant’s option, Declarant may appoint an owner of a Dwelling as an advisory member of

the Committee without vote. Any member appointed by the Board may be removed with or without cause by the Board at any time by written notice to such appointee, and a successor or successors appointed to fill such vacancy shall serve the remainder of the term of the former member. The Committee shall elect a chairman and he or she shall be the presiding officer at its meetings. The Committee shall meet as necessary to carry out its business and promptly decide upon plans submitted to it, as well as upon call of the chairman, and all meetings shall be held at such places as may be designated by the chairman. A majority of the members of the Committee shall constitute a quorum for the transaction of business. An affirmative vote of a majority of those present in person or by proxy at a meeting of the Committee shall constitute the action of the Committee on any matter before it. The Committee is authorized to retain the services of consulting architects, landscape architects, urban designers, engineers, inspectors, attorneys, and/or other professionals in order to advise and assist the Committee in performing its functions set forth herein. The Committee is hereby empowered to establish and promulgate building guidelines that are no less restrictive than the requirements than the requirements of these covenants (herein, the requirements of these covenants and any adopted building guidelines are referred to herein as "Building Guidelines") and architectural and landscaping policies and procedures to which all Owners must adhere, with the exception of Declarant, in undertaking any improvement within any Lot, Dwelling, or Common Area.

9.03 Permitted Improvements. No improvements of any nature whatsoever shall be constructed, altered, added to, or maintained upon any part of the Development, without the prior written approval of the Committee, except: (i) for Dwellings and other improvements which are constructed by Declarant, (ii) such improvements as are approved by the Committee in accordance with this Article 9, or (iii) improvements which pursuant to this Article 9 do not require the consent of the Committee.

9.04 Construction of Improvements.

9.04.01 Set-back Requirements; Location of Improvements. All buildings, structures, or other improvements (excepting sidewalks and driveways) on or with respect to any Lot or Dwelling shall be constructed in accordance with the Building Guidelines established by the Committee from time to time and shall be located only within the set-back lines specified on the plats thereof recorded at the time of submission of said Lots or Dwellings to this Declaration; provided that the Committee shall be empowered to grant variances with respect to such set-back lines. No building, structure or other improvements (excepting sidewalks and driveways), or any part thereof, with respect to any Lot or Dwelling shall be located nearer to any front lot line than 25 feet. No building, structure or other improvements (excepting sidewalks and driveways), or any part thereof, with respect to any Lot or Dwelling shall be located nearer to any side lot line than 5 feet. No building, structure or other improvements (excepting sidewalks and driveways), or any part thereof, with respect to any Lot or Dwelling shall be located nearer to any rear lot line than 20 feet. To assure that Dwellings and other structures will be located so that the maximum view, privacy, and breeze will be available to each Dwelling or structure, Dwellings and structures will be located with regard to the topography of each Lot and Dwelling, and taking into consideration the location of trees and

vegetation and other aesthetic and environmental considerations, as well as the precise site and location of any other Dwellings or structures within the Development.

9.04.02 Payment and Performance Bonds. The Committee, in its sole discretion, may require that any Owner, contractor and/or subcontractor for any planned improvements within the Development post payment and/or performance bonds with the Committee to ensure that such contractor or subcontractor shall satisfactorily complete such improvements, or to cover any repairs to the Common Area necessitated by construction activity. Such bonds shall be in the name of the Association and to be in form and amount satisfactory to the Committee. Furthermore, the Committee, in its sole discretion, may require that an Owner place in escrow with the Committee a sum of no more than Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) in order to ensure that completion of all improvements, including landscaping, in accordance with this Section 9.04 and in Section 9.06 hereof.

9.04.03 Commencement and Completion of Construction of Improvements. The exterior of any improvements shall be commenced no later than twenty-four (24) months from the date of purchase of the Lot. The exterior of any improvements permitted by this Declaration shall be completed and a Certificate of Occupancy shall be obtained within eighteen (18) months after the construction of same shall have been commenced, except where the Committee allows for an extension of time because such completion within such time is impossible or would result in great hardship to the Owner or builder thereof due to strikes, national emergencies, fires, floods, lightning, earthquakes, or other casualties. In the event that such improvements or landscaping are not completed within the provided periods, the Committee shall be entitled to collect on or enforce any payment or performance bonds required hereunder so as to ensure the proper completion of any such improvements. Furthermore, the Committee shall be entitled to retain any sums so held in for such failure to complete, and such sums shall be remitted to and shall be the property of the Association. Any such sums so held in accordance with this Section shall, at the discretion of the Committee, be invested so as to earn interest, and any interest earned thereon shall be paid to the Owner making such deposit, if his or her deposit is refunded, or if remitted to the Association shall be the property of the Association.

9.04.04 Maintenance of Lot During Construction Activities. The Owner of any Lot or Dwelling shall require his or her contractors to maintain the Lot or Dwelling, in a reasonably clean and uncluttered condition and all construction trash and debris shall be kept within refuse containers. Upon completion of construction, such Owner shall cause his or her contractors to immediately remove all equipment, tools, and construction material and debris from the Lot or Dwelling on which such construction has been completed.

9.05 Architectural Approval. To preserve the architectural and aesthetic appearance of the Development, no construction of improvements of any nature whatsoever shall be commenced or maintained by any Owner other than Declarant or a Declarant Owner, with respect to the construction of the exterior of any Dwelling or with respect to any other portion of the Development, including, without limitation, the construction or installation of sidewalks, driveways, parking lots, mail boxes, decks, patios, courtyards, swimming pools, tennis courts,

greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servants quarters, or other outbuildings, nor shall any exterior addition to or change or alteration therein be made, unless and until three (3) copies of the plans and specifications and related data shall have been submitted to and approved in writing, as to: (i) the harmony of external design; (ii) location; (iii) quality of design, workmanship and materials; (iv) appearance in relation to surrounding structures and topography; and (v) architectural uniformity with surrounding structures including the Dwelling, by the Committee. The Committee shall have the sole discretion to determine whether plans and specifications submitted for approval are acceptable to the Association. In connection with approval rights and to prevent excessive drainage or surface water run-off, the Committee shall have the right to establish a maximum percentage of a Lot or Dwelling which may be covered by Dwellings, buildings, structures, or other improvements, which standards shall be promulgated on the basis of topography, percolation rate of the soil, soil types and conditions, vegetation cover, and other environmental factors. Following approval of any plans and specifications by the Committee, representatives of the Committee shall have the right during reasonable hours to enter upon and inspect any Lot or Dwelling, or other improvements with respect to which construction is underway to determine whether or not the plans and specifications therefore have been approved or whether or not construction is in compliance with approved plans. In the event that Committee shall determine that such plans and specifications have not been approved or construction is not in compliance with approved plans, the Committee shall be entitled to enjoin further construction and to require the removal or correction of any work in place which does not comply with approved plans and specifications. Refusal of approval of plans and specifications may be based by the Committee upon any ground which is consistent with the objects and purposes of this Declaration, including purely aesthetic considerations, so long as such grounds are not arbitrary or capricious.

