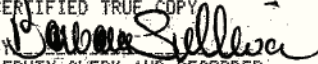


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**AMENDED AND RESTATED
DECLARATION OF
COVENANTS, CONDITIONS, RESTRICTIONS AND SERVITUDES

FOR

AMERICANA**

**DAIGLE AMERICANA DEVELOPMENT, L.L.C.
DECLARANT**

**PREPARED BY:
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Jones Walker
8555 United Plaza Boulevard, Suite 500
Baton Rouge, Louisiana 70809**

**THIS DECLARATION MAY BE AMENDED BY DECLARANT AT ANY TIME IN
DECLARANT'S SOLE AND ABSOLUTE DISCRETION.**

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EXHIBIT G	INITIAL FORM OF BYLAWS OF AMERICANA INSTITUTE, INC.
EXHIBIT H	URBAN REGULATING STANDARDS

This Amended and Restated Declaration Establishing Covenants, Restrictions and Servitudes (this "Declaration") is executed on the 30th day of September, 2013, but effective as of May 21, 2012, by:

DAIGLE AMERICANA DEVELOPMENT, L.L.C. (HEREINAFTER REFERRED TO AS "DECLARANT") (FEDERAL TAXPAYER IDENTIFICATION NO. XX-XXX5797), A LOUISIANA LIMITED LIABILITY COMPANY, WHOSE ADDRESS FOR THE PURPOSES HEREOF IS 1100 CAMELLIA BOULEVARD, SUITE 200, LAFAYETTE, LOUISIANA 70508.

Statement of Purpose:

A. Declarant owns six certain lots or parcels of land as more particularly described on a map entitled "Final Plat of Americana Phase 1 and 1A (a Traditional Neighborhood Development Being a Portion of the M.L. Harvey Tract and B-1-A-1 of the Delaune Jackson Tract located in Sections 75 & 76, Township 4 South, Range 1 West, and Section 60, Township 5 South, Range 1 West, East Baton Rouge Parish, Louisiana, prepared by Barry J. Bleichner, PE, PLS, LLC, Civil Engineer and Land Surveyor, dated August 29, 2013 and recorded in the official records of East Baton Rouge Parish on October 1, 2013 at Original 818, bundle 12533 ("Declarant's Property"), a copy of which is attached hereto as Exhibit A ("Final Plat").

B. Declarant intends to develop a Traditional Neighborhood Development (a "TND") on all or a portion of the Declarant's Property to be known as "Americana". Americana shall consist of Live/Work Units, 261 Condominiums, 69 Single Family Attached Houses, Single Family Detached Houses, commercial space, including but not limited to retail and office space, a theater, grocery store, recreational facility, civic buildings, and green space.

C. It is Declarant's intent that land development within the TND be planned to encourage and provide residential (both single family and multi-family), retail and commercial uses and properties.

D. The Declarant's intent and expectation is that the TND developed on any portion of the Declarant's Property described above will share the following conventions:

- 1) Multiple neighborhoods will be developed within the TND according to this Declaration sharing common characteristics but creating unique environments.
- 2) Each neighborhood within the TND will be physically understood and limited in scale.
- 3) Residences, retail shops, workplaces and civic buildings will be located in the neighborhoods all in close proximity to one another.
- 4) A hierarchy of streets will serve the needs of pedestrians, bicycles and automobile traffic.
- 5) Squares, parks and green space will provide places for organized social activity as well as informal recreation.
- 6) Civic buildings and squares will reinforce the elements of the neighborhood, adding to the community identity and providing places of purposeful assembly for social, cultural and religious activities.

E. The Declarant's intent and expectation is that the TND developed on any portion of the Declarant's Property will promote the following objectives:

- 1) Bring within walking distance most of the activities of daily living, including dwelling, shopping and working;
- 2) Reduce and/or minimize the number and length of automotive trips, traffic congestion and road construction;
- 3) Make public transit a viable alternative to the automobile through organization of appropriate building densities;
- 4) Provide a means for residents to come to know each other and to watch over their collective security by providing defined public spaces such as streets and squares;

- 5) Provide a full range of housing types and work places, integrating age and economic class and forming the bonds of an authentic community;
- 6) Provide suitable civic buildings, encouraging democratic initiatives and balancing the evolution of the community.

F. Declarant establishes this Declaration for this new community for the following purposes:

- 1) To promote enjoyment of the natural resources of the Declarant's Property and to protect and enhance its beauty;
- 2) To encourage a harmonious architecture;
- 3) To plan for the possibility of both commercial and residential uses but without the customary divisions between them that require dependence on the automobile;
- 4) To allow for eventual self-governing of the community by its owners; and
- 5) To provide a guide for development that will preserve certain values while allowing change when appropriate.

Declaration:

This Declaration is intended to **amend and restate in its entirety** that certain "Declaration of Covenants, Conditions Restrictions and Servitudes for Americana" recorded in the East Baton Rouge Clerk and Recorder of Mortgages and Conveyances on May 21, 2012 at Original 480, bundle 12411. In furtherance of the aforesaid recitals, Declarant declares that, subject to the provisions of this Declaration, it does by these presents hereby create and establish certain servitudes, building restrictions, restrictive covenants, and charges upon the property known as Americana, and obligations of ownership, for its benefit and the benefit of its vendees, successors and assigns, which servitudes, building restrictions, restrictive covenants, charges upon, and obligations of ownership shall be covenants running with the land and which shall apply against and affect all of the property defined below as Americana:

ARTICLE 1. DEFINITIONS

The following definitions apply wherever the capitalized terms appear in this Declaration.

A. **Additional Annexable Property.** "Additional Annexable Property" shall mean any immovable property: (a) contiguous with the Declarant's Property (including without limitation any property separated from the Declarant's Property by a public street or body of water), or (b) any portion of which is within a one-half (1/2) mile radius of any portion of the Declarant's Property (including without limitation thereto any property separated from the Declarant's Property by a public street, body of water or other property).

B. **Alley.** "Alley" shall mean a traditional, walkable thoroughfare serving the pedestrian mobility and access needs at the rear of Residential Lots in other than the Village Center. Alleys are Common Roads. Other functions may include trash removal and utility service.

C. **Alley-Loaded Lot.** "Alley-Loaded Lot" shall mean a Lot which is bordered on its rear Lot line (which is opposite a boundary of the Lot facing a Street) by an Alley.

D. **Americana.** "Americana" shall mean, collectively, the TND developed on the immovable property in East Baton Rouge Parish, Louisiana, described as follows:

(1) That portion of Declarant's property described on the Final Plat as Phase 1, consisting of Tracts 1, 2, 4, 5, 6 and 7, together with the Streets, Alleys, rights of way passage, and servitudes, which are included within the described property.

(2) Any additional portions of the Declarant's Property or any Additional Annexable Property which Declarant, by Supplemental Declaration as authorized under Section 2.2C, at any time in the future declares to be part of Americana and subject to this Declaration.

(3) Any Additional Annexable Property which an Association Board, by Supplemental Declaration as authorized under Section 2.2, at any time in the future declares to be part of Americana.

E. **Americana Council.** The "*Americana Council*" shall mean the council created by the Associations, with the duties and powers given to it pursuant to Section 11.2.

F. **Assessments.** "*Assessments*" shall mean, collectively, the following charges:

(1) **General Assessment.** The "*General Assessment*" is the amount assessed to, and due from, all Members of an Association to meet such Association's annual budgeted expenses and cash requirements, as described in Section 14.3.

(2) **Individual Lot Assessment.** An "*Individual Lot Assessment*" is an amount assessed to and due from, an Owner of a particular Lot for charges relating only to that Lot, as provided in Section 14.7.

(3) **Institute Assessment.** The "*Institute Assessment*" is the amount assessed to, and due from, all Institute Members to meet the Institute's annual budgeted expenses and cash requirements, as described in Section 14.4.

(4) **Neighborhood Assessment.** A "*Neighborhood Assessment*" is an amount assessed to, and due from, each Owner of a Lot within a particular Neighborhood for special services or capital improvements within such Neighborhood, as discussed in Section 14.6.

(5) **Special Assessment.** A "*Special Assessment*" is an amount assessed to, and due from, each Owner of a Lot within a designated area for capital improvements or emergency expenses in such area, in accordance with the provisions of Section 14.5.

G. **Association.** "*Association*" shall mean either the Residential Association or the Commercial Association, as the context requires. "*Associations*" shall mean, collectively, the Residential Association and the Commercial Association.

H. **Association Articles.** "*Association Articles*" shall mean the Articles of Incorporation of an Association, together with all amendments and modifications to same, adopted in accordance with the laws of Louisiana, copies of which are attached as Exhibits "B" and "C" to this Declaration.

I. **Association Board.** "*Association Board*" shall mean the Board of Directors of an Association.

J. **Association Bylaws.** "*Association Bylaws*" shall mean the Bylaws of an Association, together with all amendments and modifications to same adopted hereafter in accordance with the laws of Louisiana, the form of the initial Bylaws, as proposed, are attached as Exhibits "D" and "E" to this Declaration.

K. **Association Members.** "*Association Members*" shall mean, as of the time of any determination, the members of an Association.

L. **Building.** "*Building*" shall mean any building constructed on any Lot. If permitted by the Guiding Principles and approved by the Design Review Board, a Building may be attached to another Building and share party walls.

M. **Carport.** "*Carport*" shall mean an open air structure with a weatherproof roof to shelter an automobile(s).

N. **Clerk of Court.** "*Clerk of Court*" shall mean and refer to the Clerk of Court and ex-officio recorder of mortgages and registrar of conveyances for the Parish of East Baton Rouge, Louisiana.

O. **Commercial Association.** "*Commercial Association*" shall mean Americana Commercial Association, Inc., a Louisiana nonprofit corporation, its successors and assigns. The Commercial Association, whose members are the Commercial Owners (including Declarant), is responsible for maintaining the Commercial Commons in Americana and enforcing this Declaration.

P. **Commercial Lot(s)**. "Commercial Lot(s)" shall mean any lot which is designated exclusively for commercial, retail or office use, including but not limited to use as commercial lodging, drive through or drive in facilities, kennels, shopping centers, commercial recreation and amusement facilities, farmers markets, offices, restaurants, services, veterinarian facilities and such other uses as allowed by the applicable zoning authority. Notwithstanding any applicable zoning or permitted uses applicable to a Commercial Lot, Declarant shall have the authority to limit or restrict the use of a Commercial Lot by stating such limitations or restrictions in the deed or act of sale for such Lot. The Commercial Lots shall be located in Tracts 2, 4, 5, 6, and 7 of Declarant's Property and such portion of Tract 1 as labeled for retail or office use, all as shown on the Final Plat.

Q. **Commercial Owners**. "Commercial Owners" shall mean any Owner of a Commercial Lot.

R. **Commercial Commons**. "Commercial Commons" shall mean any Commons designated as such on the Final Plat, or the by Americana Council.

S. **Commons**. "Commons" shall mean all immovable property within Americana designated for the common use and enjoyment of all Owners. "Commons" also include any Improvements on that immovable property, all servitudes and personal property for the Owners' common use, and any other property of any type specifically designated as Commons. The Commons (except for Common Roads) are not dedicated for use by the general public. Commons may be designated as Commercial Commons or Residential Commons if authorized by Americana Council.

T. **Common Roads**. "Common Roads" are the streets and roads located within Americana which are intended for general automobile traffic. Common Roads are part of the Commons. Title to or servitudes in the Common Roads may be granted, transferred and sold to an Association. Common Roads may also be dedicated, partially or in their entirety, at any time, to the Governmental Authority for the City of Zachary and Parish of East Baton Rouge Parish, Louisiana, by Declarant or an Association.

U. **Community Meeting**. A "Community Meeting" is any public meeting of Members of an Association for discussion and voting, as described in Section 11.9.

V. **Condominium**. "Condominium" shall mean a residential unit located on a Residential Lot that is subject to a condominium regime pursuant to the Louisiana Condominium Act, Revised Statutes 9:1121 et seq.

W. **Corner Lot**. "Corner Lot" shall mean a Lot situated at the juncture of two or more Streets.

X. **Cottage**. "Cottage" shall mean a relatively small single family detached house on a Residential Lot approximately 35' by 90', with parking in the rear from Alleys.

Y. **Cottage House**. "Cottage House" shall mean a relatively small single family detached house on a Residential Lot approximately 40' by 100', with parking in the rear from Alleys. Cottage houses can be grouped, facing a mews, small common or green in a court. A cottage court is often, but not always, arranged in a U-shape. Units are separated from the Commons only by a sidewalk, path or non-vehicular way.

Z. **Courtyard House**. "Courtyard House" shall mean a courtyard building type on a Residential Lot approximately 50' by 110' with a single-family dwelling which is positioned at or near the boundaries of the Lot while internally defining one or more private courts or patios.

AA. **Days**. "Days" shall mean calendar days and not business days, unless expressly stated. When a time period stated herein ends on a Saturday, Sunday or day on which banks in the State of Louisiana are closed for business, such time period shall be deemed to be extended until the next day.

BB. **Declarant**. The "Declarant" is Daigle Americana Development, L.L.C., a Louisiana limited liability company, its successors and assigns. Declarant shall also be an Owner for so long as Declarant is record owner of any Lot.

CC. **Declarant's Property.** "*Declarant's Property*" shall mean the immovable property described in Paragraph A of the Statement of Purpose hereinabove, as further shown and described on the Final Plat.

DD. **Declaration.** "*This Declaration*" shall mean this instrument titled "Declaration Establishing Covenants, Restrictions and Servitudes", together with (i) all exhibits and attachments to same, (ii) all amendments and modifications adopted hereafter pursuant to the terms hereof, and (iii) all Supplemental Declarations filed pursuant to Section 2.2C.

EE. **Design Review Board.** The "*Design Review Board*" is the panel established by Article 9 of this Declaration.

FF. **Dwelling.** "*Dwelling*" shall mean and refer to any complete building designed or intended for use and occupancy as a residence by a single family.

GG. **Effective Date.** "*Effective Date*" is May 11, 2012.

HH. **Estate.** "*Estate*" shall mean a custom-built, single family detached house on a large Residential Lot with at least 3,500 square feet.

II. **Fence.** "*Fence*" shall mean a three (3) to six (6) foot high closure of front, side or rear yard area on a Lot.

JJ. **Final Plat.** "*Final Plat*" shall mean the recorded plat and survey attached hereto as **Exhibit "A"** entitled "Final Plat of Americana Phase 1 and 1A (a Traditional Neighborhood Development Being a Portion of the M.L. Harvey Tract and B-1-A-1 of the Delaune Jackson Tract located in Sections 75 & 76, Township 4 South, Range 1 West, and Section 60, Township 5 South, Range 1 West, East Baton Rouge Parish, Louisiana, prepared by Barry J. Bleichner, PE, PLS, LLC, Civil Engineer and Land Surveyor, dated August 29, 2013 and recorded in the official records of East Baton Rouge Parish on October 1, 2013 at Original 818, bundle 12533.

KK. **Garage.** "*Garage*" shall mean an enclosed structure to shelter automobiles.

LL. **Garden Wall.** "*Garden Wall*" shall mean a closure of a side or rear yard area constructed of wood, masonry or stucco measuring a minimum of six feet (6') to seven feet (7') high.

MM. **Governmental Authority.** "*Governmental Authority*" shall mean (i) the United States of America, (ii) the State of Louisiana, (iii) any other State of the United States of America, (iv) any political subdivision of any of the foregoing, (v) any agency, department, commission, board or bureau of any of the foregoing, and (vi) any tribunal, instrumentality or court having jurisdiction over Americana or any of the uses that may be made of Lots or other portions of Americana.

NN. **Guiding Principles.** "*Guiding Principles*" shall mean the document titled "Americana Master Plan and Guiding Principles," together with all amendments and modifications to same adopted hereafter pursuant to the terms hereof as well as any subsequently adopted regulations relating to the urban design, architecture, landscape or signage permitted in Americana, including but not limited to the Landscape Code. The initial Guiding Principles contain the Urban Regulating Standards which are attached hereto and made a part hereof as **Exhibit "H."**

OO. **Home Office.** "*Home Office*" shall mean premises located on a Residential Lot used for the transaction of business or the provision of professional services employing no more than four full-time employees, one of whom must be the Owner of the Residential Lot on which the Home Office is located, or the tenant of said Owner.

PP. **Improvement.** "*Improvement*" shall mean and refer to every structure and all appurtenances thereto of every type and kind, including but not limited to, Dwellings, Buildings, outbuildings, patios, tennis courts, swimming pools, Garages, Carports, driveways, sidewalks, walkways, fences, walls, gates, screening walls, terraces, retaining walls, stairs, decks, exterior air conditioning and heating units, pumps, wells, tanks and reservoirs, pipes, lines, cables, meters, towers, antennae, equipment and facilities used in connection with water, sewer, gas, electric, telephone, television or other utilities or services, and any construction which in any way alters the exterior appearance of any improvement, but shall not include pipes, lines, cables, meters, equipment and facilities in connection with water, sewer, drainage, gas,

electric, telephone, television or other utilities or service provider in favor of whom a utility or drainage servitude has been expressly established and granted herein.

QQ. **Institute.** "*Institute*" shall mean Americana Institute, Inc., a Louisiana non-profit corporation, its successors and assigns. The Institute, whose members are, but shall not be limited to, the Owners (including Declarant), has the purpose of encouraging the arts and cultural events within Americana. The Institute may have one or more classes of membership.

RR. **Institute Articles.** "*Institute Articles*" shall mean the Articles of Incorporation of the Institute, the initial form of which is attached as Exhibit "F" to this Declaration, together with all amendments and modifications to same adopted hereafter in accordance with the laws of Louisiana.

SS. **Institute Board.** "*Institute Board*" shall mean the Board of Directors of the Institute.

TT. **Institute Bylaws.** "*Institute Bylaws*" shall mean the Bylaws of the Institute, the initial form of which is attached as Exhibit "G" to this Declaration, together with all amendments and modifications to same adopted hereafter in accordance with the laws of Louisiana.

UU. **Institute Members.** "*Institute Members*" shall mean, as of the time of any determination, all Owners and any other Person who has acquired a membership interest in the Institute; each Owner is a member of the Institute as provided in Section 12.2.

VV. **Landscape Code.** "*Landscape Code*" shall mean the document titled "Americana Landscape Code," together with all amendments and modifications to same adopted hereafter pursuant to the terms hereof. The initial Landscape Code shall be recorded within sixty (60) days of the Effective Date of this Declaration but shall be deemed effective as of the Effective Date, and all Owners shall be subject to the Landscape Code as if it was recorded simultaneously herewith.

WW. **Live/Work Unit.** a "*Live/Work Unit*" shall mean a Unit in a Building located on a Mixed Used Lot consisting of both a Commercial and Residential function.

XX. **Lot.** A "*Lot*" is the smallest parcel of land which may be separately conveyed. Lots are designated as numbered, separately identifiable parcels on the Final Plat or a subsequently recorded plat of Additional Annexable Property which will be annexed to, and included and otherwise incorporated within, Americana by Supplemental Declaration pursuant to Section 2.2C. Declarant may redefine Lots by combining Lots or portions of Lots and by adjusting the boundary of a Lot. Lots are designated herein as Residential Lots, Commercial Lots or Mixed Use Lots.

YY. **Mixed Use Lots.** "*Mixed Use Lots*" shall mean those Lots which are designated for mixed use, with each Lot containing both commercial and residential components, including Live/Work Units.

ZZ. **Mortgagee.** "*Mortgagee*" shall mean any Person which holds: (i) a mortgage encumbering a Lot as collateral security for the payment and/or performance of an obligation, or (ii) otherwise holds a lien or encumbrance burdening or otherwise encumbering a Lot, as collateral security for the payment and/or performance of an obligation.

AAA. **Neighborhood.** "*Neighborhoods*" may be defined within certain areas of Americana and may be further defined by Supplemental Declaration as provided in Section 2.2C. For areas in which no Neighborhoods have been defined or in which none are defined at the time of filing a Supplemental Declaration, an Association Board (if each Lot in the Neighborhood is designated for the same uses (Residential, Mixed Use, or Commercial) or the Americana Council (for Neighborhoods consisting of a mix of uses)) may designate Neighborhood boundaries for the purpose of Neighborhood Improvements and the making assessments under Section 14.6. To the extent possible, all Lots on both sides of a Common Road shall be included within the same Neighborhood. Separate Neighborhoods may be created if the Common Road is interrupted by cross streets, or by bodies of water or Commons wider than typical Lots on that block, or if Lots on opposing sides of the Common Road are of significantly different character.