9.06 Landscaping.

9.06.01 Trees. Unless located within five (5) feet of a building or a recreational or parking facility, no trees, shrubs, bushes, or other vegetation having a trunk diameter of three (3) inches or more at a point of four (4) feet above ground level, shall be cut, removed or mutilated by any Owner without obtaining the prior approval of the Committee; provided that dead or diseased trees which are inspected and certified as dead or diseased by the Committee or its representatives, as well as other dead or diseased shrubs, bushes, or other vegetation shall be cut and removed promptly from any Lot or Dwelling by the Owner of such Lot or Dwelling, as the case may be. If any Owner removes such a tree without the approval of the Committee as herein provided, the Owner shall replace the same with a tree of comparable value. In the event the Owner fails within thirty (30) days to satisfactorily replace the tree, the Owner shall pay the Association an assessment on demand in an amount not to exceed Two Thousand Five Hundred and No/100 Dollars (\$2,500.00) per lost tree, and the Association shall have the right to enter the Property for the purpose of replacing the tree. Said assessment will become a lien on the property of the Owner, and all provisions relative to Assessments herein shall apply to these Assessments.

9.06.02 Required Amount of Landscaping. Excluding the cost of purchase and installation of a sprinkler system and sod and excluding the cost of any retaining walls and fill, after construction of the initial Dwelling on a Lot, all Owners shall spend not less than one percent (1%) of the total purchase price for the Lot and Dwelling combined on landscaping, pursuant to the terms and conditions of this Section 9.06.

9.06.03 Approval Required. To preserve the aesthetic appearance of the Development, no landscaping, grading, excavation, or filling of any nature whatsoever shall be implemented and installed by any Owner other than Declarant, unless and until the plans therefore have been submitted to and approved in writing by the Committee. The provisions of Section 9.05 hereof regarding time for approval of plans, right to inspect, right to enjoin and/or require removal, etc. shall also be applicable to any proposed landscaping, clearing, grading, excavation, or filling. Such plans shall include a grading plan and calculation of the ratio of the area to be covered by grass lawns versus the area to be used otherwise, and the Committee shall be entitled to promulgate standards with respect to such ratios. Such landscape and grading plans shall be reviewed and approved with consideration to the harmony of the proposed landscape design to the environmental character in the surrounding area, integration of any structures and proposed landscaping to the character and nature of the surrounding area, the preservation of natural drainage patterns, the visual impact to surrounding areas and the establishment of adequate and sufficient shading and buffering with regard to the individual Lot or Dwelling to the surrounding area.

9.06.04 Completion of Landscaping. All of the landscaping of Lots and Dwellings must be completed within one (1) month of occupancy or substantial completion of the Dwelling, whichever date shall first occur.

9.07 Approval Not a Guarantee. No approval of plans and specifications and no publication of architectural standards and Building Guidelines shall be construed as representing or implying that such plans, specifications, or standards will, if followed, result in properly designed improvements. Such approvals and standards shall in no event be construed as representing or guaranteeing that any Dwelling or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither Declarant, the Association, nor the Committee shall be responsible or liable for any defects in any plans or specifications submitted, revised, or approved pursuant to the terms of this Article 9, nor any defects in construction undertaken pursuant to such plans and specifications.

9.08 Exterior Appearance.

9.08.01 Window Treatments; Heat and Air Units; No clotheslines. No foil or other reflective materials shall be used on any windows for sunscreens, blinds, shades, or other purposes, and all window treatments for all Dwellings and other buildings and improvements within the Development shall conform to rules and regulations established by the Committee.

9.08.02 Window-mounted Heating and Air Units. No window-mounted heating or air-conditioning units shall be permitted within the Development.

9.08.03 Clotheslines. Except within screened service yards, outside clotheslines or other outside facilities for drying or airing clothes are specifically prohibited and shall not be erected, placed, or maintained, nor shall any clothing, rugs, or other item be hung on any railing, fence, hedge, or wall.

9.09 Signs. Except as may be required by legal proceedings, no signs or advertising posters of any kind shall be maintained or permitted within any windows or on the exterior of any improvements located within the Development, without the express written permission of the Committee. The approval of any signs and posters, including, without limitation, name and address signs, shall be upon such conditions as may be from time to time determined by the Committee and may be arbitrarily withheld. Notwithstanding the foregoing, the restrictions of this Section 9.09 shall not apply to Declarant or Declarant Owners. In addition, the Board of Directors, on behalf of the Association, shall have the right to erect reasonable and appropriate signs on any portion of the Common Areas.

9.10 Unauthorized Signs. Any signs or posters displayed within the Development in violation of Section 9.09 may be reviewed by Declarant, and Declarant shall have the right to enter upon the premises where such signs or posters are displayed for the purpose of removing the unauthorized sign or poster without it being deemed a trespass.

9.11 Antennas. No television antenna, radio or television receiver, or other similar device shall be attached to or installed on any portion of the Development, unless contained entirely within the interior of a building or other structure, nor shall radio or television signals, nor any other form of electromagnetic radiation, be permitted to originate from any Lot or Dwelling which may unreasonably interfere with the reception of television or radio signals within the Development; provided, however, the Declarant and the Association shall not be prohibited from installing equipment necessary for master antenna, security, cable television, mobile radio, or other similar systems within the Development. Notwithstanding the foregoing, satellite dishes may be installed provided such dishes are not within sight of the front elevation of the Dwelling and not more than thirty-six (36) inches in diameter.