BBB. **Neighborhood House.** "*Neighborhood House*" shall mean a one or two story, single family detached house with attached, detached, or open parking; whether rear loaded or not, set well back from the façade.

CCC. **Out Building.** "*Out Building*" or "*Outbuilding*" shall mean an additional Building on a Lot containing a Townhouse, Cottage or Urban House, which is additional to a Dwelling, constructed at or near the rear Lot line with a maximum of two-stories and having a maximum Building footprint of 550 square feet per floor. Out Buildings do not count against maximum Building cover restrictions or unit counts. Out Buildings may only be attached to the Dwelling on a Residential Lot.

DDD. **Owner.** "*Owner*" shall mean the record owner, whether one or more persons or entities, of the fee simple title to any Lot. Owners shall not include any Mortgagee of such Lot.

EEE. **Person.** "*Person*" shall mean any individual, corporation, limited liability company, partnership, trustee, joint venture, association, joint stock company, trust, unincorporated organization, Governmental Authority, government or any agency or political subdivision thereof, or any other legal form of entity.

FFF. **Residential Association.** "*Residential Association*" shall mean Americana Residential Association, Inc., a Louisiana non-profit corporation, its successors and assigns. The Residential Association, whose members are the Residential Owners (including Declarant), is responsible for maintaining the Commons including the Residential Commons, but excluding Commercial Commons, in Americana and enforcing this Declaration.

GGG. **Residential Lot(s).** "*Residential Lot(s)*" shall mean any Lot which is designated for exclusively residential use, including Condominiums, Rowhouses, Cottages, Cottage Houses, Townhouses, Village Houses, Courtyard Houses, Sideyard Houses, Neighborhood Houses and Estates. Residential Lots are those Lots designated as Lots A-1 through A-87 on the Final Plat.

HHH. **Residential Owners.** "*Residential Owners*" shall mean any Owner of a Residential Lot.

III. **Residential Commons.** "*Residential Commons*" shall mean any Commons designated as such on the Final Plat or by Americana Council.

JJJ. **Right of Way.** "*Right of Way*" shall mean the area of each Street and adjacent land which is reserved for transportation and pedestrian travel. Vehicular travel shall be permitted within the Streets up to one foot (1') behind the curbing, and up to ten feet (10') on each side of such vehicular right of way shall be reserved for sidewalks and utility servitudes if applicable.

KKK. **Rowhouse.** "*Rowhouse*" shall mean a Single Family Attached House with common walls on the side lot lines, the facades forming a continuous frontage line and located on a Residential, Alley-Loaded Lot approximately 25' by 90'.

LLL. **Rules and Regulations of the Association.** "*Rules and Regulations of the Association*" shall mean the rules and regulations governing permissive and prohibited uses and behaviors within Americana as adopted by an Association Board pursuant to this Declaration, from time to time by such Association Board, which are applicable to the Association's Members, together with all amendments to same that may thereafter be adopted by such Association Board.

MMM. **Setback.** "*Setback*" shall mean the placement of a Building from the property line of a Lot to the exterior principal facade of said Building exclusive of allowed encroachments.

NNN. **Sideyard House.** "*Sideyard House*" shall mean a sideyard building type on a Residential Alley-Loaded Lot approximately 50' by 110' with a single-family dwelling which occupies one side of the lot, and the primary yard to the other side.

OOO. **Side-Yard Setback.** "*Side-Yard Setback*" shall mean the minimum distance from the side property line of a Lot, which is adjacent to another Lot, to any part of the Building on the Lot as to which the Side-Yard Setback is being considered or determined.

PPP. **Single Family Attached House.** "*Single Family Attached House*" shall mean a Townhouse or Rowhouse.

QQQ. **Street.** "Street" shall mean and refer to a Common Road, and any public street or cul-de-sacs within Americana.

RRR. **Subsequent Phase.** "Subsequent Phase" shall mean any future phase of Americana that is an addition to or extension of Americana or an earlier Subsequent Phase thereof, as shown on a final plat of survey of the Subsequent Phase prepared by a registered land surveyor or registered engineer, duly approved by the appropriate Governmental Authority and filed for registry with the Clerk of Court, and which future phase is declared by Declarant to be a Subsequent Phase or extension of Americana in an act filed of record with the Clerk of Court. Subsequent Phases shall be added in accordance with the further requirements of Section 2.2.

SSS. **Supplemental Declaration.** "Supplemental Declaration" shall mean any declaration which may be recorded by Declarant, or an Association in accordance with Article 2 to annex, and include and otherwise incorporate, additional immovable property to and within Americana.

TTT. **TND.** "TND" shall mean a traditional neighborhood development having those characteristics listed in the Statement of Purpose hereinbefore described.

UUU. **Townhouse.** a "Townhouse" is a Single Family Attached House located on a Residential Alley-Loaded Lot approximately 25' by 100'.

VVV. **Utility Servitudes.** "Utility Servitude" shall mean those portions of Americana depicted or labeled on the Final Plat, or on any plat submitted as part of any Supplemental Declaration, as "utility servitude", "utility serv." or any similar words suggesting that such areas have been reserved for use in conjunction with any such public or private utility or service system.

WWW. **Village House.** "Village House" shall mean a one and a half or two-story single family detached house on a Residential Lot approximately 45' by 110', often with rear loaded parking. Parking must be rear loaded on lots narrower than 50 feet.

XXX. **Work.** "Work" shall mean and refer to any construction, erection, alteration, addition, renovation or removal of Improvements on any Lot other than routine maintenance and repairs of existing Improvements.

YYY. **Additional Definitions.** Additional definitions for some terms used in the Guiding Principles are included as part of the Guiding Principles. In addition, unless the context otherwise requires or specifies, the words and phrases defined in this Declaration, when used in the Guiding Principles, shall have the meanings specified for those words and phrases, whether or not such words or phrases are capitalized when used in the Guiding Principles.

ZZZ. **General.** All terms used in this Declaration and/or in the Guiding Principles, to the extent not defined in this Declaration, shall, if those are terms used in the architectural profession and/or the construction industry, have those meanings generally described to those terms within the architectural profession and/or construction industry as applicable. The fact that a word or phrase is defined in this Declaration does not mean that such word or phrase has been used, or was intended to be used, in this Declaration or in the Guiding Principles; definitions may have been included in anticipation of the future use of such words or phrases in amendments to this Declaration, the Guiding Principles, the Landscape Code, and/or the use of such words or phrases in Supplemental Declarations.

ARTICLE 2. PROPERTY SUBJECT TO THIS DECLARATION

This article describes the immovable property initially comprising Americana, but also provides the method by which additional property may be added to Americana.

Section 2.1 Initial Property. The immovable property which shall be held, transferred, conveyed and occupied subject to this Declaration consists initially of that platted property described on the Final Plat consisting of the Tracts labeled and designated thereon as "Phase I", as may be further subdivided in accordance with all applicable laws, together with the Streets, Alleys, rights of passage, and servitudes reflected on the Final Plat.

Section 2.2 Annexation of Additional Property.

A. **By Declarant.** Declarant shall have the right, but not the obligation, for a period of thirty (30) years from the Effective Date, from time to time in its sole discretion, to

declare that any additional portions of the Declarant's property, or any Additional Annexable Property, is annexed to, and included and otherwise incorporated within Americana for the development of a Subsequent Phase or otherwise. Declarant shall also have the right, but not the obligation, for a period of thirty (30) years from the Effective Date, from time to time in its sole discretion, to declare that property which is not part of the Declarant's Property and is not Additional Annexable Property, but which Declarant believes to have a reasonable relationship with Americana, be annexed to, and included and otherwise incorporated within, Americana for such purpose. Any immovable property, whether part of Declarant's Property or not, which is not expressly described as Phase I on the Final Plat shall not be subject to this Declaration until such time as such property is incorporated pursuant to the terms of a Supplemental Declaration.

B. **By Association Boards.** After termination of the Association Class B membership (described in Section 11.5), additional immovable property may be annexed to, and included and otherwise incorporated within, Americana by a majority vote of both Association Boards.

C. **Supplemental Declaration.** A Supplemental Declaration annexing to, and including and otherwise incorporating within, Americana, additional immovable property as authorized under Section 2.2, Subparts A and B, shall become effective upon being recorded in the conveyance records of the Clerk of Court. The restrictive covenants and conditions contained in this Declaration shall not extend to any such Subsequent Phase except to the extent expressly declared by Declarant or the Association Boards, as applicable, in a Supplemental Declaration. The Supplemental Declaration may modify or add to the provisions of this Declaration as required to reflect the different character of the Additional Annexable Property. Additionally, it shall be permissible for Declarant, or its successors, or the Association Boards, as applicable, to declare in a juridical act that any Additional Annexable Property is subject to all restrictive covenants and conditions in this Declaration subject to any modifications thereof or additions or deletions thereto that are applicable only to the specific Additional Annexable Property in question. It is further expressly declared that any Rules and Regulations of the Association may differ in their application to all or any portion of such Additional Annexable Property, and the requirements of the Guiding Principles applicable to such Additional Annexable Property may be different from those requirements of the Guiding Principles applicable to the property being developed under this Declaration. A Supplemental Declaration may, with approval of the Declarant or the Association Boards, as applicable, (1) define certain Neighborhoods within both newly annexed and previously existing portions of Americana, (2) designate certain Commons, whether existing or newly created, as "Neighborhood Commons" for the use of certain Neighborhoods, (3) and create and/or modify an assessment scheme by which certain Neighborhoods are assessed separately for Commons located within that Neighborhood. However, no such Supplemental Declaration shall deny use of existing Commons to those Owners who had such right prior to the recording of the Supplemental Declaration. A Supplemental Declaration may also create Neighborhood advisory councils.

Section 2.3 Platted Lots. No Lots may be subdivided or separated into smaller lots except by Declarant or with the specific consent of the Design Review Board. No portion of any Lot may be separately conveyed (apart from the whole Lot), except by Declarant or with the specific consent of the Design Review Board. This Section 2.3, however, shall not prohibit the recording of corrective acts or similar corrective instruments. Declarant shall have the right to record a Supplemental Declaration to modify approved subdivision plats of Americana for the purpose of making adjustments to Lot boundary lines with consent only of those Owners whose Lot boundaries are to be changed by such Supplemental Declaration.

ARTICLE 3. NEIGHBORHOOD DEVELOPMENT

Americana shall consist of multiple neighborhoods incorporating a mix of residential, commercial and retail uses, and including public and civic areas.

Section 3.1 Neighborhood Planning. Americana is designed to obtain an overall sense of community and connectedness between residents and the development as a whole. Each Neighborhood within Americana incorporates a mix uses and residential housing options, while sharing common characteristics with the other Neighborhoods. Americana is broadly divided into "Village Center" and "Village General" and "Village Edge" areas. Within each of these areas, further zones are classified and defined to create each Neighborhood, resulting in more densely developed neighborhoods in certain areas, and a less dense, more rural neighborhoods in other areas. For example, within the Village General zone, there may exist three subcategories of Lots: the VGI, which contains more dense Lots closest to the Village Center, the VGII, which contains less dense Lots further away from the Village Center, and the

VGIII, which contains the least dense, furthest Village General Lots from the Village Center. Each Neighborhood is connected with the others through a network of carefully articulated vehicular and pedestrian thoroughfares.

Section 3.2 Village Center. The Village Center is the densest area in Americana. It is the focus of Americana's civic buildings and social activity, incorporating retail, and office space, and denser residential units. Streets are wider with formal on-street parking. Buildings and Improvements are built at or near the Street, reinforcing the public character of the Village Center.

Section 3.3 Village General. The Village General area focuses principally on residential uses with a minimum of other potential uses. This area is the largest district within Americana. Streets are narrower than those found in the Village Center.

Section 3.4 Village Edge. The Village Edge is the least dense area of Americana and is exclusively residential. This area seeks to retain a rural character, with deeper setbacks along the edges of each Lot, creating a wide edge of landscaped green space along the Streets, which may be narrower than those found in the Village General.

ARTICLE 4. COMMONS

Certain property within Americana, called the "Commons," is to be owned and maintained by an Association for the benefit of all Owners. As Americana is completed, additional property may be added to the Commons.

Section 4.1 Common Areas. Americana is designed so that each Lot is within walking distance of a green space, park or square. These areas can be used by Owners and residents for individual and family recreation, and will also be used by the community as a whole for formal events and gatherings.

Section 4.2 Title.

A. **Association Ownership.** The Commons shall be owned by the Residential Association for the benefit of all Owners unless the Commons have been designated by Americana Council as either Commercial Commons or Residential Commons, in which case such Commons shall be owned by the Residential Association or the Commercial Association, as applicable, for the benefit of such Association's Members.

B. **Additional Commons.** Declarant may convey to the Residential Association additional Commons which the Residential Association shall accept and following such acceptance the Residential Association shall be solely responsible for maintenance of such additional Commons.

C. **Dedication.** Declarant and the Residential Association shall at all times have the right, without the necessity of consent or approval of any of the Owners, to convey title to and/or dedicate the Common Roads to the Governmental Authority with jurisdiction to accept such dedication, which is currently understood to be the City of Zachary or the Parish of East Baton Rouge. All other Commons may be dedicated to the public by the Residential Association Board upon consent in writing of Association Members representing 75% of the votes in the Residential Association.

Section 4.3 Maintenance: Capital Improvements.

A. **Generally.** Until such time as the Commercial Association accepts certain Commons as Commercial Commons pursuant to Section 4.3G below, the Residential Association shall have the sole responsibility for the management, control and improvement of the Commons and shall keep such Commons attractive, clean and in good repair, including without limitation, the Common Roads, which such Common Roads have been dedicated to a Governmental Authority for public use, maintenance and repair.

B. **Capital Improvements.** The Residential Association may make capital improvements to the Commons and may modify the uses of the Commons. For example, the Residential Association is authorized to create parking areas within the Commons or to add new recreational facilities. Expenses for substantial capital improvements must be approved in accordance with Section 13.2G.

C. **Street Regulation and Parking.** The Residential Association may make rules and regulations concerning driving and parking within Americana, and may construct

speed bumps, post speed limit or other traffic signs, including no parking signs, and take any other reasonable measures to discourage excessive speed, encourage safe driving and regulate parking on the Streets. The Residential Association may, but shall not be obligated to, hire private security personnel for the purpose of enforcing any driving and parking rules or regulations adopted in accordance with this Section, including imposing fines and hiring private companies to tow and impound vehicles found to be in violation of such rules. The amount of any fines shall be set by the Residential Association. Failure by any Owner to pay any fines in accordance with the rules and regulations may result in liens being filed against such Owner's Lot. Neither Declarant, nor any Association shall be held liable for any loss or injury resulting from any such enforcement or failure to enforce. Notwithstanding anything to the contrary contained herein, Declarant shall have the right, in its sole discretion, to restrict or prohibit parking in any Common Area, Street, Right of Way or any other part of Declarant's Property that is not a Lot for any purposes, including but not limited to maintenance, events, or activities.

D. **Use of Commons by Owners.** Each Owner shall have a nonexclusive right to use the Commons, except to the extent such Commons have been designated as either Residential Commons or Commercial Commons, in which case, only the Residential Owners or the Commercial Owners, respectively, shall have the right to use such Commons. The Association charged with the maintenance of the Commons shall have the authority to create rules and regulations related to the use of the Commons, including policies allowing all or portions of the Commons to be available to Owners for private events (for which a fee may be charged).

E. **Damage or Destruction of Commons by Owner.** If any Owner or Owner's guests, tenants, licenses, agents, employees or members of Owner's family damages any of the Commons as a result of negligence or misuse, the Owner hereby authorizes the Residential Association to repair the damage. The cost of repair shall be the responsibility of that Owner and shall become an Individual Lot Assessment payable by the responsible Owner. The Residential Association may, but is not required to, seek compensation for damage from the guest, tenant, agent, employee, member or other party who caused the damage, in which case the Owner shall be jointly and severally liable with the guest, tenant, agent, employee, member or other party who caused the damage.

F. **Limitation of Liability.** Neither the Residential Association nor Declarant makes any representation or assumes any liability for any loss or injury caused by its maintenance of the Commons and Common Roads.

G. **Designation of Commons.** At any time during the term of this Declaration, Americana Council shall be authorized to recommend the designation of certain Commons as Residential Commons or Commercial Commons. Commercial Commons shall be such areas as the Streets, parking areas, sidewalks, landscape areas, common signage, lighting, restrooms, water fountains, garbage containers and other areas benefiting the Commercial Lots. In order for Commons to be designated as Commercial Commons or Residential Commons, each Association Board must adopt Americana Council's recommendation, by majority vote, to be effective, after which, the Association currently holding title to such Commons shall transfer title to the new Association, and all obligations and rights related to such Commons shall be transferred to the responsible Association.

ARTICLE 5. SERVITUDES

Every Owner has the benefit of certain servitudes, and the responsibility of providing and maintaining others.

Section 5.1 Owners' Servitude of Enjoyment.

A. **Commons.** Every Owner shall have the right and servitude of enjoyment in and to the Commons. This servitude shall be a predial servitude appurtenant to and shall pass with title to every Lot. Notwithstanding anything to the contrary stated herein, the Declarant shall have the right to use and reserve the Commons for all types of events, including but not limited to social events, athletic and civic events, private parties, and concerts, whether for a fee, contribution or without cost, within its sole discretion unless such area has been previously reserved by an Owner.

B. **Tenants and Guests.** Any Owner may delegate, subject to the provisions of this Declaration, the Association's Bylaws and the Rules and Regulations of the Association, such Owner's right to enjoyment to the Commons to the members of his family (if Owner owns a Residential Lot), his tenants or his guests who are accompanied by the Owner.

The Association may adopt rules to prohibit or restrict dual use of the Commons' recreational facilities by both an Owner and the Owner's tenant, except when the Owner is a bona fide guest of the tenant.

Section 5.2 Servitudes in Favor of Declarant and Association. Declarant hereby reserves for itself, its successors and assigns, and grants to the Association holding title to any property, including any Commons, within Americana (any such Association referred to in this Section 5.2 as "the Association"), the following servitudes, which shall benefit Declarant, the Association, Americana and all other properties owned, now or in the future, by Declarant which are adjacent to, or contiguous with, Americana (including without limitation thereto the Declarant's Property and any portion of such property which may be separated from Americana, by a public road or body of water). Each of the servitudes reserved herein (i) shall be predial servitudes in favor of the Declarant's Property (to the extent not included within Americana), and all other properties owned, now or in the future, by Declarant which are adjacent to, or contiguous with, Americana (including without limitation thereto any portion of such property which may be separated from Americana by a public road or body of water), (ii) shall also be a personal servitude in favor of Declarant and the Association, and (iii) shall also be a predial servitude for the benefit of the Association as the owner of the Commons.

A. **Common Roads.** Declarant reserves for itself, its successors and assigns, a nonexclusive servitude for use of the Common Roads.

B. **Utility Servitudes.**

(1) Declarant reserves for itself, its successors and assigns, and grants to the Association, a blanket servitude for ingress, egress, construction, installation, replacement, repair and maintenance of all public and private utility and service systems which servitude shall be upon, across, over, through, and under all Utility Servitudes. These systems include, but are not limited to, water, sewer, irrigation systems, drainage, telephone, electricity, television, cable or communication lines and other equipment. By virtue of this servitude, Declarant may, but is not obligated to, install and maintain facilities and equipment, excavate for such purposes and affix and maintain wires, circuits and conduits; the systems themselves (which shall include all pipes, wires, circuits, cables, conduits, switch boxes and other equipment related to the providing of any public or private utility service) shall be installed within the Utility Servitudes.

(2) Either Declarant or the Association may at any time make a partial assignment to any public or private utility company, or any Governmental Authority, of the servitudes reserved by Declarant, and granted to the Association, in the preceding Subpart B(1) whether or not such assignment by Declarant or the Association expressly states, the assignment shall be partial and nonexclusive and both Declarant and the Association shall continue to have the servitude reserved and granted herein, to be used on a nonexclusive basis with each other and with any public or private utility company, or any Governmental Authority to whom such assignment was made. Nothing shall prohibit Declarant or an Association from installing landscaping or streetscaping over, within, or across a Utility Servitude. Neither Declarant, nor the Association, shall have any liability or responsibility to each other or to any Owner for (1) any damages caused by any public or private utility company, or any Governmental Authority, or (2) for failure to provide any utility services to any Owner or to the Association.