9.12 Pets. No livestock shall be maintained on or in any of the Development. No other animals, including but not limited to, birds, fowl, poultry, fish or reptiles, shall be maintained on or in any of the Development, other than a maximum of three (3) generally recognized house or yard pets, and then only if they are kept, bred, or raised thereon solely as domestic pets and not for commercial purposes. No animal which makes an unreasonable amount of noise or is a nuisance shall be permitted. When outdoors all pets shall be on a leash, or shall be restrained by a fence or other suitable device. No structure for the care, housing, exercise or confinement of any animal shall be maintained on or in any of the Development so as to be visible from neighboring property without the prior written consent of the Committee. Upon the written request of any Owner, the Committee may conclusively determine, in its sole and absolute

discretion, whether, for the purposes of this Section, a particular animal is a generally recognized house or yard pet, or a nuisance, or whether the number of animals on any such property is reasonable; provided however, that horses, mules, donkeys, cattle, pigs, goats and sheep shall not be considered as house or yard pets hereunder. The Committee may from time to time establish rules and regulations regarding pets and animals within the Development, and any decision, rule or regulation established or rendered by the Committee shall be enforceable as other restrictions contained herein.

9.13 Nuisances. No rubbish or debris of any kind shall be dumped, placed, or permitted to accumulate upon any portion of the Development, nor shall any nuisance or odors be permitted to exist or operate upon or arise from the Development, so as to render any portion thereof unsanitary, unsightly, offensive, or detrimental to Persons using or occupying any other portions of the Development. Noxious or offensive activities shall not be permitted on any Lot or Dwelling or in any part of the Common Areas, and each Owner, his or her family, tenants, guests, invitees, servants, and agents shall refrain from any act or use of a Lot or Dwelling or of the Common Areas which could cause disorderly, unsightly, or unkempt conditions, or which could cause embarrassment, discomfort, annoyance, or nuisance to the Occupants of other portions of the Development or which could result in a cancellation of any insurance for any portion of the Development, or which would be in violation of any law or governmental code or regulation. Any waste, garbage, or refuse materials produced, occurring or resulting from the permitted activities conducted within any portion of the Property shall be stored, processed and transported away from the Property in a safe, neat, clean, efficient, healthy and sanitary manner. Any and all streets, roadways, driveways, and right-of-ways, including Common Area, shall be kept and maintained in a clean, safe, neat and efficient manner. All such streets, driveways, walkways, and right-of-ways shall be kept reasonable clean and free of leaves, limbs, excess soil and any and all other types of debris.

9.14 Motor Vehicles, Trailer, Boats, Etc. Each Owner shall provide for parking of automobiles off of streets, roads and driveways within the Development prior to occupancy of the Dwelling owned or maintained by such Owner. Personal vehicles of Owners and their guests may be temporarily parked in driveways or on the street, but Owners shall not park such vehicles in their driveways on a regular basis unless fully enclosed in a garage or on the street overnight. Subject to the terms of this Section, except wholly enclosed within a garage which has been approved by the Committee, there shall be no outside storage or overnight parking upon any Lot, street within the Development, Dwelling, or within any portion of the Common Areas of any mobile home, trailer (either with or without wheels), motor home, tractor, truck (other than standard size or compact pick-up trucks), camper, motorized camper or trailer, boat or other watercraft, boat trailer, or any other related forms of transportation devices. Commercial vehicles are also prohibited from outside storage or parking, unless such vehicles are cars, standard size vans, or standard or compact size pick-up trucks and unless such vehicles are parked or stored **within adequately screened areas as determined in writing, in advance by the Committee.** Furthermore, although not expressly prohibited hereby, the Board of Directors may at any time prohibit mobile homes, motor homes, campers, trailers of any kind, motorcycles, motorized bicycles, motorized go-carts, and other similar vehicles, or any of them, from being

kept, placed, stored, maintained, or operated upon any portion of the Development if in the opinion of the Board of Directors such prohibition shall be in the best interest of the Development. No Owners or other Occupants of any portion of the Development shall repair or restore any vehicle of any kind upon or within any Lot or Dwelling or within any portion of the Common Areas, except: (i) within enclosed garages or workshops, or (ii) for emergency repairs, and then only to the extent necessary to enable the movement thereof to a proper repair facility.

9.15 Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, it shall be expressly permissible for Declarant and its agents, employees, successors, and assigns to maintain and carry on such facilities and activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Lots and/or Dwellings or the developing of Lots, Dwellings, and Common Areas in the Development, including, without limitation, the installation and operation of construction trailers and sales offices, signs and model Dwellings; provided that the location of any construction trailers of any assignees of Declarant under this Section 9.15 shall be subject to Declarant's approval. **The right to maintain and carry on such facilities and activities shall include specifically the right to use Dwellings as model residences, and to use any Dwelling as an office for the sale of Lots and/or Dwellings and for related activities.**

9.16 Driveways. Private driveways from the street to a Lot, Dwelling, or other improvements located on any Lot or garage and carport parking areas shall be concrete or other hard-surface approved by the Committee and shall be continuously maintained so as to avoid unsightly deterioration and the growth of the grass or any other plant on or through such surface. No driveway shall be constructed or altered without the prior written approval of the Committee, which shall consider the appearance, design and materials of said driveway and the effect the driveway may have on drainage affecting the Common Areas or any other Lot, or Dwelling.

9.17 Easements and Tenants. No Lot shall be further subdivided or separated into smaller lots or parcels by an Owner other than Declarant. No easement or other such partial interest in a Lot shall be conveyed or transferred by any Owner other than Declarant without the prior written approval of the Committee. No portion of a Lot, but for the entire Lot, together with the improvements thereon, may be rented to any tenant without the express written consent of the Board.