(3) To the extent any Governmental Authority, or any public or private utility uses any of the Utility Servitudes within Americana, and/or to the extent that the Declarant, the Association or any assignee of Declarant or the Association (all of whom are collectively referred to as "grantee" in this subparagraph (3)) use or exercise any of the rights granted and reserved under the preceding Subpart B(1), then and in that event:

(a) whenever reasonably possible, the lines and facilities to be constructed and installed within the Utility Servitudes shall be placed underground,

(b) each grantee shall respect the reasonable use of the servitudes by the other grantees thereof, and each shall cooperate with the others to the extent necessary to assure the reasonable, mutual use of the Utility Servitudes by all grantees;

(c) each grantee, after any use of the Servitude Areas or exercise by such grantee of the rights herein granted, shall restore the surface of the immovable property subject to the servitude to a condition as close as is reasonably possible to that which existed prior to such use or exercise, provided that such grantee shall not be required to replace, or otherwise repair any Improvements, trees, shrubs or other obstructions which

interfere with use of the servitude granted pursuant to preceding Subpart B(1) and which are damaged through the reasonable exercise of the servitudes granted pursuant to the preceding Subpart B(1). The Association shall be responsible for maintaining the Servitude Areas in a well-manicured, properly landscaped manner that does not interfere with the reasonable use of such servitudes;

(d) each grantee who is an assignee of Declarant or the Association, by its use of the Utility Servitudes or exercise of the rights herein granted pursuant to the preceding Subpart B(1), does hereby agree to defend and hold its assignor (whether Declarant or the Association), together with its successors and assigns, harmless from any and all liability arising from any negligence or other fault of the respective grantee in the construction, installation, repair, alteration and maintenance of the said water, sewer, natural gas, electrical, telephone and communications, and cable television lines and facilities pursuant to the servitudes granted under the preceding Subpart B(1); and

(e) Declarant, the Association, each Governmental Authority, each public utility and each private utility agree that (i) it accepts the right to use the said Utility Servitudes subject to the right of Owners to construct Buildings on Lots which have soffits, eaves, stairs, stoops, balconies and/or facade which encroach on and over the said Utility Servitude by no more than 24 inches measured from the boundary of the Utility Servitude nearest to the interior of the Lot going out toward the exterior boundary of the Lot, provided that any such encroachment is at least 10 feet above the finished ground elevation in the area of the encroachment, and (ii) it may never request that the Owner remove any such soffits, eaves, stairs, stoops, balconies or facade, which encroach on any Utility Servitude consistent with the conditions of the preceding subpart (i).

(4) Those areas located on Lots and identified as utility niches are not to be considered as part of the Utility Servitude or subject to any servitude in favor of any Governmental Authority or any public or private authority. All such utility niche areas shall be used solely, in the absence of approval from the Design Review Board to the contrary, for the placement of utility meters and, on Alley-Loaded Lots, for the storage of garbage cans and other receptacles for the storage of garbage.

C. **Police Powers.** Declarant reserves for itself, its successors and assigns, and grants to the Association, a blanket servitude throughout Americana for private patrol services, and for police powers and services supplied by the local, state and federal governments. Declarant may, at any time, in Declarant's sole and absolute discretion, install security cameras, gates or other security devices as it deems necessary for the protection of Americana. All security measures shall be paid for out of Assessments. Declarant and the Associations may adopt rules and regulations providing for security measures, parking and traffic regulations, or such other policing power, which may include enforcement through fines and penalties, with failure to pay such fines permitting the Declarant or the Association to file a lien against any Lot owned by the Person found to be in violation of such rule or regulation.

D. **Alleys.** Declarant reserves for itself, its successors and assigns, and grants to the Association, the Association Members, and all future Owners of Lots, a nonexclusive servitude of passage (for use by vehicles, bicycles and pedestrians) on and across those portions of Americana that are labeled and designated as "Alley" or rights of passage on the Final Plat and on any plat filed in conjunction with any Supplemental Declaration. The Declarant reserves the right to dedicate the Alleys and rights of way to an Association.

Section 5.3 Property I.D. Signs. Declarant hereby excepts and reserves a nonexclusive perpetual servitude for the construction, reconstruction, replacement, operation, maintenance and repair of a sign structure, landscaping and entry features ("Property Identification Signs") over, under, upon and across certain portions of Americana, together with reasonable access over, under, upon, through and across the Property to install, replace, maintain, repair and operate such utility lines necessary to provide power to illuminate any of the same.

A. **Panels.** Panels on certain Property Identification Signs shall be designated by Declarant for the benefit of the Commercial Lots. The right of Owners and Occupants of Commercial Lots to place signage on any designated Property Identification Signs shall be determined as part of the review of site plans for development of a Commercial Lot and must be approved by the Design Review Board. The Property Identification Signs shall constitute Commercial Commons, unless otherwise designated by the Declarant or the Design Review Board.

Section 5.4 Servitudes in favor of Lots. There is hereby granted a servitude in favor of each Lot, tract or across that portion of each adjoining Lot or Commons which is no more than the three (3) feet away from the boundary of the Lot in whose favor such servitude has been created. The servitude created herein may be used only in compliance with the following requirements: (a) in conjunction with the construction, maintenance and/or repair of Improvements constructed on the Lot in whose favor the servitude is created, including but not limited to Garden Walls and Garages; (b) with the exception of an emergency, no use may be made of the servitude granted herein without providing at least ten (10) days prior written notice to the Owner of the Lot or tract burdened with the servitude (the "**Servient Lot**") of the intention to use the servitude burdening the Servient Lot, and during those ten (10) days the Owner of the Servient Lot shall provide the notifying Owner of any reasonable restrictions (including the time of access) which the Owner of the Servient Lot requires be honored by the notifying Owner; (c) if the notifying Owner is willing to comply with the restrictions provided by the Owner of the Servient Lot, as contemplated by the preceding subpart (b), then the notifying Owner may proceed with the repair and maintenance provided that said Owner also complies with all requirements established by the Guiding Principles and/or any applicable Rules and Regulations of the Association; (d) if the notifying Owner believes the restrictions provided by the Owner of the Servient Lot, as contemplated by the preceding subpart (b) are not reasonable, and cannot resolve the issue with the Owner of the Servient Lot, then the notifying Owner who wishes to use the servitude granted on the Servient Lot shall apply to the Covenants Committee (or the Association Board of the Association to which the Owner belongs, if no Covenants Committee has yet been created by such Association Board) which shall grant a hearing to all Owners involved with respect to any request submitted to Covenants Committee (or the Association Board, as applicable), under the preceding subpart (d), and any decision rendered by the Covenants Committee (or the Association Board, as applicable) shall be final and binding on all Owners involved in the application submitted pursuant to subpart (d) of this Section 5.4; and (e) each grantee, after any use or exercise by such grantee of the rights herein granted, shall restore the surface of the immovable property subject to the servitude to a condition as close as is reasonably possible to that which existed prior to such use or exercise, provided that such grantee shall not be required to replace, or otherwise repair any Improvements, trees, shrubs or other obstructions which interfere with use of the servitude granted pursuant to this Section 5.4 and which are damaged through the reasonable exercise of the servitudes granted pursuant to this Section 5.4 .

Section 5.5 Wetlands. This Declaration is subject to any rights of any Governmental Authorities in portions of Americana which may be considered wetlands or protected coastal areas.

ARTICLE 6. GENERAL BUILDING RESTRICTIONS AND DESIGN CODE

Section 6.1 Mandatory Construction Start Date. Each Owner must commence construction of the primary Building on his/her Lot no later than TWO YEARS from the date of the recording of the sale, transfer or other conveyance instrument from Declarant to Owner in the public records of East Baton Rouge Parish, Louisiana. Declarant reserves the right, in Declarant's sole discretion, upon ten day prior written notice to an Owner, to demand that Owner re-convey any Lot upon which construction of a primary building has not commenced to Declarant for the original purchase price of such Lot.

Section 6.2 Building Restrictions and Other Covenants.

A. **General.** Notwithstanding any inferences to the contrary anywhere in this Declaration, no Improvement of any nature may be constructed on a Lot without complying with the requirements of this Declaration, the Guiding Principles. This Section 6.1 sets forth specific building restrictions and other covenants relating to the construction of Improvements on each Lot; it is expressly noted that other provisions of this Declaration (including without limitation thereto Article 10) and the Guiding Principles also address such requirements. Each Lot within Americana is designated with an assigned Lot Type in the Guiding Principles. Each Lot Type has distinguishing characteristics and certain features that set it apart from other Lot Types. All Buildings and Improvements constructed on each Lot shall be designed and constructed in accordance with the requirements applicable to the Lot Type designation assigned to that particular Lot in the Guiding Principles, in addition to such other requirements as are provided in this Declaration. Height restrictions, use restrictions, Allowed Architectural Typology, placement requirements, parking requirements, Setback requirements, and requirements concerning porches, Fences and/or Garden Walls, are all set forth for each Lot Type on the corresponding page of the Urban Regulations within the Guiding Principles that applies to that particular Lot Type.

B. **Encroachments.** With the permission of the Design Review Board, eaves, soffits, stoops, stairs, and fascade of Buildings are permitted to overhang a Utility Easement or a Street right of way, and in the case of any zero (0) lot line Lot, the adjoining Lot, by 24 inches, provided that any such encroachment must be no less than ten (10) feet above the finished ground elevation in the area of the encroachment, and further provided that any required consent has been obtained from any Governmental Authority or utility company, whether public or private.

C. **Construction Materials.** In the absence of a variance from the Design Review Board, no exterior building or construction material will be allowed to be utilized in the construction of any Improvement except for those materials set forth and described below:

(1) **Unit Masonry or Brick.** Molded clay brick masonry units shall be chosen from the pre-approved palettes for all buildings. Lime mortar is recommended for all applications. Wire-cut clay-brick masonry may be approved by the Design Review Board. Concrete Masonry Units (and ACMU) are only acceptable for plaster-finish exterior applications. Exposed Concrete Masonry Units (or ACMU) are not permitted. Natural stone may be allowed for specific architectural typologies, but must be approved by the Design Review Board. Selected stone must be of patterns appropriate for vertical, rather than horizontal, construction.

(2) **Exterior Architectural Woodwork.** Exterior architectural woodwork shall be limited to custom or approved premium grades of woodworking and shall include, but are not limited to, exterior standing and running trim, exterior ornamental work, pediment heads, pilasters, cupolas, railings, columns, exterior frames and jambs, and exterior shutters. Species of wood for exterior woodwork shall include Honduras mahogany, clear all heart redwood, all heart western red cedar, clear all heart red cypress, or treated southern pine as suitable for retaining painted finish coating, high density polymer molded products, James Hardy cement board, "Clear-Lam" engineered products or other products approved by the Design Review Board as equal to the preceding specifically named products. All woodwork must be able to be sealed with paint or stain.

(3) **Exterior Siding.** Exterior siding must be exterior siding consisting of 1" x 6" or 1" x 8" wood or James Hardy smooth face cement board, or other products approved by the Design Review Board as equal to the preceding specifically named products.

(4) **Roofing.** Roofing material must be one of the following: Raised seam gray metal, slate, gray asphalt shingle (min-330# per square) approved by the Design Review board, synthetic slate approved by the Design Review Board, or V-crimp galvanized metal.

(5) **Flashing and Sheet Metal Accessories.** Flashing and sheet metal accessories shall be limited to those used in construction of Buildings and include, but are not limited to, roof drainage systems, exposed trim, copings and metal flashings. Metals suitable for use for these application shall include anodized aluminum, galvanized steels, copper and stainless steel. Roof vents shall be copper or galvanized metal. Paint-Grip galvanized metal is approved.

(6) **Windows.** Windows shall be one of the following: wood window units that are primed wood window units for field painting, aluminum clad wood window units, vinyl clad wood window units, and any other windows which have been approved by the Design Review Board. Insulated glazing shall be allowed for use; however tint and reflectivity shall be limited to a maximum of 10%.

(7) **Cement Plaster (Stucco).** Cement plaster (stucco) shall mean Portland cement plaster consisting of three coat work over metal lath. A factory-prepared integrally colored synthetic finish coat shall be considered acceptable for use, however adherence to color palette by painting, if required, shall still remain. Southern Building Code approved hard coat synthetic plaster is approved, however, the use of exterior polystyrene sheet board is not allowed.

(8) **Fences and Garden Walls.** Wooden Fences shall be surfaced on four sides (S4S) with wood in the styles and configurations as indicated in the Historic Details portion of the Guiding Principles. Alternate designs are encouraged but must be approved in advance by the Design Review Board. Fences constructed of wood shall be painted using a white color selected from the Pratt & Lambert Historic Series, or such other color as may be approved by the Design Review Board. Fences constructed of wrought iron shall be painted either black or voodoo green. All fences shall be 3 feet 6 inches in height above ground level and shall be constructed in accordance with the requirements of this

Declaration and the Guiding Principles. All Fences shall be maintained so as not to detract from the general appearance of Americana. Garden Walls shall be constructed of wood, cement plaster (stucco) or approved unit masonry (brick). Areas requiring mandatory Garden Walls require use of cement plaster (stucco). Where Garden Walls are not indicated or are not indicated as mandatory and construction is optional, Owners shall have the option of constructing such Garden Walls utilizing approved unit masonry (brick), wood, or cement plaster (stucco). Garden Walls constructed of brick shall utilize only brick approved by the Design Review Board, and shall be constructed in accordance with the requirements set forth in the Historical Details portion of the Guiding Principles. Garden Walls constructed of cement plaster (stucco) shall be painted using a white color selected from the Pratt & Lambert Historic Series, or such other color as may be approved by the Design Review Board. Garden Walls constructed of cement plaster (stucco) shall have the cement plaster (stucco) applied to both sides of the Garden Wall. All Garden Walls shall be six (6) to eight (8) feet in height above ground level and shall be constructed in accordance with the requirements of this Declaration and the Guiding Principles. Any Garden Walls permitted or required by the Guiding Principles or this Declaration, shall be constructed on the property line dividing two (2) Lots, except in the case of any Lot that is not bounded by another Lot, in which case the Owner of such Lot shall construct the Garden Wall within the confines of the boundary of such Lot. Any Fence or Garden Wall, the design and construction of which has been approved in accordance with Article 10 shall be kept neat and attractive and in good repair. On any Lot having a portion of any perimeter wall constructed by Declarant upon the Lot, the Owner of such Lot will be responsible for maintaining that portion of the wall which is upon the Lot in good condition and repair. This provision shall not require that the Guiding Principles or the Design Review Board approve any Fences or that they approve ornamental or picket fences.

Section 6.3 Miscellaneous Prohibitions and Rules. Except for the activities of Declarant in connection with development and the activities of the grantees in connection with the construction, installation, repair, alteration and maintenance of the Utility Servitudes hereinabove established, the following restrictions shall apply to all immovable property within Americana:

A. **Air-Conditioning.** No window air conditioning units may be installed in any improvements.

B. **Animals.** Except for a veterinary office, pet store or pet grooming and boarding facility located on a Commercial Lot(s), the maintenance, keeping, boarding and/or raising of animals (including without limitation thereto all dogs, cats, livestock, birds, poultry, snakes and reptiles) of any kind, regardless of number, shall be and is hereby prohibited on any Lot or within any Improvement constructed on a Lot, except as permitted in Section 7.17.

C. **Antennas.** No exterior radio, television, satellite or communications antenna, aerial or dish shall be erected or maintained within Americana without the prior, written approval of the Design Review Board; variances should only be granted where it is believed that the antenna, aerial or dish will not be visible from a street or another Lot. No amateur or "ham" radio transmitters shall be operated within Americana without the prior, written approval of the Design Review Board.

D. **Burning or Storage of Trash.** No burning of any trash and no accumulation or storage of litter, lumber, scrap metals, refuse, bulk materials, waste, new or used building materials, or trash of any other kind shall be permitted on any Lot; provided, however, that the storage of building materials, equipment and scrap materials and waste generated in connection with Work shall be permitted on a Lot during periods of Work on the Lot if stored neatly.

E. **Compliance with Law.** No use shall be made of, nor any actions taken on, any Lot which is any violation of any law, ordinance or regulation applicable to the geographical area within which the Lot is located.

F. **Construction Requirements.** No Improvements shall be constructed nor any landscaping or other Work performed on any Lot except in compliance with this Declaration, the Guiding Principles and the Landscape Code, except for matters as to which a written variance has been granted by the Design Review Board.

G. **Division of Lots.** No Lot shall be divided or subdivided and no portion of any Lot other than the entire Lot shall be transferred or conveyed for any purpose except by Declarant, or with the prior, express, written approval of the Design Review Board. This shall not be construed to prohibit the granting of any servitude and/or right-of-way to any Governmental Authority, public utility, or to the Associations or Declarant.

H. **Insurance.** Nothing shall be done or kept on any Lot or the Commons which will increase the rate of, or resulting cancellation of, insurance for Americana or any other Lot, or the contents thereof, without the prior written consent of the Association. This prohibition shall not prohibit the usual and customary activities associated with residential use of a single family dwelling.

I. **Interferences with Servitudes and Drainage.** No Improvements other than driveways, sidewalks, walkways, mailboxes, fences, walls, retaining walls, and gas and water meters, and no other obstruction shall be placed or permitted to remain upon any Lot which may damage or interfere with any Utility Servitude or servitude for passage or drain, or obstruct any drainage ditch or channel. Notwithstanding any inference herein to the contrary, driveways, sidewalks, walkways, mailboxes, fences, walls, retaining walls, and gas and water meters may only be constructed and/or installed on a Lot in accordance with the requirements of the Guiding Principles and in compliance with the provisions of Article 10.

J. **Landscaping.** Landscaping is required on any Lot on which Improvements have been constructed except that no grass, trees, shrubs, hedges or other plants shall be planted or allowed to grow on any Lot except in compliance with the Landscape Code and in compliance with the requirements of Article 10. Each Owner shall keep neat and maintain in good condition and repair both his or her Lot as well as that portion of any Street right-of-way servitude (i.e., that portion of the right-of-way between the edge of the Street curb and the Owner's boundary line(s) that is immediately adjacent to (whether in front of or alongside) the Owner's Lot). The opinion of the Design Review Board as to the acceptability of such conditions shall be final; the Design Review Board may delegate, in its sole discretion, its authority under this provision. The maintenance obligations imposed pursuant to subsection K below shall also be applicable to the landscaping on a Lot.

K. **Maintenance.** No Lot (whether or not any Buildings have been constructed on the Lot), and no Buildings or other Improvements or landscaping which are located upon a Lot, shall be permitted to fall into disrepair and each such Lot, and all such Buildings and other Improvements, and all lawns and other landscaped areas, shall be kept neat and maintained in good condition and repair consistent with any requirements set forth in either the Guiding Principles, the Landscape Code or in Rules and Regulations of an Association. The Associations shall have the authority to set standards for the upkeep and maintenance of all Buildings, Improvements and landscaping on the Residential or Commercial Lots as applicable and, after notice to the Owner that such standards have not been met on a particular Lot, may levy fines for any violation thereof. If an Owner fails to correct any violation for which it has received notice within the time period stated therein, the Association may perform such maintenance as it deems necessary and assess the Owner for the costs thereof, the failure to pay such costs by the Owner giving rise to a right of the Association to file a lien on the Lot.

L. **Mineral and Mining Activity.** No Lot shall be used for the purpose of boring, mining, quarrying, exploring for, producing or removing oil or other hydrocarbons, minerals, gravel or earth except in the case of soil borings in connection with soil analysis for foundation design; provided, however, that offsite exploration for or production of oil, gas or other minerals lying beneath the surface of a Lot through directional or horizontal drilling methods or otherwise shall be allowed if such directional or horizontal drilling does not penetrate or otherwise disturb any portion of the earth within 500 feet of the surface of any Lot. Nothing herein shall prohibit grading, soil remediation, or mitigation activities required to make a Lot suitable for development otherwise in accordance with this Agreement.

M. **Movable Structures and Outbuildings.** No structure of any type, Dwelling or otherwise, shall be moved on to any Lot in Americana except as may be expressly approved by the Design Review Board. No structure of a temporary character and no trailer, tent, shack, barn, pen, stable, coop, cage, storage building or shed shall be erected, used or maintained on any Lot at any time without the express, prior, written approval of the Design Review Board, provided, however, the foregoing restriction shall not prohibit the use and maintenance of those temporary structures necessary during the performance of any Work thereon. No such structures, trailers or the like shall be utilized for residence purposes and all such structures, trailers or the like shall be removed from the Lot promptly following the completion of the Work. During art festivals, craft fairs, block parties and other special events, an Association Board or Americana Council may approve the use of tents, trailers and other temporary buildings on the Commons or elsewhere within Americana.

N. **Noise.** Except as expressly permitted by the Declarant or the Design Review Board on Commercial Lots, no exterior speakers, horns, whistles, bells or other sound transmitting, generating or amplifying devices other than security devices used exclusively for

security purposes shall be located, used or placed on any Lot in such manner that the sound emitted there from may be heard on any other Lot. No noise shall be permitted to exist or operate upon any Lot that may be a nuisance to any other Owner or tenant.

O. **Noxious, Hazardous or Offensive Activity.** No noxious odors shall issue or emanate from any Lot. No noxious, hazardous or offensive trade or activity shall be carried on or upon any Lot or within any Building or Improvement situated upon the Property or at any other place within Americana, nor shall anything be done therein or thereon which may be or become unsafe or hazardous or an annoyance or nuisance to other Owners or tenants of Americana.

P. **Nuisance.** No nuisance or immoral, improper, offensive or unlawful use shall be permitted to exist or operate on any Lot or Commons. All laws, building codes, orders rules, regulations or requirements of any Governmental Authority shall be complied with.

Q. **Pipes, Cables and Lines.** Except for hoses and the like which are reasonably necessary in connection with normal landscape maintenance, no water pipe, sewer pipe, gas pipe, drainage pipe, telephone line, electrical line or cable, television cable or similar transmission line, or the like shall be installed, placed or maintained above the surface of any Lot except where approved by the Design Review Board as reasonably necessary for connection to a Dwelling or building or for access for repair or maintenance. The Rules and Regulations of an Association may prescribe rules relative to hoses that are authorized for normal landscape maintenance.

R. **Soliciting.** No soliciting will be allowed at any time within Americana.

Section 6.4 Rules and Regulations. The Association Boards may from time to time adopt rules or amend previously adopted rules and regulations governing and regulating (a) the operation, use, maintenance, condition, attractiveness, and control of, as well as conduct on and within, the Lots over which each such Association governs, the Commons designated for use by such Lots and any facilities or services made available to the Owners of such Lots, and (b) any other matters as to which this Declaration authorizes the adoption of rules and regulations by such Association Board. This right shall include without limitation the right to approve rental agents, design professionals, contractors and sub-contractors who do business within Americana. The Rules and Regulations of each Association shall take effect immediately upon approval by such Association Board, or at a later date selected by such Association Board. If requested by at least 10% of an Association's Members, a Community Meeting may be called and any rule or regulation adopted by the Association Board reporting to such members may be repealed by majority vote of such Association Members. A copy of the Rules and Regulations of each Association shall be kept in the registered office of the Association and available for review during its normal business hours on each Monday through Friday, except for holidays. Upon acquisition of a Lot, each Owner does, through that acquisition subject to this Declaration, agree and acknowledge that said Owner has received a copy of the Rules and Regulations of the Association applicable to such Lot as of that date. As additions, deletions or modifications are adopted with respect to the rules and regulations adopted pursuant to this Section 6.3, copies of such additions, deletions or modifications shall be mailed to each Association Member affected thereby at the last known address for said Association Member as shown in the records of such Association. Additional copies of the Rules and Regulations of an Association Board shall be provided to any Association Member upon payment by said Association Member for the cost of reproducing same which is hereby set at \$.50 per page. The Association shall have the nonexclusive right to enforce by any legal remedy, including a suit for damages, the Rules and Regulations against any owner, tenant or occupant, after giving of notice and an opportunity for a hearing before the Board, as more specifically described in such Rules and Regulations.

ARTICLE 7. RESIDENTIAL RESTRICTIONS

Section 7.1 Additional Restrictions Specific to the Residential Area. In addition to the General Building Restrictions contained in Article 6, Residential Lots must also comply with the terms and conditions contained in this Article 7. References to "Lots" in this Article 7 shall mean exclusively Residential Lots. References to the Association, the Association Board or the Association Members shall each refer to the Residential Association and its Board and Members.

Section 7.2 Allowed Architectural Typologies. The Dwelling constructed on each Lot shall be designed in accordance with one (1) of the Allowed Architectural Typologies for that particular Lot. Allowed Architectural Typologies for Residential Lots in the Village Center shall

be Live/Work, Condominium, Rowhouse, Townhouse, or Village House typologies. The Allowed Architectural Typologies for Residential Lots in the Village General shall be Cottage, Cottage House, Village House, Courtyard House, Sideyard House, Neighborhood House or Estate typologies. The Allowed Architectural Typologies for Residential Lots in the Village Edge areas shall be Courtyard House, Sideyard House, Neighborhood House or Estate typologies. These Allowed Building Typologies are also indicated on the Urban Regulations in the Guiding Principles provided for each Lot Type under the heading "Allowed Architectural Typology".

Section 7.3 Design Guidelines for Architectural Typologies. The Guiding Principles contains some of the design requirements and/or restrictions for each of the various Allowed Architectural Typologies for the various typologies and Neighborhoods. The Guiding Principles shall be complied with in the design and construction of Dwellings using the designated Architectural Typology. With respect to the Historical Architectural Characteristics and the Historical Details applicable to each of the Architectural Typologies reflected in the Guiding Principles, it is noted that those are intended to typify each such Architectural Typology, but it is acknowledged there are many other characteristics and details of each approved Architectural Typology and those other characteristics and details may also be used. It is the function of the Design Review Board, through the review process described in Article 10, to verify that the plans for the design of Dwellings proposed for construction on a Residential Lot are consistent with the characteristics and details of the Architectural Typology chosen by the Owner presenting plans to review.

A. Setbacks.

(1) **Front Setbacks – Dwelling.** The principal facade of each Dwelling constructed on a Residential Lot must be located within the range of feet from the front property line of said Lot as is set forth as the front Setback of the Dwelling in the Guiding Principles and in the Urban Regulations which relate to the Lot Type for that particular Lot.

(2) **Side-Yard Setbacks – Dwelling.** The principal facade of the sides of each Dwelling constructed on a Residential Lot (i.e., the boundaries not facing the Street on which the Lot fronts and not facing the rear of said Lot) may be located no closer to the side property lines than as stated in the Guiding Principles and in the Urban Regulations relating to the Lot Type for that particular Lot.

(3) **Rear Setbacks – Dwelling.** The rear facade of the sides of any Dwelling constructed on a Residential Lot must be located within the range of feet from the rear property line of said Lot as set forth as the rear Setback of the Dwelling in the Guiding Principles and the Urban Regulations relating to the Lot Type for that particular Lot.

(4) **Front Setbacks – Garages.** Where a front Setback is specified in the Guiding Principles for a Garage, then the front facade (meaning the facade that is closest to the front property line) of any Garage or Carport must be located no closer to the front property line than that number of feet that is set forth as the front Setback in the Garage Setback column in the Guiding Principles.

(5) **Side-Yard Setbacks – Garages.** The facade of the sides of any Garage or Carport (i.e., the boundaries not facing the Street on which the Lot fronts and not facing the rear of said Lot) may be located no closer to the side property lines than that number of feet that is set forth as the side Setback of the Garage in the Guiding Principles.

(6) **Rear Setbacks – Garages.** If the rear Setback for Garages and Carports is set at a specific number, then the Garage's or Carport's facade which is nearest the rear property line of a Lot must be located no more and no less than that number of feet from the rear property line of said Lot that is set forth as the rear Setback of the Garage in the Guiding Principles. If the rear Setback for Garages and Carports is set at a range, then the Garage's or Carport's facade nearest the rear property line of a Lot must be located no less than that number of feet from the rear property line of said Lot that is designated as the lower number in the range of the rear Setback of the Garage in the Guiding Principles, and no more than that number of feet from the rear property line of said Lot that is designated as the higher number in the range of the rear Setback of the Garage in the Guiding Principles.

B. Driveways. Driveways shall be designed to reflect the overall quality of the architecture of the Dwelling. In order to allow sufficient space for pedestrian crossings and other infrastructure at the front of a Dwelling, only single entry drives shall be constructed to a depth terminating at the front facade of the Building nearest to the front property line. Circular drives with 2 street entrances will not be permitted.

C. **Garages; Carports and Out Buildings.** At the time of any construction of a Dwelling on a Lot, the Owner shall also construct a Garage which matches the architectural design of the Dwelling constructed on that Lot. A Garage must be totally enclosed when all doors (both for vehicles and pedestrians) are closed; all openings, other than windows, must have doors that close easily. With the prior approval of the Design Review Board, in its sole discretion, Owner may construct a Carport instead of a Garage. No Garage or Carport may have an opening (other than a window) which is taller than 10 feet above the finished grade of the floor of the said Garage or Carport. Carports shall be no more than one story in height. Except as may be expressly allowed by the Guiding Principles (e.g., as to a Lot which is not bordered by an Alley) or as otherwise expressly allowed by the Design Review Board, the doors through which vehicles enter a Garage may not face a Street. Garage doors shall be kept closed except when automobiles are entering or leaving the Garage.

D. **Mailboxes.** The Association Board has selected or will select a specific mailbox for use within Americana. Each Owner shall utilize the mailbox approved by the Association Board as the receptacle for receiving mail at each Residential Lot; no mailbox, other than the mailbox approved by the Association Board, may be used on any Residential Lot. The mailbox used on each Residential Lot shall be placed in that location which is designated by the Association Board. At the option of the Design Review Board a central delivery mail system may be adopted.

Section 7.4 Trash and Garbage Containers. On Alley-Loaded Lots, trash and garbage containers shall be kept in that area along the rear of the Lots which are designated as utility niches on the Initial Plat or such other recorded plat showing such Residential Lot. On Alley-Loaded Lots, and except where allowed by the Guiding Principles and/or the Rules and Regulations of the Association, all garbage (including recyclables) may only be picked up or collected by garbage collection vehicles from the Alleys contiguous with the rear of each such Lot. The area around any such garbage pick-up point on an Alley-Loaded Lot must be enclosed with screening, as required by the Guiding Principles and/or the Design Review Board, so that garbage cans are not visible from any Common Road or Alley. On all Lots which are not Alley-Loaded Lots, the Owners or occupants of those Lots shall not place trash or garbage containers in public view except on trash collection days and then on those days the garbage containers shall be removed from the public view no later than 7:00 p.m. on the day the garbage has been picked up by the Person charged with the collection efforts. Garbage, trash and other refuse shall be placed in covered containers approved by the Design Review Board, except as otherwise expressly required by law. Recyclable products or materials may be placed for collection in containers expressly designed or legally required for such collection. Owners shall further use and store trash and garbage containers in compliance with any applicable Rules and Regulations of the Association.

Section 7.5 Landscaping.

A. **General.** Each Lot shall be landscaped in accordance with the requirements of this Declaration, the Guiding Principles and the Landscape Code.

B. **Specific Requirements for Alley-Loaded Lots.** If required by Declarant or the Design Review Board, a continuous, contiguous area along the rear boundary of Alley-Loaded Lots shall be kept landscaped with grass and other plants pursuant to a landscape plan approved by the Design Review Board. The minimum area in question shall begin at the edge of the paving constructed within the Alley.

Section 7.6 Permitted Uses.

A. **Lots.** Residential Lots may not be used for any purpose other than residential. The Guiding Principles may permit the building of two (2) or more Dwellings on a Lot. Other uses, such as certain home occupations incidental to residential use which, in the sole discretion of the Design Review Board, do not generate significant traffic may be permitted by the Design Review Board.

B. **Special Use Parcels.** The Guiding Principles may describe special restrictive covenants and building restrictions for Special Use Parcels, which shall include residential use.

C. **Renting.** Dwellings, including outbuildings and garage apartments designed for residential use, may be rented, subject to the Rules and Regulations of the Association. No Rule or Regulation may limit the length of leases. In any event, no Dwelling shall be rented to any more than one (1) Single Family Unit (defined below).

D. **Occupancy.** In the absence of written approval of the Association Board, all Occupants of a Dwelling must comprise a Single Family Unit. For purposes of this subpart 7.7(D), "Occupant" shall mean any Person who stays overnight in a Dwelling for more than thirty (30) days (whether or not consecutive) in any one (1) calendar year. "Single Family Unit" shall mean one or more Persons related by blood, adoption or marriage, or the Owner and not more than two unrelated persons, living and cooking together as a single housekeeping unit.

E. **Home Office.** If allowed by the applicable zoning and land use ordinances and regulations of the Governmental Authorities with jurisdiction over the Lots, each Residential Lot may have one (1) Home Office, provided that each of the following conditions is met: (a) no sign, advertisement or notice of any type or nature whatsoever may be erected or displayed on the Lot or on any Building located on the Lot which in any way advertises or provides notice or reference to the business conducted in the Home Office; and (b) which business is not otherwise prohibited by the Rules and Regulations of the Association.

Section 7.7 Compliance with Law. No use shall be made of, nor any actions taken on, any Lot which is any violation of any law, ordinance or regulation applicable to the geographical area within which the Lot is Located.

Section 7.8 Prohibited and/or Restricted Uses: Other Obligations. The following, which may be in addition to what may be provided pursuant to the Rules and Regulations of the Association and the Guiding Principles, constitute prohibited conduct and/or uses on Residential Lots within Americana:

A. **Time Sharing.** No time-share ownership of Residential Lots is permitted without Declarant's approval. For this purpose, the term "time-share ownership" shall mean a method of ownership of an interest in a Lot under which the exclusive right of use, possession or occupancy of the Lot circulates among the various owners on a periodically reoccurring basis over a scheduled period of time. Leasing a Building or ownership of a Lot by a corporation, partnership or other entity, or by not more than four individuals or married couples, will not normally be considered time-share ownership.

B. **Half-way Houses.** No Dwelling or other Improvement on any Residential Lot shall at any time be used as a Half-Way House under supervision of a Supervising Agency. For the purposes of this Subpart E, the term "Supervising Agency" shall mean a Governmental Authority including without limitation thereto the Sheriff of East Baton Rouge Parish, the police department for the City of Zachary, the Louisiana Department of Corrections, the United States Department of Justice and the United States Marshal's Service. For the purposes of this Subpart E, the term "Half-Way House" shall mean a place where persons who have been imprisoned or incarcerated for crimes (whether felonies or misdemeanors), or confined for drug or alcohol rehabilitation, are continued under some form of supervision for the primary purpose of aiding said persons in readjusting to society following their imprisonment, incarceration, hospitalization or other form of confinement.

Section 7.9 Ingress and Egress. Except as allowed by the Guiding Principles or as otherwise approved by the Design Review Board, vehicular ingress to and vehicular egress from Residential Lots other than Alley-Loaded Lots shall be from and to the front of the Lot (i.e., that side which a Dwelling thereon must face as hereafter set forth) and no vehicular access shall be allowed from the sides or rear of any Lot. Vehicular ingress and vehicular egress to and from each Alley-Loaded Lot shall only be from the Alley located at the rear of the Lot. With respect to each Alley-Loaded Lot, there shall be no driveway or parking area constructed or used on that part of any such Lot between the front wall of the Dwelling and the front property line where the Lot fronts on a Street.

Section 7.10 Sewerage Disposal Systems. No individual sewage disposal systems will be permitted. All Dwellings constructed in Americana shall be connected to approved sanitary sewage facilities.

Section 7.11 Incinerators. No incinerator shall be kept or maintained on any Lot.

Section 7.12 Vehicles and Other Equipment. None of the following may be kept or stored within a Residential Lot in Americana: (a) junk or abandoned vehicles, (b) commercial vehicles other than company automobiles provided for personal use, (c) trailers, (d) tractor-trailers, (e) campers, (f) motor homes and recreational vehicles, (g) camp trucks, (h) house trailers, (i) boats, (j) boat trailers, or (k) other machinery or equipment of any kind or character (except for such equipment as may be reasonable, customary and usual in connection with the use and maintenance of any Dwelling or other Improvements located upon the Lot). No repair, maintenance or restoration of automobiles or other authorized vehicles (except for bona-fide

emergencies) may be carried out on any Residential Lot or at any location within Americana unless and except to the extent such repair, maintenance or restoration can be accomplished inside an enclosed Garage with all doors to the said Garage closed. This restriction shall not apply to vehicles, trailers, boats, machinery, equipment or the like stored and kept on a Lot within an enclosed Garage. Nothing in this section 7.12 shall act to prohibit or restrict the use or storage of golf carts or other electric-powered vehicles.

Section 7.13 Use of Alleys and Sidewalks During Construction. Notwithstanding anything to the contrary herein, any and all construction-related activities and/or traffic on, to, from or for the benefit of any Alley-Loaded Lot shall only be from the front or Street side of the Lot, including but not limited to the delivery of materials and equipment. Any violation of this Section 7.14 shall result in the Owner of the Lot as to which the violation occurred being held personally responsible for any and all damages caused by the said violation, including but not limited to the cost of repairing any damages caused thereby to the Alley or sidewalks. Nothing herein shall prevent Declarant or the Design Review Board from requiring the Owner of a Lot or Lots from constructing an Alley, sidewalk, or related improvement in conjunction with such Owner's development of its Lot(s).

Section 7.14 Garages. Any Garage that is to be constructed on a shall be completed contemporaneously with the completion of any Dwelling or other Buildings and/or Improvements to be constructed on the Lot except with the prior consent of the Design Review Board to a different scheduling.

Section 7.15 Garden Walls and Fences. The cost for constructing any Garden Wall or Fence shall be borne as follows:

A. **Voluntary Garden Walls and Fences.** If an Owner of a Residential Lot is permitted, but not required, to construct a Garden Wall or Fence, and such Owner elects to construct a Garden Wall or Fence, then the Owner who elects to so construct a Garden Wall or Fence shall bear the full cost of such construction, unless the Lot is adjacent to another Lot and the adjacent Lot Owner agrees to bear a portion of the cost of construction. The adjacent Lot Owner shall not have any obligation, however, to agree to pay for any portion of the cost of the construction of the Garden Wall or Fence. Regardless of who pays the cost of construction of a Garden Wall or Fence, the cost of maintenance of the Garden Wall or Fence shall be divided equally between the Owners of the Lots between which the Garden Wall or Fence is constructed. The cost of maintaining any Garden Wall or Fence constructed within the confines of the boundary of a Lot that is not bounded by another Lot shall be borne in full by the Owner of the Lot upon which the Garden Wall or Fence is constructed. Each Owner, by executing a cash sale, deed or other instrument pursuant to which such Owner acquired title to a Residential Lot, acknowledges and agrees to the obligations set forth herein with respect to the cost of construction of any Garden Wall or Fence and the maintenance of same. Notwithstanding the foregoing, Declarant shall not be required to share in the cost of maintaining any Garden Wall or Fence; all such costs are to be paid by the Owner of any Lot who has purchased the Lot from Declarant.

B. **Mandatory Garden Walls and Fences.** If a Garden Wall or Fence is required to be constructed on the boundary of a Residential Lot that is not bounded by another Lot along that boundary, then the Owner shall bear the full cost of construction of the Garden Wall or Fence, as well as the maintenance of same. If the Guiding Principles requires that a Garden Wall or Fence be constructed along the boundary between two (2) adjacent Lots, then the first of the Owners of the Lots to construct a Dwelling, Building or other Improvements on his/her Lot shall be required to construct the Garden Wall or Fence, at his/her cost and expense; the adjacent Lot Owner shall, in such cases, be offered the opportunity to pay fifty (50%) percent of the actual cost of same. Notwithstanding the foregoing, the Owner so constructing a Garden Wall or Fence, or his/her successors or assigns in the event the Owner that constructed the Garden Wall or Fence no longer owns the Lot in question, shall be entitled to reimbursement from the then Owner of the adjacent Lot when plans for the construction of a Dwelling, Building or other Improvements on the adjacent Lot are presented for approval pursuant to Article 10, such amount of reimbursement owed to the Owner who constructed the Garden Wall or Fence being hereby fixed at \$75.00 per linear foot for Garden Walls and \$15.00 per linear foot for Fences, effective as of recordation of this Declaration, subject to escalation at a rate of one-quarter percent (.25%) per month hereafter, regardless of the actual cost of construction of the said Garden Wall or Fence. Regardless of how the cost of construction of a Garden Wall or Fence is determined or divided, the cost of maintenance of the Garden Wall or Fence shall be divided equally between the Owners of the Lot between which the Garden Wall or Fence is constructed. Each Owner, by executing a cash sale, deed or other instrument pursuant to which such Owner acquired title to a Residential Lot, acknowledges and agrees to the obligations set forth herein with respect to the cost of construction of any Garden Wall or

Fence and the maintenance of same. The obligation to share costs of construction and maintenance of a Garden Wall or Fence apply only to that portion of a Garden Wall or Fence which is constructed as a common wall along a boundary between two (2) Lots. Notwithstanding the foregoing, Declarant shall not be required to share in the cost of maintaining any Garden Wall or Fence, all such costs to be paid by the Owner of any Lot who has purchased the Lot from Declarant.