9.18 Grading and Excavation. No improvement shall be constructed or maintained upon any Lot or Dwelling, without the prior written approval of the Committee which would in any way impede natural drainage. No grading, scraping, excavation or other rearranging or puncturing of any surface of any Lot or Dwelling, without the prior written approval of the Committee shall be commenced which will or may tend to interfere with, encroach upon or alter, disturb or damage any surface or subsurface utility line, pipe, wire, or easement. Any such interference, encroachment, alteration, disturbance, or damage due to the negligence or intentional act of an Owner or his or her agents, contractors, or representatives will be the responsibility of such Owner and the owner of the line, pipe, wire, or easement, the Association or the Declarant may effect all necessary repairs and charge the cost of the same to such Owner.

All grading and excavation should be completed in such a manner to minimize damage to the root systems of existing trees. All cutting, crushing, compacting and/or covering roots of trees should be minimized.

9.19 Repair of Buildings. No building or structure upon any property within the Development shall be permitted to fall into disrepair, and each such building and structures shall at all times be kept in good condition and repair and adequately painted or otherwise finished.

9.20 Mineral Exploration. No property within the Development shall be used in any manner to explore for or to remove any oil or other hydrocarbons, minerals of any kind, gravel, or substantial amounts of earth or any earth substance of any kind for commercial purposes.

9.21 Machinery and Equipment. No machinery or equipment of any kind shall be operated upon or adjacent to any Lot except such machinery or equipment as is customary in connection with the approved use, maintenance, or construction of improvements, appurtenant structures, or other improvements. No machinery or equipment of any kind shall be parked, placed, maintained, constructed, reconstructed, or repaired upon any Lots in such a manner as will be visible from neighboring property; provided, however, that the provisions of this Section shall not apply to machinery and equipment which are actually in temporary use in conjunction with the maintenance or construction of a Dwelling, appurtenant structure or other improvements.

9.22 Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, and radio signals, shall be erected, placed or maintained anywhere in or upon any Lot or Dwelling unless the same shall be contained in conduits or cables installed and maintained underground or concealed in, under or on buildings, or other structures, or otherwise are not visible from neighboring property, unless underground distribution systems are not available. No provisions hereof shall be deemed to forbid: (i) the erection of temporary power or telephone structures incident to the construction of improvements approved by the Committee, or (ii) the installation of overhead lines bringing utility service from outside the Development to a utility pole located within the Development; provided, that the utility service must go underground from such pole and that the location of such is approved in advance by the Committee.

9.23 Fluid Storage. No tank for the storage of any fluid may be maintained outside a building above the ground on any of the Lots or Dwellings without the prior consent of the Committee.

9.24 Waste Disposal Systems. All waste disposal systems shall be aerobic, and all components thereof, shall be installed and maintained in accordance with the currently applicable City, County, State and Federal laws, rules, regulations and codes.

9.25 Additional Architectural Covenants.

9.25.01 Square Footage; Stories. No Dwelling or other structure shall be constructed on any Lot which has a height exceeding two (2) stories. All Dwellings constructed on Lots shall have a minimum of 1400 square feet of living space (heated dwelling space). All Dwellings and structures constructed on Lots which possess multiple floors shall contain a minimum of 1400 square feet of living space (heated dwelling space) within the first floor of any such Dwellings.

9.25.02 Exterior Materials; Paint Colors. The principal material, other than glass, of the exterior of each wall in all the buildings comprising the Dwelling on any Lot shall not be less than seventy-five percent (75%) brick, stone, stucco or concrete stucco unless the Committee grants specific approval in writing to a lesser percentage.

9.25.03 Roofs. Acceptable roofing materials include composition shingles with a minimum of a thirty (30) year roof. All roofs shall be weathered wood or a similar color as approved by the Committee. All roofs shall be constructed with a high profile ridge and a painted open W-valley. All roofs shall have a pitch of not less than 5/12 except for a reasonable amount of covered exterior patio, which may be of lesser pitch.

9.25.04 Mailbox. All Dwellings must possess a mailbox constructed of Iron Material, the design, style and location of which are to be approved in advance by the Committee.

9.25.05 Pools. Above ground pools shall not be allowed, other than small, movable children's pools with a capacity of 150 gallons or less which shall be located only in the back yard of any Dwelling.

9.25.06 Fences. Notwithstanding Section 9.05, chain-link fences are not allowed within the Development and will not be approved by the Committee. No fence may be constructed, erected, placed or maintained forward of the front building limit or setback line on each Lot as shown on the recorded plat thereof or as set forth in this Declaration. No double fencing is allowed. The following are generally acceptable types of fences: (A) Wrought iron fences not less than four (4) feet in height; (B) Brick or stone fences that match or complement the materials used in the residence; or (C) Cedar Shadow Box fences with a top rail, stained to match or complement the wood trim of the residence. Types of fences that are not acceptable include standard stockade fences, PVC fences, and cyclone or chain link fences: except plastic-coated chain link fencing material may be used for dog runs within a rear yard provided it is not visible from any neighboring property or from any street. All fences must be approved by the Committee.

9.25.07 Basketball Goals. There shall be no basketball backboards in front of the front building setback line. Otherwise, basketball backboards may be erected in the Development. Each backboard must have a free standing structure supporting it and may not be

attached to a house. The supporting structure must be constructed from rust resistant steel and maintained at all times, i.e., supporting structure to be kept completely painted and free of dirt and any markings giving it an unsightly appearance. A backboard which is cracked must be removed or replaced immediately. The net must be free of all rips and tears and shall be replaced whenever it becomes unsightly. The rim must be kept perpendicular to the backboard in a standard basketball installation.

9.25.08 Garages. Also, all garages must be a minimum of two-car and a maximum of four-car capacity.

9.25.09 Outbuildings. All outbuildings must be approved in advance in writing by the Committee and must match the Dwelling in architecture and exterior appearance, construction materials, windows and roof, including but not limited to a minimum 5/12 roof pitch. No outbuilding may exceed 200 square feet.

9.26 Use of Lots. Each Lot shall be used for single-family residential purposes only, and no trade or business of any kind may be carried on therein. Except for sales offices of Declarant, the utilization of any Dwelling or other structure, or any portion thereof, as an office by any owner or tenant thereof shall be considered to be a violation of this Declaration where such utilization of a Dwelling as an office creates any type of regular customer, client, or employee vehicular or pedestrian traffic to and from any such Dwelling. No Lot or any Dwelling or structure constructed on a Lot, or any portion thereof, shall be used as the office or storage area for any building contractor or real estate developer, except those sales offices of Declarant.