The fact that the Design Review Board is given the right to grant exceptions to the prohibitions contained in this Section 7.16 shall not mandate that any exceptions be granted.

Section 7.16 Pets. Pets may be kept by an Owner on his Lot but only if such pets do not cause a disturbance or annoyance within Americana. Each Owner shall be strictly responsible for immediately collecting and properly disposing of wastes and litter of his pets. It is expressly declared that the Rules and Regulations of the Association relative to pets may regulate the number, breed, and size of pets, prohibit the keeping of animals other than customary household pets, designate specific areas within the Commons where pets may be walked, prohibit pets on other areas, require pets to be on leash, and restrict the rights of tenants to keep pets. The Association Board shall have the right to order any Association Member or other resident of Americana whose pet is considered, in the sole discretion of the Association Board, to be dangerous or a nuisance or which creates disturbances or annoyances to the reasonable displeasure of other Owners, to remove such pet from Americana and the Association Board shall have the sole and exclusive authority to determine, after notice to such Association Member or resident and affording such person an opportunity for a hearing before the Association Board, whether or not any pet is dangerous or a nuisance.

Section 7.17 Signs. No sign, advertisement or notice of any type or nature whatsoever (including "For Sale" or "For Rent" signs) shall be erected or displayed upon any Residential Lot (including placement on a Dwelling, other Building, in the yard or in any window) or upon the Commons unless specifically permitted by the Guiding Principles or specifically authorized by the Design Review Board. Notwithstanding any language to the contrary herein, Declarant shall, however, be permitted to post and display advertising signs (including "For Sale" signs) within Americana so long as Declarant has any property for sale in the normal course of business. Declarant (or the Design Review Board, if delegated such authority by Declarant) shall designate an approved sign ("**Permit Board**") to be sold or leased by all builders of Improvements on any Lot. The Permit Board shall be the only sign permitted on a Lot during construction of any Improvements and must be removed upon sale of a Lot by the builder.

Section 7.18 Automobiles.

(1) **Parking.** Automobiles may be parked only in the Garage or driveway of a Lot, in unassigned parking areas as originally created by Declarant or in other parts of Americana which may be specifically designated in writing by the Association Board. All parking within Americana shall be in accordance with the Rules and Regulations of the Associations or Americana Council which may allow parking along Streets for special functions such as small parties.

(2) **Good Repair.** Only automobiles bearing current license and registration tags, as required by state law from time to time, may be parked in Americana.

(3) **Visibility at Street Intersections.** No automobile shall be parked so as to create a temporary obstruction to visibility at a Street intersection.

(4) **Attractiveness and Safety of Lots.** Both the Guiding Principles, the Landscape Code and the Association through its adoption of the Rules and Regulations of the Association, may regulate placement and maintenance of garbage and trash containers, and other matters affecting the attractiveness or safety of Lots.

Section 7.19 Enforcement.

A. **Owner's Responsibility.** Each Owner, all family members of Owners and all Owners' guests and tenants shall conform and abide by the covenants contained in this Declaration and the Rules and Regulations of the Association. Each Owner shall be responsible for assuring such compliance, and any violation by family members, guests or tenants may be considered to be a violation by the Owner.

B. **Covenants Committee.** The Association Board may establish a Covenants Committee to hear any complaints of violations of the Covenants set forth in this

Declaration or the Rules and Regulations of the Association. Members of the Association Board may serve on the Covenants Committee. If a Covenants Committee is not created, the references herein shall refer to the Association Board.

C. **Notice, Hearing and Fines.** If an Owner is believed to be in violation of this Declaration or the Rules and Regulations of the Association, the Covenants Committee shall notify the Owner and provide an opportunity to be heard. After such hearing, the Covenants Committee shall have the right to assess fines, up to a maximum of \$100 for a single violation or \$10 per day for a continuing violation (to be adjusted according to increases in the cost of living) and may restrict the Owner's use of the Commons for up to sixty (60) days or until remedied, whichever is longer. The primary goal, however, of the Covenants Committee is not to punish but to conciliate and resolve problems. The Covenants Committee may suggest or approve dispute resolution agreements and withhold the requirement of paying a fine if the agreement is honored. Fines shall be charged against an Owner's Lot as an Individual Lot Assessment.

D. **Tenant Violations.** If a tenant is believed to be in violation of the covenants set forth in this Declaration or the Rules and Regulations of the Association, the Covenants Committee shall notify the Owner and tenant and provide an opportunity for hearing. If the Covenants Committee determines after notice and opportunity for hearing that a tenant has violated the covenants set forth in this Declaration or the Rules and Regulations of the Association, the Covenants Committee may assess fines against the Owner as provided in paragraph C of this Section 7.19. In addition, if the tenant materially violates the covenants set forth in this Declaration or the Rules and Regulations of the Association more than once in any one-year period, the Association, by a two-thirds (2/3) vote of the Association Board, shall have right to evict the tenant. Each Owner by acceptance of a deed irrevocably appoints the Association as its agent and attorney-in-fact in such an eviction action. All costs and attorney's fees related to such action shall be charged to the Owner as an Individual Lot Assessment. Any Owner whose tenant or tenants (whether under one lease or different leases) violate the covenants set forth in this Declaration or the Rules and Regulations of the Association three (3) times in any one (1) year period may be prohibited from further leasing of his Lot for a period of up to one (1) year.

E. **Corrective Action for Lot Maintenance.** If the Covenants Committee determines after notice and hearing that any Owner has failed to maintain any part of the Lot (including the yard and any Garden Wall, Fence, Building, or other Improvement) in a clean and attractive manner, in accordance with the provisions of this Declaration, the Guiding Principles and applicable Rules and Regulations of the Association, the Covenants Committee shall notify the Owner of its findings and may assess fines as provided in paragraph C of this Section 7.19. If the violation continues for ten (10) days after notice to the Owner of the covenants Committee's findings, the Association, by a two-thirds (2/3) vote of the Association Board, shall have the right without liability to enter upon such Lot to correct, repair, restore, paint or maintain any part of such Lot and to have any objectionable items removed from the Lot. The Association Board may reduce or eliminate the time for notice if it believes the condition creates a hazard. All costs related to such action shall be assessed to the Owner as an Individual Lot Assessment.

F. **Additional Remedies.** All remedies listed in this section are non-exclusive and may be applied cumulatively. The Association shall also have the right to bring suit to enforce the covenants and Rules and Regulations of the Association, as described in Section 6.4.

G. **Residential Units on Mixed Use Lots.** Owners of units designated for residential use in Buildings on Mixed Use Lots (such as apartments, condominiums or lofts) shall comply, and shall demand that any tenant or occupant of such unit, comply with all restrictions contained in this Article 7. Owners of residential units on Mixed Use Lots shall be members of the Residential Association. Nothing herein shall prohibit the Owners of residential units of Mixed Use Lots from organizing other associations to impose additional restrictions on their Lots or units; provided however, that in the case of a conflict between such restrictions and those contained herein or in the Rules and Regulations of the Residential Association, either this Declaration or the Rules and Regulations of the Residential Association shall govern.

ARTICLE 8. COMMERCIAL RESTRICTIONS

Section 8.1 Additional Restrictions Specific to the Commercial Lots. In addition to the General Building Restrictions contained in Article 6, Commercial Lots must also comply with the terms and conditions contained in this Article 8. References to "Lots" in this Article 8

shall mean exclusively Commercial Lots or any portion thereof. References to the Association, the Association Board or the Association Members shall each refer to the Commercial Association and its Board and Members.

Section 8.2 Construction of Commercial Improvements. Declarant intends to construct the Improvements allocated for commercial use on Commercial Lots within the Village Center, and in such other neighborhoods as determined by Declarant, in compliance with the Guiding Principles. In the event that Declarant conveys the Commercial Lots prior to the construction of such Improvements, or if additional Commercial Lots are designated on Additional Annexable Property, any Owners of such Commercial Lots shall design and build any Improvements thereon in compliance with the terms and conditions set forth in the Guiding Principles and this Declaration.

Section 8.3 Allowed Architectural Typologies. The Buildings constructed on each Lot shall be designed in accordance with one (1) of the Allowed Architectural Typologies for that particular Lot. Allowed Architectural Typologies for Commercial Lots in the Village Center shall be Commercial and Live/Work Units. This Allowed Building Typology is also indicated on the Urban Regulations in the Guiding Principles provided for each Lot Type under the heading "Allowed Architectural Typology".

Section 8.4 Design Guidelines for Architectural Typologies. The Guiding Principles contains some of the design requirements and/or restrictions for each of the various Allowed Architectural Typologies for the various typologies and neighborhoods. The Guiding Principles shall be complied with in the design and construction of Buildings using the designated Architectural Typology. With respect to the Historical Architectural Characteristics and the Historical Details applicable to each of the Architectural Typologies reflected in the Guiding Principles, it is noted that those are intended to typify each such Architectural Typology, but it is acknowledged there are many other characteristics and details of each approved Architectural Typology and those other characteristics and details may also be used. It is the function of the Design Review Board, through the review process described in Article 10, to verify that the plans for the design of Buildings proposed for construction on a Commercial Lot are consistent with the characteristics and details of the Architectural Typology chosen by the Lot Owner presenting plans to review.

Section 8.5 Setbacks.

A. **General.** The Guiding Principles contains information as to the required Setbacks of the Building to be constructed on each Lot. All Setback numbers are expressed in "feet" as the linear measurement of the Setback.

B. **Front Setbacks** – Commercial Building. The principal facade of each Building constructed on a Commercial Lot must be located between the Lot line of the Lot and the maximum distance shown as the front Setback of the Building in the Guiding Principles and in the Urban Regulations which relates to the category of Lot Type which includes that particular Lot.

C. **Side-Yard Setbacks** – Commercial Building. The facade of the sides of any Building constructed on a Commercial Lot (i.e., the boundaries not facing the Street on which the Lot fronts and not facing the rear of said Lot) may be located no closer to the side property lines than that number of feet that is set forth as the side Setback of the Building in the Guiding Principles and in the Urban Regulations which relates to the category of Lot Type which includes that particular Lot.

D. **Rear Setbacks** – Commercial Building. The rear facade of the sides of any Building constructed on a Commercial Lot must be located no more and no less than that number of feet from the rear property line of the Lot that is set forth as the rear Setback of the Building in the Guiding Principles and the Urban Regulations which relates to the category of Lot Type which includes that particular Lot.

Section 8.6 Trash and Garbage Containers. Trash and garbage storage and disposal shall be subject to this Declaration, any Rules and Regulations of the Commercial Association, and any trash management plan provided by Declarant to each Commercial Owner. On all Commercial Lots, trash and garbage containers shall be kept in that area along the rear of the Lots which are designated for such purpose on the plat of survey recorded with the Clerk of Court pursuant to which subdivision of that phase of development was approved. All garbage (including recyclables) may only be picked up or collected by garbage collection vehicles from an area designated for such use for each Building. The area around any such garbage pick-up point on a Commercial Lot must be enclosed with screening, as required by the

Guiding Principles and/or the Design Review Board, so that garbage containers are not visible from any Common Road or Alley. The Owners or occupants of Commercial Lots shall not place trash or garbage containers in public view. Garbage, trash and other refuse shall be placed in covered containers approved by the Design Review Board, except as otherwise expressly required by law. Recyclable products or materials may be placed for collection in containers expressly designed or legally required for such collection. Owners shall further use and store trash and garbage containers in compliance with any applicable Rules and Regulations of the Association.

Section 8.7 Landscaping. Each Commercial Lot shall be landscaped in accordance with the requirements of this Declaration, the Guiding Principles and the Landscape Code.

Section 8.8 Permitted Uses.

A. **Commercial Use.** Commercial Lots shall be used only for normal retail, office and related and/or appurtenant service uses customarily conducted in first-class retail shopping centers, office complexes and power centers, including retail sales, retail warehouse, retail and/or wholesale distribution, theaters, museums, tourist purposes, lodging, offices, entertainment, restaurants or other permitted commercial purposes approved by the Declarant compatible with the foregoing and in accordance with all applicable zoning laws, rules and regulations. Notwithstanding the foregoing, Tracts 2 and 3 (pursuant to Article 18 below) shall be used exclusively for a YMCA facility, but such restricted uses shall in no way make the remaining provisions of this Declaration inapplicable to such tracts.

B. **Sale and Consumption of Alcoholic Beverages.** Commercial sale or consumption of alcoholic beverages and spirits, whether for onsite or offsite consumption is prohibited within any Commercial Lot in Americana except as expressly permitted in any act of sale, deed, lease, donation or other transfer agreement, or within a separate written agreement ("**Act of Transfer**") between Declarant and a third party transferee. If Declarant permits an Owner or tenant of a Commercial Lot to sell and/or distribute alcoholic beverages by so stating in an Act of Transfer, such permission shall be transferrable to subsequent Owners or tenants of such Commercial Lot unless the Act of Transfer expressly prohibits such transfer. Notwithstanding an Owner's receipt of or application for any governmental approval for the sale or distribution of alcoholic beverages, including any required zoning, license, permit or other approval, no such sales or distribution shall be permitted without the written approval of and permit from, Declarant either within an Act of Transfer or a separate written agreement. Nothing herein shall prevent Declarant or an Association from permitting the sale and/or consumption of alcoholic beverages and spirits in conjunction with special events, festivals, community gatherings or private functions otherwise permitted hereunder and permitted under all applicable law.

Section 8.9 Prohibited Uses.

A. **Warehouse Operations.** A facility primarily used as a storage warehouse operation, mini-warehouse or freight terminal (for purposes hereof, a "**storage warehouse operation**" or freight terminal shall not be construed to include retail merchandise stored on the premises with the main use).

B. **Manufacturing Facility.** A facility for assembling, manufacturing, refining, smelting, drilling, mining, exploring or the producing of oil, gases or other minerals (provided this restriction shall not preclude the assembly of merchandise to be sold at a facility).

C. **Salvage Yard.** Salvage or reclamation yards and the storage of inoperative vehicles.

D. **Pawn Shop.** Any pawn shop or "second hand" store.

E. **Mobile Home Park.** Any mobile home park, camp ground, trailer court or labor camp; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance or for trailers, delivery trucks or recreational vehicles of agents or contractors or Owner or Occupant.

F. **Dumping.** Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Improvement.

G. **Laundromat.** Any central laundry or laundromat; provided, however, this prohibition shall not be applicable to a drop-off and pickup facility.

H. **Automobile Sales.** Any automobile, truck, trailer or recreational vehicle with outside sales, leasing or display unless approved by the Association Board or in conjunction with promotions, displays and other similar marketing activities, subject, however, to compliance with all applicable laws, rules and regulations.

I. **Body Shop.** Any body shop repair operation, engine repair or vehicle repair facility for all vehicles, including motorcycles.

J. **Funeral Home.** Any mortuary, funeral home or cemetery.

K. **Flea Market.** A flea market, defined as a market of individual stalls selling old or used articles. Nothing herein shall prevent the Declarant or an Association from permitting a neighborhood garage sale, farmers market, antique market, or similar special or regular event.

L. **Gas Stations.** A service station shall only be permitted on Commercial Lots with prior written approval of the Commercial Association Board. The location and size of any such service station shall be determined by the Commercial Association Board. Service stations must be properly landscaped and the Association Board shall have the right to impose additional landscaping requirements with respect to a Commercial Lot upon which a service station is to be located. Any service station shall be of similar architectural quality and shall be consistent with the architectural themes of Americana. No fuel pumps shall be located on any Commercial Lot other than the Lot on which a service station is located.

M. **Toxic Materials.** Any business which emits noxious toxic or caustic or corrosive fuel or gas, including a dry cleaning business; provided, however, that nothing shall prohibit a dry cleaning pickup location (where no dry cleaning operations are conducted).

N. **Fireworks.** Any unusual fire or explosion, or any use which involves any firing, explosives or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks or a shooting gallery). Nothing herein shall prohibit the Associations or the Institute from applying to Declarant for an exception to this prohibition on such terms and conditions as Declarant may set.

O. **Heavy Industrial Use.** Any heavy industrial use or for a purpose which may cause materially objectionable odors and/or untidiness such as (but not limited to) stand-up or drive-in food facilities or other litter-creating operations; provided, however, that a sit-down or drive-through type restaurant is not precluded hereby.

P. **Truck Parking.** The parking of trucks and/or delivery vehicles so as to unreasonably interfere with, or suffer or permit any use thereon to interfere with, the use of any driveways, walks, roadways, highways, streets, parking areas or other Common Areas, excluding loading areas, docks, and truck courts or turnarounds.

Q. **Outdoor Carnivals.** Outdoor circus or other outdoor entertainment, excluding temporary carnivals or entertainment in connection with the marketing of the first class shopping center/power center, not to exceed two (2) times per year.

R. **Gaming Facilities.** Any casino, video poker facility, bingo halls, off-track betting parlor or similar facility at which games of chance are conducted.

Section 8.10 Rules and Regulations.

A. Subject to prior express written approval given by Declarant or an Association, Owners and tenants of Commercial Lots or any portion thereof shall abide by all reasonable rules and regulations established by the Association or Declarant, from time to time, with respect to the use and care of the Lot or portion thereof, and to Americana, including the Commons, and shall:

(1) Conduct no auction, fire or bankruptcy sales, so called going out of business or "lost our lease" sales, or similar practices.

(2) Conduct no special events, radio spots, or other promotional activities or programs unless approved in advance by the Association.

(3) Except, as may be set forth in the Rules and Regulations, a written policy adopted by the Association, or as expressly permitted in writing from time to time, display no merchandise outside the Lot nor in any way obstruct the Commons and store all trash in appropriate containers within the Lot, or in the event Owner or tenant is a food service

operation, within containers within temperature controlled areas within the Lot, and attend to the daily disposal thereof in the manner designated by the Association. Owner or tenant shall not burn any trash within the confines of Americana.

(4) Load or unload all merchandise, supplies, fixtures, equipment and furniture and cause the collection of trash only through the rear service door(s) of the Lot unless a rear service door is not provided in which event Owner or tenant shall accept deliveries through the front entrance only during hours that the business operation is not open for business to the general public. Owner or tenant shall not permit trailers or trucks servicing the Lot to remain parked in Americana beyond those periods necessary to service Owner's or tenant's operations. Such trailers or trucks shall not remain parked in Americana beyond the closing hour of Americana. The restrictions may be altered by Declarant or Association in conjunction with the adoption of a formal parking management plan made available to all Owners. Nothing herein shall prohibit Declarant from designating certain areas as no parking zones or reserving certain areas for emergency parking, or from restricting parking in conjunction with any events or emergencies as determined by Declarant. Nothing herein, shall prevent delivery of mail or small packages through the front door of a Building.

(5) Keep the inside and outside of all glass in the windows and doors of the Lot clean.

(6) Keep the Lot in a careful, safe, clean and proper manner and free of insects, rodents, and other pests; not permit any trash of any nature emanating from the Lot to accumulate in the Commons.

(7) Employ a pest exterminating contractor to service the Lot at such intervals as the Association may require.

(8) Prohibit the plumbing facilities within or servicing the Lot to be used for any purposes other than for which they were constructed, and no foreign substances of any kind shall be thrown therein.

(9) Not solicit business or distribute any handbills or other advertising matter in the Commons, without advance consent of the Association.