ARTICLE 10

RULE MAKING

10.01 Rules and Regulations. Subject to the provisions hereof, the Board of Directors and/or the Committee may establish reasonable rules and regulations, including Building Guidelines, concerning the use of Lots, Dwellings, and the Common Areas and facilities located thereon. In particular but without limitation, the Board of Directors may promulgate, from time to time, rules and regulations which shall govern activities which may, in the judgment of the Board of Directors, be environmentally hazardous, such as application of fertilizers, pesticides, and other chemicals. Copies of such rules and regulations, including Building Guidelines, and amendments thereto shall be furnished by the Association to all Owners prior to the effective date of such rules and regulations and amendments thereto. Such rules and regulations shall be binding upon the Owners, their families, tenants, guests, invitees, servants, and agents, until and unless any such rule or regulation be specifically overruled, canceled, or modified by the Board of Directors or in a regular or special meeting of the Association by the vote of the Owners, in person or by proxy, holding a majority of the total votes in the Association; provided that in the event of such vote, such action must also be approved by Declarant, for so long as Declarant owns any Lot or Dwelling primarily for the purpose of sale.

10.02 Authority and Enforcement. Subject to the provisions of Section 10.03 hereof, upon the violation of this Declaration, the Bylaws, Building Guidelines or any rules and regulations duly adopted hereunder, including, without limitation, the failure to timely pay any Assessments or charges, the Board shall have the power: (i) to impose reasonable monetary assessments, which shall constitute an equitable charge and a continuing lien upon the Lot or Dwelling, or the Owner, his or her family, tenants, or guests which are guilty of such violation, (ii) to suspend an Owner's right (and the right of such Owner's family, guests, and tenants of such Owner and their respective families, guests, and tenants) to use any of the Common Areas and/or (iii) to suspend voting rights of any such Owner, and the Board shall have the power to impose all or any combination of these sanctions. An Owner shall be subject to the foregoing sanctions in the event of such a violation by such Owner, his or her family, guests, or tenants. Any such suspension of rights may be for the duration of the infraction and for any additional period thereafter, not to exceed thirty (30) days. The Assessments levied and assessed as provided in this Section 10.02 herein shall be a lien upon the applicable Lot or Dwelling in the same manner as that provided for in Sections 8.08 and 8.09 herein. The effect of the non-payment of such Assessments and the remedies of the Association to enforce collection thereof shall be the same as those provisions provided in Section 8.09 herein.

10.03 Procedure. Except with respect to the failure to pay Assessments or charges, the Board shall not impose an assessment, suspend voting rights, or infringe upon or suspend any other rights of an Owner or other Occupant of the Development for violations of the Declaration, the Bylaws, or any rules and regulations, including Building Guidelines, of the Association, unless and until the following procedure is followed:

10.03.01 Demand. Written demand to cease and desist from an alleged violation shall be served upon the Owner responsible for such violation specifying: (a) The alleged violation; (b) The action required to abate the violation; and (c) A time period of not less than ten (10) days during which the violation may be abated without further sanction, if such violation is a continuing one, or, if the violation is not a continuing one, a statement that any further violation of the same provision of this Declaration, the Bylaws, or of the rules and regulation of the Association may result in the imposition of sanctions after notice and hearing.

10.03.02 Notice of Hearing. Within twelve (12) months of such demand, if the violation continues past the period allowed in the demand for abatement without penalty, or if the same violation subsequently occurs, the Board may serve such Owner with written notice of a hearing to be held by the Board in executive session. The notice shall contain: (a) The nature of the alleged violation; (b) The time and place of the hearing, which time shall be not less than ten (10) days from the giving of the notice; (c) An invitation to attend the hearing and produce any statement, evidence, and witnesses on his behalf; and (d) The proposed sanction to be imposed.

10.03.03 Hearing. The hearing shall be held in executive session of the Board of Directors pursuant to the notice and shall afford the alleged violator a reasonable opportunity to be heard. Any sanctions and Assessments levied by the Board of Directors according to the terms and provisions of this Article 10 shall be established by a majority vote of the Directors

present at the above-referenced hearing. No such hearing shall be undertaken with less than a duly constituted quorum of the Board of Directors. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice together with a statement of the date and manner of delivery is entered by the officer, director, or other individual who delivered such notice. The notice requirement shall be deemed satisfied if an alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction imposed, if any.

10.04 Arbitration. The arbitration procedure set forth in this Section will be the sole and exclusive method for resolving and remedying any dispute (a “**Dispute**”) arising under, out of, in connection with, or related to any of the following: this Declaration, or any provision thereof, or the making or validity thereof, or the interpretation thereof, or any violation or breach or alleged violation or breach thereof, or any failure to enforce or alleged failure to enforce. Arbitration shall be conducted in accordance with the Rules of the American Arbitration Association (the “**Rules**”) in Oklahoma City, Oklahoma. Arbitrators will be selected in accordance with the Rules. The determination of the American Arbitration Association as to the resolution of the Dispute shall be binding. The arbitrators shall so conduct the arbitration such that a final result, determination, finding, judgment and/or award (the “**Final Determination**”) is made or rendered as soon as practicable. The Final Determination shall be final and binding on all parties, and there shall be no appeal from or reexamination of the Final Determination, except for fraud, perjury, evident partiality or misconduct by an arbitrator prejudicing the rights of any party and to correct manifest clerical errors. The injured party shall be entitled to payment from the other party immediately upon Final Determination based on the Final Determination whether by payment, settlement, judgment, arbitrator’s decision or other resolution of the claim. The arbitration procedures and any Final Determination under this Section shall be governed by, and shall be enforced pursuant to, applicable Oklahoma law. Notwithstanding anything contained herein to the contrary, nothing in this Section shall prohibit litigation to enforce any Final Determination.