(10) Prevent the Lot from being used in any way which may be a nuisance, or cause damage to the other occupants of Americana, including, without limiting the generality of the foregoing, the operation of any instrument or equipment or the carrying on of any trade or occupation which emits (i) an odor discernible outside of the Lot and which may be deemed offensive in nature, (ii) a noise which may be heard outside the Lot; or (iii) a vibration emanating from the Lot and otherwise discernible outside or adjacent to the Lot.

(11) Not permit the display or sale of any merchandise which is inconsistent with the general high standards of Americana as determined by the Association which is inconsistent with the highest standards of decency and morals prevailing in Americana. The Association, in exercising its right to determine the general high standards of Americana shall act in a reasonable manner consistent with the operation of a first class regional shopping center with residential components. For the purposes hereof, merchandise such as nude photos, sexual devices, objects depicting genitalia and any other similar items and merchandise commonly associated with so called peep shows, massage parlors, adult book stores and head shops shall be deemed inconsistent with the general high standards of Americana.

(12) Not display or affix any sign, placard, name, trademark, insignia, decal, advertising matter or any other item(s) on the surface of any exterior door, wall or window or within one (1) foot of the surface of any display window space in the Lot or within any entrance to the Lot. The Association shall have the right, without notice to Owner or tenant and without any liability for damage to the Lot reasonably caused thereby, to remove any items displayed or affixed in violation of the foregoing provisions. All signage is subject to the approval of the Design Review Board and the Association.

(13) Promptly comply with all present and future laws, regulations or rules of any parish, state, federal and other Governmental Authority and any bureau and department thereof, and of the National Board of Fire Underwriters or any other body exercising similar function applicable to the Owner's or tenant's Work done to the Lot, including the making of any required structural changes thereto, subject to the supervision of the Design Review Board. If Owner or tenant shall install any electrical equipment that overloads the lines in the Lot, Owner or tenant shall make all changes necessary to comply with the requirements of the insurance underwriters and Governmental Authorities having jurisdiction.

(14) Not store, handle, use, sell, generate or release, or specify, use or dispose of, or permit its architect, contractors, subcontractors or any parties performing any Work on behalf of Owner or Tenant to specify, use or dispose of, directly or indirectly, on the Lot, Commons, or in Americana, any Hazardous Substance. Upon completion of such Work, Owner or tenant shall deliver to the Association a certificate from its architect, contractor, subcontractor or other performing party stating that no such materials have been specified or used in such Work. Upon notice to Owner or tenant, the Association may conduct an environmental audit of the Lot. If any Hazardous Substance is detected or if a violation of the covenants contained herein is discovered, the fees and expenses of such audit shall be paid by Owner or tenant on demand by the Association. Owner or tenant shall immediately notify the Association and provide copies upon receipt of all written complaints, claims, citations, demands, inquiries, reports or notices relating to the condition of the Lot or compliance with Environmental Laws.

(15) Without the prior written approval of Declarant or the Association, Owners shall not install any vending machine or similar type of equipment within any area of the Lot which is accessible to the public. The Association shall have the right, without notice to Owner or tenant and without any liability for damage to the Lot reasonably caused thereby, to remove any vending machines or similar type of equipment installed, maintained or existing within the Lot in violation of the foregoing provisions. In no event may vending machines or similar equipment be visible from any Common Area or other publicly accessible location.

(16) Maintain lighting on the interior side of the storefront of the Lot until 2:00 a.m. each day. The adequacy of such lighting shall be subject to the Design Review Board's approval.

Section 8.11 Association's Right to Cure. If Owner or tenant fails to keep or perform any covenant or term included in Article 8, and if Owner or tenant fails within a reasonable time (not to exceed three (3) days following receipt of written or oral notice from the Association) to cure such failure with all due diligence, the Association may cure or prosecute the curing of such failure and Owner or tenant shall pay all expenses in connection with such cure or prosecution of such cure of such failure, including, without limitation, reasonable legal fees.

Section 8.12 Commercial Units on Mixed Use Lots. Owners of units designated for commercial use in Buildings on Mixed Use Lots shall comply, and shall demand that any tenant or occupant of such unit, comply with all restrictions contained in this Article 8. Owners of commercial units on Mixed Use Lots shall be members of the Commercial Association. Nothing herein shall prohibit the Owners of commercial units of Mixed Use Lots from organizing other associations to impose additional restrictions on their Lots or units; provided however, that in the case of a conflict between such restrictions and those contained herein or in the Rules and Regulations of the Commercial Association, this Declaration and the Rules and Regulations of the Commercial Association shall govern.

ARTICLE 9. TOWN PLANNER AND DESIGN REVIEW BOARD

Section 9.1 Town Planner.

A. **Selection.** The Town Planner is initially selected by Declarant and may be removed and replaced with another Town Planner, at any time, in the sole discretion of Declarant. While Declarant owns at least three (3) Lots or holds any property within Americana for sale in the normal course of business, Declarant may select any successor or replacement, unless Declarant permanently waives that right in writing. When Declarant no longer selects the Town Planner, the Residential Association Board or Americana Council shall select the Town Planner.

B. **Qualification.** The Village Architect shall have a degree in professional architecture or shall have a master's degree in urban design from an accredited university, or shall have comparable qualifications. The Town Planner does not, however, need to be licensed to practice in Louisiana unless required by the State of Louisiana.

Section 9.2 Design Review Board

A. **General.** The Design Review Board is an agency, department or division of the Residential Association.

B. **Composition.** The Design Review Board shall have either three (3) members or five (5) members; initially, the Design Review Board shall consist of three (3)

members. Should the Residential Association Board wish to declare that there shall be an increase in the number of members serving on the Design Review Board, it may do so at a regularly called meeting of the Residential Association Board. The members of the Design Review Board shall be selected as follows:

C. **Town Planner.** The Town Planner, who is appointed pursuant to Section 9.1, shall serve as one (1) member of the Design Review Board.

D. **Additional Members.** All other members of the Design Review Board shall be appointed by Declarant for so long as Declarant is permitted under Section 9.1(A) to select or replace the Town Planner. When Declarant no longer selects the Town Planner, the Residential Association Board shall appoint the additional members of the Design Review Board.

E. **Compensation.** The Town Planner, the other members of the Design Review Board, and other professionals and staff assisting the Design Review Board may be paid reasonable compensation for service on the Design Review Board, as determined from time to time by the Residential Association Board. All members of the Design Review Board shall be reimbursed by the Residential Association for their respective expenses incurred in furtherance of the authorized activities of the Design Review Board, subject to review and approval by the Residential Association Board.

F. **Cost of Operation.** The Residential Association shall be responsible for all reasonable costs of operation of the Design Review Board. Each Owner submitting plans for the construction or modification of Improvements on any Lot pursuant to Article 10 shall submit with such plans a payment of \$450.00 as a nonrefundable Review Fee and that payment shall be made to the Residential Association; the Review Fees paid shall be used by the Residential Association to defray the costs and expenses incurred by the Design Review Board and the fees and compensation paid, if any, to the Town Planner, staff, other professionals and members of the Design Review Board. The Residential Association Board, in its sole discretion, may increase the amount which must be paid as a Review Fee in conjunction with the submissions of plans pursuant to Article 10 above the initial \$450.00 fee, but in no event shall the said Review Fee charged in any one calendar (1) year exceed 125% of the Review Fee charged during the preceding calendar year.

G. **Employees.** The Design Review Board may employ personnel or contract with individuals or companies as necessary to assist in the review process, as authorized pursuant to the budget for the Design Review Board, as established by the Residential Association Board. All such personnel, individuals and/or companies employed or contracted with by the Design Review Board shall be considered as employees and/or independent contractors of the Residential Association.

H. **Rules and Procedures.** The Design Review Board is authorized to adopt rules and procedures and to adopt, from time to time, amendments to said rules and procedures for the conduct of its business, consistent with the provisions of this Declaration. Any Owner shall be provided with a copy of such rules and procedures within fifteen (15) days of submission of a written request to the Residential Association Board.

ARTICLE 10. DESIGN REVIEW PROCEDURES

Section 10.1 Approved Contractors; Approved Architects and Design Professionals.

A. **Contractors.** No Owner shall self-contract the construction of any Improvements on any Lot. The Contractor selected by an Owner to construct Improvements on a Lot must be approved by the Design Review Board, in its sole discretion. Any approval by the Design Review Board of a contractor is not meant as an endorsement of that contractor's ability and shall not be the basis for any liability on the part of the Design Review Board.

B. **Architects and Design Professionals.** The architect or other design professional selected by an Owner to design any Improvements to be constructed on a Lot must be approved by the Design Review Board, in its sole discretion. Approval by the Design Review Board of an architect or other design professional is not meant as an endorsement of that architect's or design professional's ability and shall not be the basis for asserting any liability on the part of the Design Review Board.

C. **Access to Approved Lists.** The list of approved contractors and the list of approved architects and other design professionals shall be maintained by the Residential Association in the registered office of the Residential Association and those lists shall be available for review by Owners during regular business hours of the Residential Association.

D. **Approval Process.** Should an Owner desire to have a Building or other Improvements constructed on a Lot by a contractor who is not approved by the Design Review Board, or to have a Building or other Improvements to a Lot designed by an architect or other design professional who is not approved by the Design Review Board, the said Owner shall submit to the Design Review Board such information as may be requested by the Design Review Board which information may include, without limitation thereto, the following: (a) name and address; (b) a listing of other Buildings or similar types of Improvements constructed or designed, as the case may be, by the proposed contractor or design professional, together with photographs of such Buildings or similar types of Improvements; (c) a listing of references who may be called to discuss the quality, effectiveness, thoroughness and other aspects of services to be provided by the proposed contractor or design professional; (d) evidence of insurance; (e) evidence of ability to obtain payment and performance bonds, or other evidence of net worth and liquidity; (f) other evidence of ability, as to a contractor, to build a Building or other Improvements in a timely manner, in accordance with plans and specification; and (g) other evidence, as to a design professional, of ability to design and provide specifications for a Building or other Improvements which would be consistent with the requirements of this Declaration, the Guiding Principles and the Landscape Code.

Section 10.2 Review Procedure.

A. **Construction Subject to Review.** All construction or modification (except interior alterations not affecting the external structure or appearance of any Building) on any Lot or Commons must be approved in advance by both the Design Review Board and the Declarant. Modifications subject to review specifically include, but are not limited to, painting or other alteration of a Building (including doors, windows and trim); replacement of a roof or other parts of a building other than with duplicates of the original material; installation of antennae, satellite dishes or receivers, solar panels or other devices; construction of fountains, swimming pools, whirlpools or other pools; construction of privacy walls or other fences or gates; addition of awnings, flower boxes, shelves, statues, or other outdoor ornamentation; window coverings; any individual wells or septic tanks; and any material alteration of the landscaping or topography of Americana, including without limitation any removal or substantial pruning of trees or plants. The listing of a category does not imply that such construction is permitted; this Declaration may, for example, prohibit all antennae, satellite dishes or receivers, in which event, such a prohibition shall control.

B. Plan Review and Approval Procedure for Residential Lots.

(1) **Conceptual Submittal and Pre-Application Meeting.** The Owner and his architect shall schedule a "Pre-Application Meeting" with the Design Review Board and the Declarant before any plans have been prepared to discuss concepts and goals of the Owner, Design Review Board and Declarant. Conceptual submittal shall be presented at the Pre-Application Meeting to review the conceptual site, plan, and elevations and to alleviate any confusion of a party's interpretation of the Guiding Principles.

(2) **Submission of Significantly Completed Conceptual Drawings.** The Owner and his architect shall schedule a "Phase I Meeting" with the Design Review Board and the Declarant after significantly completed conceptual drawings are completed but before final plans have been finalized to discuss concepts and goals of the Owner, Design Review Board and Declarant. Prior to the Phase I Meeting, Owner shall submit a PDF file of (a) the floor plans for all levels of each Building, (b) roof plans, (c) all exterior elevations, (d) site plan, (e) typical wall sections reflecting intended material and design intent, and (f) the \$450.00 nonrefundable Review Fee. Conceptual submittal shall be presented at the Phase I Meeting to review the conceptual site, plan, and elevations and to alleviate any confusion of a party's interpretation of the Design Code.

(3) After review and receipt of the Design Review Board's written acceptance of the Phase I submittals in accordance with the review process described in subparagraph (3) below, each Owner of a Residential Lot shall submit the following additional documentation for final architectural review and approval in such form as may be required by the Design Review Board (together with the information submitted in subparagraph (1) above, the "Residential Application"). The Residential Application shall include:

(a) one (1) complete set of final plans and specifications (paper copies and PDF formatted for full size drawings) (the "**Residential Plans**") prepared by an architect complying with Section 10.1, showing the site layout, height of proposed improvements, including balconies and porches, dormers, eaves and cornices, columns, railings, piers, entry door and surround, any other monumental features such as Garden Walls, gates, chimneys, colors and materials, garage door and garage specifications;

(b) landscaping plan, including drainage, lighting, irrigation and other features of the exterior ground work, as required by the Landscape Code and as otherwise required the by Design Review Board;

(c) construction timeline; and

(d) a non-refundable fee determined by the Design Review Board. The initial fee for the architectural review shall be no more than FOUR HUNDRED FIFTY and NO/100 DOLLARS (\$450.00). This fee is in addition to the Review Fee submitted for the Pre-Application Meeting. In addition, the Design Review Board may, with the prior approval of the Residential Association Board, retain design professionals to assist in the review of any Residential Application and the Residential Association may charge reasonable fees incurred.

(e) The Design Review Board may require the submission of additional information as it deems necessary to consider the Residential Application.

The Design Review Board shall, within forty-five (45) days after Substantial Completion of any construction for which approval has been granted, return the Plans to the Owner thereof. "**Substantial Completion**" for purposes of this Subsection 10.2.B shall be deemed to occur on the date a permit or certificate for occupancy of the Lot is issued by the local governing authority.

(4) The Design Review Board shall, within twenty (20) business days after receipt of each submission of the entire Residential Application, advise the Person submitting the same, in writing, at an address specified by that Person at the time of submission, of the (a) approval of Residential Plans; (b) approval as noted on Residential Plans; or (c) disapproval of Residential Plans, specifying the segments or features of Residential Plans which are objectionable and suggestions, if any, for the curing of objections. In the case of either (b) or (c) above, the Design Review Board shall, within five (5) business days after receipt of each submission of revised Residential Plans, advise the Person submitting the same, in writing, at an address specified by that Person at the time of submission, of the (a) approval of Residential Plans; (b) approval as noted on Residential Plans; or (c) disapproval of Residential Plans, specifying the segments or features of Residential Plans which are objectionable and suggestions, if any, for the curing of objections. In the event the Design Review Board fails to advise the submitting Person by written notice within the time set forth above of either the approval or disapproval of Residential Plans, the applicant may give the Design Review Board written notice of the failure to respond, stating that unless the Design Review Board responds within five (5) business days of receipt of such notice, approval shall be deemed granted. Upon further failure of the Design Review Board to so advise, approval shall be deemed to have been given, subject to the right of Declarant to veto approvals by the Design Review Board. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Guiding Principles unless a variance has been granted in writing pursuant to Section 10.4. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid is deposited with the U. S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of written notice also shall be sufficient and deemed to have been given at the time of delivery.

(5) Within three (3) business days after the Design Review Board has approved a Residential Application, the Design Review Board shall give written notice to Declarant of such action, together with other information as Declarant may require. Within ten (10) days of receipt of such notice, the Declarant may veto any action, in its sole discretion, by written notice to the Design Review Board and the applicant.

(6) If construction does not commence on any Work for which approval has been granted within twelve (12) months of final approval, the approval shall expire and the Owner must re-submit its Residential Plans for reconsideration in accordance with the

Guiding Principles, then in effect prior to commencing Work. All Work shall be completed within eighteen (18) months of commencement or such other period as may be specified in the notice of approval (the "**Residential Completion Period**"), unless completion is delayed due to causes beyond the reasonable control of the Owner, such as an event of force majeure, hurricane, act of God, fire, explosion, extraordinary flood or similar occurrence (but not including reasonably foreseeable weather conditions). If all such Work is not Substantially Complete within the Residential Completion Period, Owner shall pay to the Residential Association the sum of **TWO HUNDRED and NO/100 DOLLARS (\$200.00)** per day for each day which improvements remain uncompleted until the date of Substantial Completion.

C. **Plan Review and Approval Procedure for Commercial and Mixed Use**

Lots.

(1) **Types of Submittals.** There shall be three (3) types of submittals in the review process: an optional conceptual submittal; preliminary plan submittal, which shall include all design development documents; and final plan submittal, which shall include all construction documents.

(2) **Conceptual Submittal and Pre-Application Meeting.** The Owner and his architect may arrange a "Pre-Application Meeting" with the Design Review Board and the Declarant before any plans have been prepared to discuss concepts and goals of the Owner, Design Review Board and Declarant. Conceptual submittal shall be presented at the Pre-Application Meeting to review the conceptual site, plan, and elevations and to alleviate any confusion of a party's interpretation of the Guiding Principles.

(3) **Preliminary Plan Submittal.** Each Owner of a Commercial or a Mixed Use Lot shall submit an application for preliminary architectural review and approval in such form as may be required by the Design Review Board ("**Commercial Application**"). The Commercial Application shall include:

(a) Four (4) full sets of plans and specifications ("**Commercial Plans**") prepared by an architect drawn to a scale typically produced by an architect in a 24" x 36" sheet format, printed legibly and showing the site layout, building setbacks, height of proposed improvements, proposed architectural materials, floor plans, elevations, proposed color palette, summary of parking requirements, landscaping, drainage, lighting, irrigation and other features of the proposed construction, as required by the Guiding Principles and as otherwise required by the Design Review Board.

(b) a complete list of all builders and contractors to be used on the job.

(c) a non-refundable fee in the amount of \$1,000.00.

(d) floor plans, exterior building elevations indicating all materials and a site plan showing the site acreage, survey clearing, and topography; any existing improvements (such as utilities and fences); percentage of the site devoted to open space; existing vegetation, including trees to be preserved on landscape easements and along landscape setbacks on external and internal streets; building location and its size; building setbacks/dimensions; parking setbacks/dimensions; parking lot configuration, capacity and ratio; service areas, trash receptacles, mechanical equipment locations with screening method and details; fencing, if any; satellite dish or other similar items along with method of screening; sign location and details of sign; proposed irrigation layout; proposed landscaping plan; proposed colors; photo-metric drawing of the site lighting; monument signs and building signage; civil plan indicating drainage building finished floor, elevation and utility connections; and method of compliance with storm water management.

(e) rendering or colored sketch of exterior building appearance.

(f) colored elevation renderings.

(g) The Design Review Board may require the submission of additional information as it deems necessary to consider the Commercial Application.

Additional preliminary plan submittals may be assessed another non-refundable fee of \$500.00 per review if the Owner makes significant changes to the Commercial Plans, or if the Commercial Plans do not incorporate design elements required by the Guiding Principles, or if the Design Review Board must schedule an additional review. No partial submittals shall be accepted. All Commercial Plans approved hereunder shall be at the discretion of the Design Review Board and shall be signed and sealed by a licensed architect. The commercial project shall be named before it receives final approval.

(4) Other Materials. Prior to preparing a Commercial Application, the Owner of the Commercial Lot should obtain copies of the Guiding Principles from Declarant and such additional infrastructure plans as required to properly integrate the proposed Improvements with existing off-site and utility improvements adjacent to the Owner's site. In addition, the Owner should obtain copies of the most recent local zoning and property restrictions of record and building codes. Americana is subject to both City and Parish and Declarant's development requirements.