ARTICLE 11

GENERAL PROVISIONS

11.01 Control by Declarant. NOTWITHSTANDING ANY OTHER LANGUAGE OR PROVISION TO THE CONTRARY IN THIS DECLARATION, IN THE CERTIFICATE OF INCORPORATION, OR IN THE BYLAWS OF THE ASSOCIATION, Declarant hereby retains the right to appoint and remove any member or members of the Board of Directors of the Association and any officer or officers of the Association until such time as the first of the following events shall occur: (i) the expiration of twenty (20) years after the date of the recording of this Declaration; or (ii) the surrender by Declarant of the authority to appoint and remove directors and officers of the Association by an express amendment to this Declaration executed and recorded by Declarant; or (iii) Declarant sells one hundred percent (100%) of the Lots in the Development. Each Owner, by acceptance

of a deed to or other conveyance of a Lot or Dwelling vests in Declarant such authority to appoint and remove directors and officers of the Association as provided by this Section 11.01. Every grantee of any interest in the Development, by acceptance of a deed or other conveyance of such interest, agrees that Declarant shall have the authority to appoint and remove directors and officers of the Association in accordance with the foregoing provisions of this Section 11.01. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section 11.01, such right shall pass to the Owners, including Declarant if Declarant then owns one or more Lots or Dwellings, and a special meeting of the Association shall be called within a reasonable time thereafter. At such special meeting the Owners shall elect a new Board of Directors which shall undertake the responsibilities of the Board of Directors, and Declarant shall deliver all books, accounts, and records, if any, which Declarant has kept on behalf of the Association and any agreements or contracts executed by or on behalf of the Association during such period and which Declarant has in its possession.

11.02 Amendments by Declarant. During any period in which Declarant retains the right to appoint and remove any directors and officers of the Association, Declarant may amend this Declaration by an instrument in writing filed and recorded in the records of the Office of the County Clerk of Oklahoma County, Oklahoma, without the approval of any Owner or Mortgagee; provided, however, that: (i) in the event that such amendment materially and adversely alters or changes any Owner's right to the use and enjoyment of his or her Lot or Dwelling, or the Common Areas as set forth in this Declaration or adversely affects the title to any Lot or Dwelling, such amendment shall be valid only upon the written consent thereto by a majority in number of the then existing Owners affected thereby, or (ii) in the event that such amendment would materially and adversely affect the security, title and interest of any Mortgagee, such amendment shall be valid only upon the written consent thereto of all such Mortgagees so affected. Any amendment made pursuant to this Section 11.02 shall be certified by Declarant as having been duly approved by Declarant, and by such Owners and Mortgagees, if required, and shall be effective only upon recordation or at such later date as shall be specified in the amendment itself. Each Owner, by acceptance of a deed or other conveyance to a Lot or Dwelling grants to Declarant a power of attorney to make such amendments as are permitted by this Section 11.02 relating to the Development: (a) if such amendment is necessary to bring any provision hereof or thereof into compliance or conformity with the provisions of any applicable governmental statute, rule, or regulation or any judicial determination which shall be in conflict therewith; (b) if such amendment is necessary to enable any title insurance company to issue title insurance coverage with respect to any Lots or Dwellings subject to this Declaration; (c) if such amendment is required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on a Lot or Dwelling, or other improvements subject to this Declaration; or (d) if any such amendment is necessary to enable any governmental agency or reputable private insurance company to insure Mortgages on the Lots, Dwellings, or other improvements subject to this Declaration.

11.03 Amendments by Association. Amendments to this Declaration, other than those authorized by other Sections hereof, shall be proposed and adopted in the following manner:

11.03.01 Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of the meeting of the Association at which such proposed amendment is to be considered and shall be delivered to each member of the Association.

11.03.02 Approval. At such meeting, a resolution adopting a proposed amendment may be proposed by either the Board of Directors or by the Owners. Such amendment must be approved by the Owners holding at least two-thirds (2/3) of the total votes in the Association in both Class A and Class B, if applicable; provided, however: (a) that any amendment which materially and adversely affects the security title and interest of any Mortgagee must be approved by such Mortgagee, and (b) during any period in which Declarant owns a Lot or Dwelling primarily for the purpose of sale, such amendment must be approved by Declarant.

11.03.03 Effectiveness. The agreement of the required percentage of the Owners and, where required, Declarant and any Mortgagee, to any amendment of this Declaration shall be evidenced by their execution of such amendment. Any such amendment of this Declaration shall become effective only when recorded or at such later date as may be specified in the amendment itself.

11.04 Enforcement. Each Owner shall comply strictly with the Bylaws and the published rules and regulations, including Building Guidelines, of the Association adopted pursuant to this Declaration, as either of the same may be lawfully amended from time to time, and with the covenants, conditions, and restrictions set forth in this Declaration and in the deed or other instrument of conveyance to his or her Lot or Dwelling, if any. Failure to comply with any of the same shall be grounds for imposing Assessments, for suspending voting rights or rights of use in and to any Common Area, or for instituting an action to recover sums due, for damages, and/or for injunctive relief, such actions to be maintainable by Declarant, the Board of Directors on behalf of the Association, or, in a proper case, by an aggrieved Owner. Should Declarant or the Association employ legal counsel to enforce any of the foregoing, all costs incurred in such enforcement, including court costs and attorneys' fees, shall be paid by the violating Owner. Inasmuch as the enforcement of the provisions of this Declaration, the Bylaws, and the rules and regulations of the Association are essential for the effectuation of the general plan of development contemplated hereby and for the protection of present and future Owners, it is hereby declared that any breach thereof may not adequately be compensated by recovery of damages and that Declarant, the Association, or any aggrieved Owner, in addition to all other remedies, may require and shall be entitled to an injunction to restrain any such violation or breach or any threatened violation or breach. No delay, failure, or omission on the part of Declarant, the Association, or any aggrieved Owner in exercising any right, power, or remedy herein provided shall be construed as an acquiescence thereto or shall be deemed a waiver of the right to enforce such right, power, or remedy thereafter as to the same violation or breach, or as to a violation or breach occurring prior or subsequent thereto, and shall not bar or affect its

enforcement. No right of action shall accrue nor shall any action be brought or maintained by anyone whatsoever against Declarant or the Association for or on account of any failure to bring any action on account of any violation or breach, or threatened violation or breach, by any Person of the provisions of this Declaration, the Bylaws, or any rules and regulations of the Association, however long continued.