(5) Preliminary Approval Procedures. The Design Review Board shall, within sixty (60) business days after receipt of each submission of a completed Commercial Application, return one (1) set of the Commercial Plans to the Owner, with a written notice describing the Design Review Board's comments, at an address specified by that Person at the time of submission, and one (1) set of the Commercial Plans shall be retained by the Design Review Board. If the Design Review Board receives an incomplete application, it shall notify the Owner of the deficiencies in the Commercial Application within ten (10) business days of receipt. After review of the Commercial Application, the Design Review Board shall return the Commercial Plans to the Owner marked "approved" or "approved subject to conditions" or "not approved". In the event the Design Review Board fails to advise the submitting Person by written notice within the time set forth above of either the approval or disapproval of Commercial Plans, the Owner may give the Design Review Board written notice of the failure to respond, stating that unless the Design Review Board responds within five (5) business days of receipt of such notice, approval shall be deemed granted. Upon further failure of the Design Review Board to so advise the Owner, approval shall be deemed to have been given, subject to the right of Declarant to veto approvals by the Design Review Board. However, no approval, whether expressly granted or deemed granted pursuant to the foregoing, shall be inconsistent with the Guiding Principles unless a variance has been granted in writing pursuant to Section 10.4. Notice shall be deemed to have been given at the time the envelope containing such notice, properly addressed, and postage prepaid is deposited with the U. S. Postal Service, registered or certified mail, return receipt requested. Personal delivery of written notice also shall be sufficient and deemed to have been given at the time of delivery. After the Owner incorporates all necessary changes, Owner shall resubmit two (2) sets of its Commercial Plans for Final Approval of the Preliminary Submittal. One (1) set shall be returned to the Owner marked as approved. Commercial Plans approved in the preliminary submittal stage shall be submitted to the City and the State Fire Marshall for approval prior to final plan submittal. No approval shall be deemed given to any incomplete application.

(6) Final Plan Submittal. Each Owner who has received preliminary approval shall submit its final plan to the Design Review Board for final approval. The submittal shall include:

- (a) A non-refundable review fee of \$1,000.00;
- (b) Samples of exterior building materials mounted on boards (24" x 36" material boards);
- (c) Color board (with a 4" x 6" labeled sample of each color to be used);
- (d) Colored elevation rendering(s) with applications of materials;
- (e) Summary of square footage to satisfy the parking standards;
- (f) Legal closing documents showing acreage, buyer/seller, and closing date;
- (g) Signage plan (temporary and permanent locations and square footage); and
- (h) All the information required for preliminary plan review.

(7) **Final Approval Procedures.** The same procedure as set forth in Section 10.2(C)(5) shall be followed for final approval.

(8) **Final Declarant Approval.** After the Declarant has reviewed all submittals, Declarant shall issue a written notice to Owner describing any additional changes or stating that the Commercial Plans are approved. This notice shall be mailed to the Owner within thirty (30) days of the final plan submittal. The Commercial Plans shall meet all applicable local codes and ordinances, and Declarant shall not be responsible for any code or ordinance interpretation. Owner shall be responsible for all permits, plans, soils reports, utility letters, variances or any other legal documents or permissions required for constructing on a site. **No Building or Improvement may be constructed on any Lot without final approval by the Declarant, regardless of the approval of the Design Review Board.**

(9) **Construction.** Commercial Plan approval is valid for six (6) months from the date of final approval. If construction does not commence on any Work for which final approval has been granted within such six (6) month period, the approval shall expire and the Owner must re-submit Commercial Plans for reconsideration in accordance with the Guiding Principles, then in effect prior to commencing Work. All Work shall be completed within two (2) years of commencement or such other period as may be specified in the notice of approval ("**Project Completion Period**"), unless completion is delayed due to causes beyond the reasonable control of the Owner, such as an event of force majeure, hurricane, act of God, fire, explosion, extraordinary flood or similar occurrence (but not including reasonably foreseeable weather conditions). If all such Work is not Substantially Complete within the Project Completion Period, Owner shall pay to the Commercial Association the sum of **TWO HUNDRED AND 00/100 (\$200.00) DOLLARS** per day for each day which improvements remain uncompleted until the date on which they are Substantially Complete. "**Substantially Complete**" for purposes of this Subsection shall be deemed to occur on the date a permit or certificate for occupancy of the Commercial Lot is issued by the applicable local governing authority. Upon completion, the builder shall submit to the Design Review Board a signed statement indicating that the project has been constructed according to the approved Commercial Plans and specifications.

D. **Basis for Decision.** Applications shall be approved or denied based upon compliance with the factors identified in Section 10.2. The Guiding Principles and the Landscape Code each provide many, but not all, factors to be considered by the Design Review Board in reviewing applications. Each Owner agrees and acknowledges that the Guiding Principles and the Landscape Code are not a complete listing and that in reviewing applications the Design Review Board may consider such other factors as the Design Review Board may in its sole discretion deem appropriate. In addition to compliance with this Declaration, the Guiding Principles and the Landscape Code, the additional factors to be considered by the Design Review Board in reviewing plans and specifications submitted to it shall be: (a) the quality of workmanship and material; (b) the architectural style or design; (c) the aesthetic appearance of the exterior of the Improvements; (d) conformity with good aesthetic design practices; (e) the quality and size of the proposed Improvements; (f) the good aesthetic use of materials, color and location in relation to surrounding structures and topography; (g) harmony of design with existing Buildings and other Improvements; (h) avoidance of duplication of or repetitive designs for Buildings and other Improvements, and (i) whether the design or design components are historically accurate.

E. **Notification; Construction.** The Design Review Board shall notify the applicant of its decision within the time limits established pursuant to the procedures adopted under Subpart B or C of this Section 10.2. If approval is given or deemed to be given, construction of the Improvements may begin. All construction must comply with the plans and specifications approved by the Design Review Board. The Design Review Board may impose conditions for the placement of dumpsters, pods, materials or equipment, including vehicles used during construction. Both Declarant and the Design Review Board reserve the right to inspect the Work being performed on any Lot and to require changes, accept with conditions or accept any Work that it deems not to be in compliance with the approved plans and specifications.

Section 10.3 Enforcement. If any construction is begun which has not been approved or which deviates from the approved plans, the Design Review Board, the Town Planner, Declarant, or an Association may bring an action for specific performance, declaratory judgment or injunction and shall be entitled to recover its actual attorney's fees in bringing such action.

Section 10.4 Variances. The Design Review Board or the Declarant shall have the right and power to grant variances from compliance with any provision of this Declaration or any provision in the Guiding Principles or in the Landscape Code, including without limitation,

payment of fees, the approval of different building typologies than, or variances from, the building typologies identified in the Guiding Principles, as well as requirements regarding height and use, placement/parking and encroachments, with respect to any Lot. Any building restrictions, including without limitation those addressing the face direction, location, setbacks or materials for Buildings or other Improvements, may be modified when, in the sole and absolute discretion of the Design Review Board, circumstances such as topography, natural obstructions, hardship, or aesthetic, economic or environmental considerations, warrant a variance. All variances must be evidenced in writing from the Design Review Board in order to have legal effect.

If a variance is granted, no violation of this Declaration, the Guiding Principles or the Landscape Code, shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of any variance shall not operate to waive any of the terms and provisions of this Declaration for any purposes except as to the particular instance covered by the variance, and in no case shall the granting of a variance in one instance obligate the Design Review Board to grant a variance in another instance.

Section 10.5 Limitations and Release of Liability.

A. The purpose of the review of plans and specifications by the Design Review Board is to protect and enhance the aesthetic and monetary values of Americana and each Owner's Lot and to maximize compliance with the Declaration, the Guiding Principles and the Landscape Code, for the benefit of all Owners. In performing its functions, the Design Review Board does not warrant, guarantee, recommend, approve, certify or endorse any particular architectural, engineering or structural design, or any plan, specification, material, construction method or practice, as to its safety, freedom of defects, durability, fitness or suitability for intended use, strength or other characteristics.

B. Neither the approval by the Design Review Board of any plans or specifications for any Work nor any review, inspection or observation of such Work shall in any manner constitute a warranty, representation or the undertaking of any duty or obligation on the part of the Design Review Board, any Association Board, or Association, Declarant, or their respective members, agents, employees, partners, and representatives, to any person, that any method, practice, design, material or structure, contained, shown or specified in any plans or specifications approved by the Design Review Board, or reviewed, inspected or observed by the Design Review Board or its members, (a) is safe or proper or sound or free from defects or vices or is invested with any quality or characteristic whatsoever, (b) complies with the requirements of this Declaration, the Guiding Principles or the Landscape Code, (c) complies with the requirements of any contract, agreement or instrument, (d) complies with the requirements of any law, ordinance or regulation applicable to Owner's Lot and/or the Work which Owner proposes to have performed on the Lot, or (e) does not create an encroachment on a Utility Servitude for which permission must be obtained from those utilities using the Utility Servitude.

C. Each person who submits plans and specifications to the Design Review Board for particular Work, each Owner who performs or contracts for the performance of such Work on any Lot pursuant to such plans and specifications, and each architect, engineer, contractor, sub-contractor, supplier, materialman or other person who participates or engages in any Work on any Lot pursuant to such plans and specifications, hereby fully releases and discharges the Design Review Board, and its members, the Association Boards and their members, the Associations, Declarant, and their partners, their employees, agents and representatives, from all claims, demands, causes of action, suits, liabilities, damages, costs and fees arising out of any act, or fault by any person, or any defect, vice, hazard or failure, in any material, Lot or Improvement, relating in any way to such Work.

D. The Design Review Board shall have the power and authority to reject any plans or specifications for any Work that in the sole opinion of the Design Review Board does not meet the requirements of this Declaration, the Guiding Principles, and/or the Landscape Code, and any Owner whose plans or specifications have been so rejected does hereby fully release and discharge the Design Review Board and its members, the Association Boards and their members, the Associations, Declarant, and their officers, directors, employees, agents and representatives, from all claims, demands, causes of action, suits, liabilities, damages, costs and fees arising out of such rejection of plans or specifications, the opinion of the Design Review Board being final and binding and not subject to any claim or challenge whatsoever. Should any Owner nevertheless make any claim or challenge to the rejection by the Design Review Board of any plans or specifications, such Owner agrees to pay the actual attorneys fees, costs and expenses incurred by the Design Review Board in defending or responding to such claim or challenge.

E. **Use of Materials or Components.** The use of any material or components as indicated within the Guiding Principles or this Declaration shall be solely at the risk of the Owner of a Lot and shall import no liability to the Associations, Declarant, the Design Review Board, or their assigns. The materials listed in the Guiding Principles or in this Declaration are not intended to constitute or otherwise create any representations, guarantees, or warranties to any party in relation to the structural integrity or adequacy when used for any component of Improvements to be built within Americana. It shall be the responsibility of the Owner, or other proposer, when considering usage of any material on any project within Americana to have an independent review and evaluation of the adequacy of any component or element contained herein to assure their acceptability for the intended end uses.

F. **Modification of Guiding Principles or Landscape Code.** The Design Review Board may, subject to any applicable zoning, revise any part of the Guiding Principles and/or the Landscape Code, and supplement both or either of the Guiding Principles and the Landscape Code, from time to time for any of the following reasons:

- (1) To make changes which the Design Review Board believes will better accomplish the objectives set forth in this Declaration.
- (2) To adjust for market conditions so as to improve the value of all or some of the Lots;
- (3) To recognize changing land use conditions over time, both from within and outside Americana; or
- (4) To establish the plan for the development of additional immovable property annexed to, and included and incorporated within, Americana pursuant to a Supplement Declaration, which plan shall be implemented through the regulation of land use, architecture, environment and landscaping with said additional immovable property.

The Guiding Principles and the Landscape Code, together with all changes to same adopted by the Design Review Board, shall be available for review in the registered office of the Residential Association during normal business hours. Any Owner wishing to have a copy of the Guiding Principles and/or the Landscape Code, together with all changes to same adopted by the Design Review Board, shall pay the cost of reproducing same to the Residential Association which shall be calculated on the basis of \$.50 per page; provided, however, there shall be no charge for the first copy of said Guiding Principles or the first copy of the Landscape Code with respect to each Lot. While Declarant owns at least three (3) Lots or holds any property within Americana for sale in the normal course of business, no change may be made to the Guiding Principles or to the Landscape Code without the express written consent of Declarant. On request of the Design Review Board, the Residential Association Board shall, without the consent of the Residential Association Members, file any amendments to this Declaration at any time which add to, change or otherwise modify the Guiding Principles and/or the Landscape Code. Modifications and changes to the Guiding Principles and/or the Landscape Code shall not affect or bear on the construction of Buildings within Americana to the extent such Buildings have been constructed prior to the adoption of such modification or other amendment to the Guiding Principles or the Landscape Code; but such modifications and changes shall be effective with respect to any alterations or other additions to Buildings constructed after the date of such amendments or modifications to the Guiding Principles and/or the Landscape Code. Declarant and the Residential Association, whenever filing Supplemental Declarations pursuant to Section 2.2, may and are expected to file supplements to the Guiding Principles and/or the Landscape Code which will contain specific requirements for the property added to Americana pursuant to any such Supplemental Declaration, including without limitation thereto, in the filing party's sole discretion, additional designations of Lot Types, additional Architectural Typologies authorized for each new Lot Type within the new phase, architectural characteristics and historical details for each such additional Architectural Typology, and such further requirements and restrictions with respect to construction on Lots as are contained in the Guiding Principles and/or the Landscape Code as filed originally with this Declaration.

ARTICLE 11. GOVERNANCE OF AMERICANA

The Associations are responsible for maintaining Americana and enforcing the Declaration. While Declarant will control the Associations during the development stage, the Owners themselves will be responsible for the continuation of the community through their participation in the Associations.

The Association Articles and Association Bylaws, which create the Associations as non-profit corporation and provide certain procedures their corporate organization, are attached as exhibits to this Declaration.

Section 11.1 Governance by Associations. Americana shall be governed by two Associations comprised of the Owners of Lots within Americana. The Owners of Commercial Lots shall be members of the Commercial Association and the Owners of Residential Lots shall be members of the Residential Association. Owners of Mixed Use Lots shall be members of the Commercial Association; however, if such Lot contains separately owned units, the Owners of each unit shall be a member of the Association for Owners of the same use type as such Owner's unit.

Section 11.2 Joint Americana Council. Upon the approval of a majority of each the Residential Association Board and the Commercial Association Board, there may be created a Americana Council, consisting of six members, with each Association Board appointing three representatives. Americana Council shall meet quarterly or at such other times as the Council shall decide, and shall act as an advisory committee for such issues as may involve the community as a whole. Americana Council may be delegated responsibilities by an Association upon approval of a majority of the Association's Board, and acceptance by Americana Council.

Such responsibilities may include (by way of example only) the approval of the Institute's budget, the delegation of Commons as Commercial Commons or Residential Commons, and creating a plan for Capital Improvements.

Section 11.3 Membership. Each Owner, by virtue of acquiring title to a Lot, shall be granted membership in the respective Association for that Lot type (Residential or Commercial). Every Owner shall be a member of an Association. Membership shall be appurtenant to and may not be separated from title to any Lot.

Section 11.4 Notice of Status as Association Member. With the exception of those Owners who acquire title to a Lot from Declarant, each Owner shall, upon acquiring title to a Lot, immediately (a) given written notice to its Association at its registered office that he/she/it has acquired ownership of a Lot, and (b) shall include with such notice a copy of the cash sale, deed or other instrument pursuant to which such Owner acquired title to a Lot. The Association Boards and the Associations shall be entitled to rely on its records for the purpose of determining the identity and address of such Associations' Members, as of the date any notice is to be given, or any decision is to be made. There is no obligation on the part of an Association to check the records of the Clerk of Court at any time for the purpose of determining the identities of the Owners of Lots. Although an Association may on occasion check the records of the Clerk of Court for the purpose of identifying Owners of Lots, such actions shall not be considered as creating any obligation on the part of an Association to check the records of the Clerk of Court at any time thereafter for the purpose of determining the identities of the Owners of Lots. The records of the Associations, for the purpose of identifying members entitled to notice of any meeting of such Association's Members, shall consist of (i) the cash sales, deeds or other instruments pursuant to which Declarant initially transferred title to Lots, and (ii) those notices given to the Association pursuant to the requirements of the first sentence of this Section 11.4.

Section 11.5 Voting Rights. Each Association shall have two classes of voting membership:

Class A: Class A members shall be all Owners of either Residential or Commercial Lots in Americana, with the exception of Declarant for so long as Declarant remains a Class B member of such Association. Class A members who are Residential Owners shall be entitled to one vote for each Lot owned in Americana. Class A members who are Commercial Owners shall be entitled to one vote for each one-thousand (1,000) square feet of rentable square feet of commercial area owned, or such other allotment of votes as set forth by the Commercial Association. When more than one person holds an interest in any Lot, all such persons shall be members, but the vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot. Corporations, limited liability companies, partnerships and other entities shall notify the Association of the natural person who shall be considered a member of the Association for the purpose of exercising its vote; such entities shall provide such evidence of appointment and authority as the Board of Directors of the Association may require. In the event the Association agrees to assess two (2) Lots, or parts of Lots, as a single Lot as authorized under Section 14.2, the Owner(s) of such Lots or portions of Lots, shall have only one (1) vote, with respect to such Lots or parts of Lots.

Class B: Declarant shall be the sole Class B member of each Association. As the Class B Member, Declarant shall be entitled to three (3) votes for each Lot owned by Declarant in Americana and may vote at an Association meeting according to either the number of Residential Lots or the number of Commercial Lots held, depending on which Association meeting is being held. The Class B membership shall cease and be converted to Class A membership after the first to occur of the following:

A. the date on which the last Lot within Americana that is owned by Declarant or any of its affiliates is sold to a third party purchaser; or

B. the date as of which the Class B member elects in writing to become a Class A member.

Section 11.6 Duties. The Residential Association shall maintain the Commons, shall perform all other duties required by this Declaration, and shall enforce the terms of this Declaration. The Associations may acquire, hold and dispose of tangible and intangible personal property and immovable property. To the extent Commons are designated as Commercial Commons, the Commercial Association shall be obligated to maintain such areas.

Section 11.7 Additional Powers. To the extent permitted by any Governmental Authorities, the Associations may, but are not obligated to, provide the following services or engage in the following activities: (a) water, sewer, electrical, telephone, cable television or other utility services, including the supply of irrigation water, and garbage and trash collection and disposal; (b) providing laundry equipment or services; (c) insect and pest control; (d) the improvement of vegetation, fishing and wildlife conditions; (e) pollution and erosion controls; (f) emergency rescue, evacuation or safety equipment; (g) fire protection and prevention; (h) lighting of Common Roads; (i) security systems and security patrols within Americana; (j) transportation; (k) day care and child care services; (l) landscape maintenance for and within the Commons; (m) recreation, sports, craft and cultural programs, including access to fitness facilities within Americana (n) newsletters or other information services; (o) maintenance of yards on Lots (which includes without limitation thereto grass cutting and maintenance of shrubbery and flower beds), and (p) any other service allowed, or not prohibited, by law to be provided by a community association organized as a not-for-profit corporation. To the extent that an Association provides any of the above services or engages in any of the preceding activities, the cost of same shall be billed to such Association's Members as Assessments and, in the discretion of such Association's Board, said costs may be included in either the General Assessment or in the Individual Lot Assessments.

If requested by at least 10% of an Association's Members, a Community Meeting may be called and the offering of any additional service under this Section 11.6 may be repealed by majority vote of the Association's Members.

An Association may also maintain Utility Servitude Areas, public rights-of-way and other public or private properties located within reasonable proximity to Americana if its deterioration would affect the appearance of or access to Americana.

Section 11.8 Contracts. Each Association may contract with Declarant or any other party for (a) the performance of all or any portion of the management of the Association, (b) its maintenance and repair obligations, or (c) the purpose of providing any services which the Association is authorized to provide as set forth in this Article 6. The cost of such contract(s) shall be included within the General Assessment, Neighborhood Assessment, Special Assessment or Individual Lot Assessment as applicable and as determined by the Association's Board. Each Association may require that Owners contract with a third party for certain routine yard maintenance (which includes without limitation thereto grass cutting and maintenance of shrubbery and flower beds), in order to provide a uniform level of care within Americana. The Associations may also act as an agent for any Owner who is a member of such Association, but is not obligated to, contract for routine maintenance and other services not required to be provided by the Association, the cost of which would be assessed to that Owner as an Individual Lot Assessment; for the purpose of exercising this agency, each Owner does grant an irrevocable power of attorney to the Association of which it is a member, which is a power coupled with an interest, and the Association in that capacity may act on behalf of, and as such Owner's agent and attorney-in-fact to accomplish the authority intended as set forth in the first part of this sentence. The terms and conditions of all such contracts entered into pursuant to this Section 11.8 shall be at the discretion of each Association Board.

Section 11.9 Community Meetings.

A. **When Called.** A Community Meeting shall be called annually for the election of directors to serve on the Association Boards, and whenever any action is required by this Declaration to be taken by vote or assent in writing of the Association Members.