11.05 Duration. The provisions of this Declaration shall run with the land and shall bind title to the Property, shall be binding upon and inure to the benefit of all Owners and Mortgagees and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect for a period of thirty (30) years from and after the date of the recording of the Declaration; provided that rights and easements which are stated herein to have a longer duration shall have such longer duration. Upon the expiration of said thirty (30) year period, this Declaration shall be automatically renewed for successive ten (10) year renewal period, unless seventy-five percent (75%) of the total votes of the Association are cast in favor of terminating this Declaration at the end of the then current term. In the event that the Association votes to terminate this Declaration, an instrument evidencing such termination, shall be filed of record in the Office of the County Clerk for Oklahoma County, Oklahoma, such instrument to contain a certificate wherein the President of the Association states under oath that such termination was duly adopted by the requisite number of votes. Every Owner of any interest in any Property, by acceptance of a deed or other conveyance therefore, thereby agrees that the provisions of this Declaration shall run with the land and shall bind title to the Property as provided hereby.

11.06 Interpretation. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which, in the opinion of Declarant or the Board of Directors, will best effect the intent of the general plan of the Development. The provisions hereof shall be liberally interpreted, and, if necessary, they shall be so extended or enlarged by implication as to make them fully effective. The provisions of this Declaration shall be given full force and effect notwithstanding the existence of any zoning ordinance or building codes which are less restrictive. The effective date of this Declaration shall be the date of its filing for record in the Office of the County Clerk for Oklahoma County, Oklahoma. The captions of each Article and Section hereof as to the contents of each Article and Section are inserted only for convenience and are in no way to be construed as defining, limiting, extending, or otherwise modifying or adding to the particular Article or Section to which they refer. This Declaration shall be construed under and in accordance with the laws of the State of Oklahoma.

11.07 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or other entities or to individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

11.08 Severability. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be effective and valid, but if the application of any provision of

this Declaration to any Person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and to this end the provisions of this Declaration are declared to be severable.

11.09 Rights of Third Parties. This Declaration shall be recorded for the benefit of Declarant, the Owners, and their Mortgagees as herein provided, and, by such recording, no adjoining property owner, third party or the public shall have any right, title or interest whatsoever in the Development, except as provided herein, or in the operation or continuation thereof or in the enforcement of any of the provisions hereof, and, subject to the rights of Declarant and Mortgagees as herein provided, the Owners shall have the right to extend, modify, amend, or otherwise change the provisions of this Declaration without the consent, permission, or approval of any adjoining owner or third party or the public.

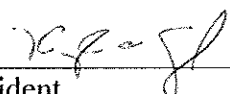
11.10 Notice of Sale, Lease, or Mortgage. In the event an Owner sells, leases, mortgages, or otherwise disposes of any Lot or Dwelling, the Owner must promptly furnish to the Association in writing the name and address of such purchaser, lessee, mortgagee, or transferee.

11.11 No Trespass. Whenever the Association, the Declarant, the Committee, and their respective successors, assigns, agents, or employees are permitted by this Declaration to enter upon or correct, repair, clean, maintain, preserve, or do any other action within any portion of the Development, the entering thereon and the taking of such action shall not be deemed to be trespass or any violation of a covenant of quiet enjoyment.

11.12 Notices. Notices required hereunder shall be in writing and shall be delivered by hand or sent by United States Mail, postage prepaid. All notices to Owners shall be delivered or sent to such addresses as have been designated in writing to the Association, or, if no address has been so designated, at the addresses of such Owners* respective Lots or Dwellings. All notices to the Association shall be delivered or sent in care of Declarant to Declarant's main office, or to such other address as the Association may from time to time notify the Owners. Notices to Mortgagees shall be delivered or sent to such addresses as such Mortgagees specify in writing to the Association.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Declaration, this
23rd day of January, 2013.

BIRNAM WOODS DEVELOPMENT, INC.,
an Oklahoma corporation

By: 
President

STATE OF OKLAHOMA)
)
COUNTY OF OKLAHOMA)

This instrument was acknowledged before me on the 23rd day of January, 2013, by Kyle Copeland as President of BIRNAM WOODS DEVELOPMENT, INC., an Oklahoma corporation, on behalf of the company.

Shula S. Fawcett

Notary Public

My Commission Expires:

8-8-16



EXHIBIT A
BIRNAM WOODS ADDITION
Section One

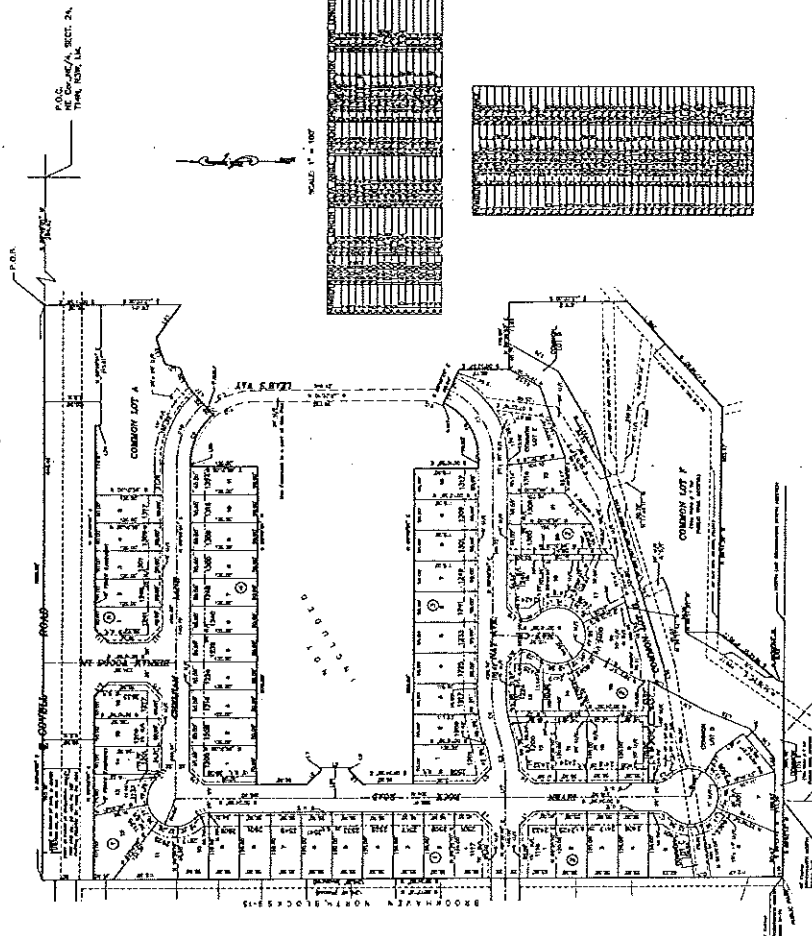
LEGAL DESCRIPTION

See attached plat of Birnam Woods Addition Section 1, an addition to the City of Edmond, Oklahoma County, Oklahoma as filed on 11/29/2012 and prepared by Red Plains Professional, Inc., which is filed in book of plats, book 70, Page 29 of the Office of the County Clerk for Oklahoma County, Oklahoma, and any future revisions, amendments and subdivisions thereof or any subdivision plat for any portion of the Property as may be recorded from time to time in the Office of the County Clerk for Oklahoma County, Oklahoma, and generally located in NE/4 of Section 24, R14N, R3W, I.M.

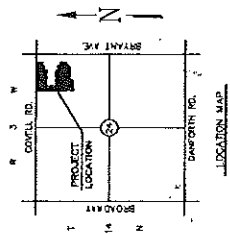
BIRNAM WOODS

SECTION 1

A Part of the NE 1/4, NE 1/4, Section 24, T 14 N, R 3 W, L.M.
Edmond, Oklahoma County, Oklahoma



- NOTES:
1. The plat was prepared by the Edmond City Engineer's Office and is subject to the Edmond City Engineer's Office's review and approval.
 2. The plat was prepared by the Edmond City Engineer's Office and is subject to the Edmond City Engineer's Office's review and approval.
 3. The plat was prepared by the Edmond City Engineer's Office and is subject to the Edmond City Engineer's Office's review and approval.
 4. The plat was prepared by the Edmond City Engineer's Office and is subject to the Edmond City Engineer's Office's review and approval.
 5. The plat was prepared by the Edmond City Engineer's Office and is subject to the Edmond City Engineer's Office's review and approval.
 6. The plat was prepared by the Edmond City Engineer's Office and is subject to the Edmond City Engineer's Office's review and approval.
 7. The plat was prepared by the Edmond City Engineer's Office and is subject to the Edmond City Engineer's Office's review and approval.
 8. The plat was prepared by the Edmond City Engineer's Office and is subject to the Edmond City Engineer's Office's review and approval.
 9. The plat was prepared by the Edmond City Engineer's Office and is subject to the Edmond City Engineer's Office's review and approval.
 10. The plat was prepared by the Edmond City Engineer's Office and is subject to the Edmond City Engineer's Office's review and approval.



OWNER'S CERTIFICATE AND DECLARATION

I, the undersigned, DAN VITRO, LLC, do hereby certify that I am the owner of the property described in the plat and that I have the right to convey the same. I further certify that the plat is a true and correct copy of the original plat as recorded in the public records of Oklahoma County, Oklahoma.

Dated this 11th day of October, 2012.

Dan Vitro
Dan Vitro, LLC

CITY ENGINEER'S CERTIFICATE

I, the undersigned, City Engineer, do hereby certify that the plat is a true and correct copy of the original plat as recorded in the public records of Oklahoma County, Oklahoma. I further certify that the plat is in compliance with the Edmond City Code and the Oklahoma State Code.

Dated this 11th day of October, 2012.

[Signature]
City Engineer

PLAT ATTORNEY'S CERTIFICATE

I, the undersigned, Attorney at Law, do hereby certify that I am the attorney for the owner of the property described in the plat and that I have the right to convey the same. I further certify that the plat is a true and correct copy of the original plat as recorded in the public records of Oklahoma County, Oklahoma.

Dated this 11th day of October, 2012.

[Signature]
Attorney at Law

PLAT ENGINEER'S CERTIFICATE

I, the undersigned, Professional Engineer, do hereby certify that I am the engineer for the plat and that I have the right to convey the same. I further certify that the plat is a true and correct copy of the original plat as recorded in the public records of Oklahoma County, Oklahoma.

Dated this 11th day of October, 2012.

[Signature]
Professional Engineer

PLAT SURVEYOR'S CERTIFICATE

I, the undersigned, Professional Surveyor, do hereby certify that I am the surveyor for the plat and that I have the right to convey the same. I further certify that the plat is a true and correct copy of the original plat as recorded in the public records of Oklahoma County, Oklahoma.

Dated this 11th day of October, 2012.

[Signature]
Professional Surveyor

CITY PLANNING COMMISSION APPROVAL

I, the undersigned, City Planning Commission, do hereby approve the plat and the plat is a true and correct copy of the original plat as recorded in the public records of Oklahoma County, Oklahoma.

Dated this 11th day of October, 2012.

[Signature]
City Planning Commission

CITY CLERK'S CERTIFICATE

I, the undersigned, City Clerk, do hereby certify that the plat is a true and correct copy of the original plat as recorded in the public records of Oklahoma County, Oklahoma.

Dated this 11th day of October, 2012.

[Signature]
City Clerk

COUNTY TREASURER'S CERTIFICATE

I, the undersigned, County Treasurer, do hereby certify that the plat is a true and correct copy of the original plat as recorded in the public records of Oklahoma County, Oklahoma.

Dated this 11th day of October, 2012.

[Signature]
County Treasurer

LEGAL DESCRIPTION

A part of the NE 1/4, NE 1/4, Section 24, T 14 N, R 3 W, L.M., Edmond, Oklahoma County, Oklahoma, containing approximately 1.25 acres, more or less, as shown on the plat.

PLAT ENGINEER'S CERTIFICATE

I, the undersigned, Professional Engineer, do hereby certify that I am the engineer for the plat and that I have the right to convey the same. I further certify that the plat is a true and correct copy of the original plat as recorded in the public records of Oklahoma County, Oklahoma.

Dated this 11th day of October, 2012.

[Signature]
Professional Engineer

RED PLAINS

OWNER: DAN VITRO, LLC
ADDRESS: 2000 E. 11TH ST.
EDMOND, OK 73119