B. **Quorum.** Voting at a Community Meeting requires presence or proxy of members representing the percentage of votes established by the Association Boards as necessary to transact business. The Association Boards may revise this percentage from time to time, but in no event shall the required percentage be less than 25% or more than 50%, unless otherwise required by statute. Notwithstanding any inference herein to the contrary, until termination of Class B membership, presence of the Class B member at a Community Meeting and a quorum of the Class A membership shall be required in order for the membership to be entitled to effectively vote on any issue brought before an Association's membership.

C. **Notice.** Notice of any meeting of Association Members must be given to the Association Members at least ten (10) days but not more than thirty (30) days before the meeting, except in an emergency when whatever notice is reasonable, in the sole discretion of the Association Board, shall be given. Notice shall be considered as having been duly and properly given, if given to those persons entitled to notice based on the records of the Association, as described in Section 11.4, as of the date any notice is given of the meeting.

D. **Action without Meeting.** If permitted by an Association Board, the membership may approve any matter (specifically including the election of directors) by written consent without a meeting, without prior notice and without a vote; provided, however, such consent shall be required to be given in writing and signed by the percentage of the Association Members as required by this Declaration, the Association Articles or the Association Bylaws, and by Declarant as the Class B member wherever approval by the Class B member is required. Consents shall be in accordance with the Association Bylaws and any applicable statutes.

Section 11.10 Board of Directors. Each Association shall be governed by a board of directors which shall, on the members' behalf, direct the day-to-day decisions regarding the maintenance of Americana and the enforcement of this Declaration.

A. **Initial Composition.** Each Association Board shall initially consist of at least three (3) persons each of whom shall be appointed by Declarant. When at least one hundred (100) Residential Lots or fifty (50) Commercial Lots have been conveyed to Owners other than Declarant and while Declarant is a Class B member of an Association, the Class A membership of the Residential Association or Commercial Association, as appropriate, shall be entitled to vote and elect one (1) member of the Board of Directors of such Association, and the remaining members of the Board of Directors of the Association shall be selected by the Class B member of the Association.

B. **After Class B Termination.** Upon termination of the Class B membership of each Association, each Association Board shall be elected as provided in the Association's Bylaws.

C. **Compensation.** Directors of each Association shall receive no compensation for their services unless expressly provided for in resolutions adopted by the members of the Association, but may be reimbursed for expenses when approved by the Association Board.

Section 11.11 Association Board Meetings.

A. **Association Board's Responsibility.** Except as specifically provided in this Article or elsewhere in this Declaration, each Association Board has been delegated the power, and shall have the authority to act on behalf of said Association under this Declaration, and to make all decisions necessary for the operation of such Association, the enforcement of this Declaration and the care of the Commons for which it is responsible. All consents, approvals, elections and other action authorized herein to be taken or given by the Association shall require only the approval of such Association's Board, with the exception of those decisions that are expressly reserved to Association Members. If a quorum is present at a meeting of the Association Board, all decisions of the Association Board shall be made by a vote of the majority of the directors present at such meeting, with the exception of those cases where a greater vote is required either by law or by the Association's Articles.

B. **Quorum.** Voting at an Association Board meeting requires presence of at least one-half of the directors, in person or by telephone conference or, if allowed by state law, by proxy. If not prohibited by law, any action required to be taken by vote of the Association Board may be taken in the absence of a meeting (or in the absence of a quorum at a meeting) by obtaining the written approval of a majority of the directors of the Board of Directors of the Association.

C. **Record Keeping.** Each Association Board shall keep records of all meetings, both of the Association Board and of the Association. For each action taken, the record shall state the vote and a description of the action approved, and, where applicable, the reasons why the action was considered necessary and a summary of the information on which the decision was based. The records of an Association shall be available for inspection by any Member of such Association.

Section 11.12 Additional Provisions. Additional provisions concerning the operation of the Associations and the Association Boards are contained in the Association Articles and the Association Bylaws.

ARTICLE 12. INSTITUTE

The Institute is responsible for the encouragement and promotion of the arts and cultural events within Americana. While Declarant will control the Institute during the development stage, the Owners themselves will be responsible for the continuation of the community through their participation in the Institute.

The Institute Articles and Institute Bylaws, which create the Institute as a non-profit corporation and provide certain procedures for its corporate organization, are attached as exhibits to this Declaration.

Section 12.1 Duties. The Institute is responsible for the encouragement and promotion of the arts and cultural events within Americana and may take such actions as are consistent with that purpose. This power and authority is to be liberally construed in favor of authorizing actions by the Institute.

Section 12.2 Membership. Every Owner shall be a member of the Institute. Membership shall be appurtenant to and may not be separated from title to any Lot. Persons who are not Owners may apply for membership into the Institute by sending such application to the Institute Board or by following any guidelines for membership as may be promulgated by the Institute Board.

Section 12.3 Notice of Status as Members. With the exception of those Owners who acquire title to a Lot from Declarant, each Owner shall, upon acquiring title to a Lot, immediately (a) give written notice to the Institute at its registered office that he/she/it has acquired ownership of a Lot, and (b) shall include with such notice a copy of the cash sale, deed or other instrument pursuant to which such Owner acquired title to a Lot. The Institute Board and the Institute shall be entitled to rely on its records for the purpose of determining the identity and address of Institute Members, as of the date any notice is to be given, or any decision is to be made. There is no obligation on the part of the Institute to check the records of the Clerk of Court at any time for the purpose of determining the identities of the Owners of Lots. Although the Institute may, on occasion check the records of the Clerk of Court for the purpose of identifying Owners of Lots, such actions shall not be considered as creating any obligation on the part of the Institute to check the records of the Clerk of Court at any time thereafter for the purpose of determining the identities of the Owners of Lots. The records of the Institute, for the purpose of identifying members entitled to notice of any meeting of Institute Members, shall consist of (i) the cash sales, deeds or other instruments pursuant to which Declarant initially transferred title to Lots, and (ii) those notices given to the Institute pursuant to the requirements of the first sentence of this Section 12.3.

Section 12.4 Voting Rights. The Institute shall have the same voting classes as the Associations, consisting of the Class A members and the Class B member, on the same terms as described in Section 11.5. In the event the Institute agrees to assess two (2) Lots, or parts of Lots, as a single Lot as authorized under Section 14.2, the Owner(s) of such Lots or portions of Lots, shall have only one (1) vote, with respect to such Lots or parts of Lots.

Section 12.5 Meetings. If requested by at least 10% of the Institute Members, a meeting of the Institute Members may be called. Notice of any meeting of Institute Members shall be considered as having been duly and properly given, if given to those persons entitled to

notice based on the records of Institute, as described in Section 12.3, as of the date any notice is given of said meeting. The taking of any action under this Article 12 may be repealed by majority vote of the Institute Members.

Section 12.6 Board of Directors.

A. **Initial Composition.** The Institute Board shall initially consist of at least three (3) persons each of whom shall be appointed by Declarant. When at least one hundred (100) Lots have been conveyed to Owners other than Declarant and while Declarant is a Class B member of the Institute, the Class A membership of the Institute shall be entitled to vote and elect one (1) member of the Board of Directors of the Institute, and the remaining members of the Board of Directors of the Institute shall be selected by the Class B member of the Institute.

B. **After Class B Termination.** Upon termination of the Class B membership of the Institute, the Institute Board shall be elected as provided in the Institute Bylaws.

C. **Compensation.** Directors of the Institute shall receive no compensation for their services unless expressly provided for in resolutions adopted by the members of the Institute, but may be reimbursed for expenses when approved by the Institute Board.

D. **Contracts.** The Institute may contract with Declarant or any other party for the performance of all or any portion of the management of the Institute and to take such actions as shall be approved by the Institute Board. The cost of the contract shall be included within the Institute Assessment, as determined by the Institute Board. The terms and conditions of all such contracts entered into pursuant to this Section 12.7 shall be at the discretion of the Institute Board.

Section 12.7 Additional Provisions. Additional provisions concerning the operation of the Institute and the Institute Board are contained in the Institute Articles and the Institute Bylaws.

ARTICLE 13. FISCAL AFFAIRS

To fulfill its obligation to maintain the Commons and perform such other services as provided by the Associations, the Association Boards are responsible for the fiscal management of their respective Association. To fulfill its obligation to maintain, encourage and promote the arts and cultural events within Americana, the Institute Board is responsible for the fiscal management of the Institute.

Section 13.1 Fiscal Year. The fiscal year of each Association and the Institute shall begin January 1 of each year and end on December 31 of that year, unless an Association Board or the Institute Board, as applicable, selects a different fiscal year.

Section 13.2 Preparation and Approval of Annual Budget for the Associations and the Institute.

A. **Initial Budget.** Declarant shall determine each of the Association's and the Institute's budget for the fiscal year in which the first Lot is conveyed to an Owner other than Declarant.

B. **Subsequent Years.** Beginning with the year in which the first Lot is conveyed to an Owner other than Declarant and each year thereafter, at least one month before the end of the fiscal year, each Association Board and the Institute Board shall, by majority vote, adopt a budget for each Association and the Institute, respectively, for the coming year and set the annual General Assessment and Institute Assessment, as applicable, at a level sufficient to meet the budget. The annual budget of the Institute must be approved by the Residential Association Board before it shall be submitted to the Institute Members. At least two (2) weeks before the fiscal year to which such budget applies, each Association Board and the Institute Board shall send to each Association Member and Institute Member, as applicable, a copy of the Association's or Institute's budget (as approved by the Residential Association Board) in reasonably itemized form, which shall include the amount of General Assessments and/or Institute Assessment payable by each Association Member or Institute Member, as applicable. Each Association shall set its own General Assessment.

C. **Approval.** If an Association's General Assessment or Institute Assessment are to be increased to greater than 125% of the previous year's respective Assessment, and at least 10% of the Association Members affected or the Institute Members, as applicable, request review within thirty (30) days after the budget is delivered to such Association Members or Institute Members, the Association Board or Institute Board, as applicable, shall call a Community Meeting to present the budget and to answer any questions. After presentation, the budget shall be deemed approved unless the percentage required to transact business is present and the budget is rejected by a majority of the Association Members or Institute Members, as applicable. If the budget is rejected, the Association Board or Institute Board shall approve a new budget within ten (10) days and send a copy to each Association Member or Institute Member, as applicable.

D. **Budget Items.** The respective budgets for each Association and the Institute shall estimate total expenses to be incurred by the Association or the Institute, as applicable, in carrying out its responsibilities. These expenses shall include, without limitation, the cost of wages, materials, insurance premiums, services, supplies and other expenses for the rendering of all services by the Association or the Institute as required by this Declaration or properly approved in accordance with this Declaration. The budgets may also include reasonable amounts, as determined by the Association Board or the Institute Board, as applicable, for working capital for the Association or Institute and for reserves. If the Commons are taxed separately from the Lots by the City of Zachary or the Parish of East Baton Rouge, Louisiana, or by any other Governmental Authority with taxing power, for ad valorem property taxes or any other taxes, the Association responsible for upkeep of such Commons shall include such taxes as part of such Association's budget and shall pay such taxes. Fees for professional management, accounting services, legal counsel and other professional services performed on behalf of an Association or the Institute may also be included in the Association's or the Institute's budget, as applicable.

E. **Reserves.** Each Association and the Institute may build up and maintain reserves for working capital, contingencies and replacement, which shall be included in the Association's or the Institute's budget, as applicable, and collected as part of the annual General Assessment or the Institute Assessment, as applicable. Extraordinary expenses not originally included in the annual budget which may become necessary during the year shall be charged first against such reserves. Except in the event of an emergency, reserves accumulated for one purpose may not be expended for any other purpose unless approved by a majority vote of the Association Members or Institute Members, as applicable. If the reserves held by an Association are inadequate for any reason, including nonpayment of any Association Member's assessment, such Association's Board may at any time levy and collect an emergency assessment in accordance with the provisions of Section 14.5 ("Special Assessment"). If there is an excess of reserves held by an Association and/or the Institute at the end of the fiscal year and the Association Board or the Institute Board, as applicable, so determines, the excess may be returned on a prorated basis to its Association Members or Institute Members, as applicable, as of the date of such decision to refund such excess of reserves, who are current in payment of all assessments due the Association or Institute, respectively, or may be used to reduce the following year's Assessments; the Association and the Institute may rely on its records as identified in Section 11.4 and 12.3, respectively, in determining the names and addresses of Association Members and/or Institute Members as of the date of any refund of excess reserves.

F. **Effect of Failure to Prepare or Adopt Budget.** An Association Board's or the Institute Board's failure or delay in preparing or adopting its respective annual budget for any fiscal year, or review of such budget under Section 13.2, shall not waive or release an Association Member's or Institute Member's obligation to pay General Assessments or Institute Assessments, as applicable, whenever the amount of such Assessment is finally determined. In the absence of an annual budget for an Association or the Institute, each Association Member and Institute Member shall continue to pay the General Assessment and/or the Institute Assessment at the rate established for such Assessment for the previous fiscal period until notified otherwise.

G. **Capital Improvements.** Any substantial capital improvement to the Commons approved by an Association Board must be ratified by a majority of the Association's Class A members. If the substantial capital improvement is approved by the Association's Class A members, the Association Board shall determine whether it shall be paid from General Assessments or by Special Assessment. A capital improvement shall be considered substantial if the cost to the Association of the improvement is more than six percent (6%) of the Association's annual budget, or if cost of the improvement, when added to other capital improvements for the fiscal year in question, totals more than ten percent (10%) of the Association's annual budget; notwithstanding any inference to the contrary, any repair or

replacement of existing Improvements shall not be considered a capital improvement. Approval of the Design Review Board is required for all capital improvements. This paragraph shall not limit the right of Declarant to make Improvements to the Commons.

H. **Neighborhood Improvement.** Subject to approval by the Design Review Board, any Neighborhood or Neighborhoods may, by two-thirds (2/3) vote of the Association Members owning Lots within that Neighborhood, or those Neighborhoods, and approval of the Association Board, vote to assess themselves for capital improvements to the Commons that primarily benefit that Neighborhood or Neighborhoods. Any assessment so approved shall be assessed to all Owners of Lots within that Neighborhood or Neighborhoods as an Individual Lot Assessment. If more than one Neighborhood is to vote, the Association Board shall determine whether approval and assessment is to be by Neighborhood or by the combined group of Neighborhoods. If a group of Lots smaller than an entire Neighborhood wishes to be assessed for capital improvements, all of those being assessed must agree to the assessment.

I. **Accounts.** Reserves held by an Association or the Institute shall be kept separate from all other funds, either in a single account for all reserves or separated by purpose. All other sums collected by the Association Boards or the Institute Board with respect to Assessments and charges of all types may be commingled in a single fund.

ARTICLE 14. COVENANTS FOR ASSESSMENTS

The cost of fulfilling the Associations' and the Institute's financial obligations is divided equitably among the Members of those three (3) nonprofit corporations by means of Assessments. To assure the Associations and the Institute of a reliable source of funds and to protect those members who contribute their equitable share, Assessments are mandatory and are secured both by a lien on the Lot and the member's personal obligation.

Section 14.1 Obligation for Assessments. Declarant, for each Lot owned within Americana, from time to time, hereby covenants, and each Owner of any Lot by acceptance of a cash sale, deed or other transfer instrument, whether or not it shall be so expressed in such cash sale, deed or other transfer instrument, is deemed to covenant and agree to pay to the Association of which it is a member the following for the purposes provided in this Declaration (to be collectively referred to as "Assessments"):

- (1) General Assessments,
- (2) Special Assessments,
- (3) Neighborhood Assessments,
- (4) Individual Lot Assessments, and
- (5) Institute Assessments

together with interest at the rate of twelve percent (12%) from that date which is ten (10) days after each payment of an Assessment is due, and all costs of collection, if any, including a reasonable attorney's fee whether or not suit is brought or otherwise filed. Upon default in the payment of any one or more installments of any Assessment, an Association Board may accelerate the entire balance of such Assessments, which shall be declared immediately due and payable in full.

Section 14.2 Equitable Division of Assessments. General Assessments and Special Assessments for Residential Lots shall be assessed equally among all Lots. Commercial Lots and Mixed Use Lots shall be charged General Assessments and Special Assessments according to the proportionate share of usable square feet, such Lot bears to the total number of usable square feet of all Commercial and Mixed Use Lots, applying the BOMA standards. If an Owner combines two (2) Lots or parts of Lots, with appropriate approval to so combine said Lots, and uses them as a single Lot, the applicable Association and the Institute may (but are not required to) assess them as a single Lot in accordance with regulations consistently applied. It is understood that the Associations and the Institute are not required to make the same decision on any requests submitted to them pursuant to this Section.

Section 14.3 General Assessments.

A. **Establishment by Association Board.** Each Association Board shall set the date or dates General Assessments become due and may provide for collection and payment of Assessments annually or in monthly, quarterly or semiannual installments.

B. **Date of Commencement.** The annual General Assessments shall begin on the day of conveyance of the first Lot to an Owner other than Declarant. The initial Assessment on any Lot subject to assessment may be collected at the time title is conveyed to the Owner. During the initial year of ownership, each Owner shall be responsible for the prorata share of the annual General or Special Assessment charged to each Lot, prorated to the day of closing. The Residential Association may elect to dedicate a portion of the initial General Assessment to the Institute, or may collect the initial Institute Assessment as part of the initial General Assessment charged when title to a Lot is conveyed to an Owner.

C. **Discretion of Association Board.** When determining the General Assessment due from each Lot Owner, each Association Board may, in its sole discretion, but is not obligated to, distinguish between Lots on which Buildings have not been constructed, Lots on which Buildings have been constructed and Lots on which Buildings are in the process of being constructed.

D. **Initial General Assessment.** As of the date this Declaration is recorded, the General Assessment due from the Owner of each Lot on which no Buildings have been constructed and on which no construction is taking place is \$40.00 per month, payable in advance for each calendar quarter, and such amount may be collected and received by the applicable Association Board without first establishing a budget. The General Assessment may be thereafter modified without amending this Declaration.

E. **Rights of Declarant.** So long as Declarant has the right unilaterally to annex additional property, Declarant may, but shall not be obligated to, reduce the General Assessment for any fiscal year by payment of a subsidy, which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's sole discretion. Any such subsidy and the nature thereof shall be conspicuously disclosed as a line item in the budget and shall be made known to the Owners. The payment of such subsidy in any year shall under no circumstances obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between an Association and Declarant.

Section 14.4 Institute Assessments.

A. **Establishment by Institute Board.** The Institute Board shall set the date or dates Institute Assessments become due and may provide for collection and payment of assessments annually or in monthly, quarterly or semiannual installments.

B. **Date of Commencement.** The annual Institute Assessments shall begin on the day of conveyance of the first Lot to an Owner other than Declarant. The initial Assessment on any Lot subject to assessment shall be collected at the time title is conveyed to the Owner. During the initial year of ownership, each Owner shall be responsible for the prorata share of the annual Institute Assessment charged to each Lot, prorated to the month of closing.

C. **Collection.** The Residential Association shall, if requested by the Institute, collect the Institute Assessment from each Owner at the time of collection of the annual General Assessments or may allocate a portion of the General Assessment to the Institute, and shall give to the Institute all funds collected on its behalf within fifteen (15) days of collection. The Institute shall have authority to enforce collection of Institute Assessments in the same manner as an Association may enforce collection of General and Special Assessments.

D. **Amount.** The annual amount of the Institute Assessment shall not exceed one hundred dollars (\$100.00) or ten percent (10%) of the annual General Assessment set by the Residential Association Board, whichever is greater. When determining the Institute Assessment due from each Lot Owner, the Institute Board may, in its sole discretion, but is not obligated to, distinguish between Lots on which Buildings have not been constructed, Lots on which Buildings have been constructed and Lots on which Buildings are in the process of being constructed.

E. **Initial Institute Assessment.** As of the date this Declaration is recorded, the Institute Assessment due from the Owner of each Lot on which no Buildings have been constructed and on which no construction is taking place is \$20.00 per quarter, payable in

advance for each calendar quarter, and such amount may be collected and received by the Institute Board or the Residential Association Board without first establishing a budget. The Institute Assessment may be hereafter modified without amending this Declaration.

Section 14.5 Special Assessment. In addition to the General Assessment, the Association Boards may levy in any fiscal year a Special Assessment on its members applicable to that year and not more than the next four succeeding years as follows:

A. **Capital Improvements.** Any substantial capital improvement which has been approved in accordance with Section 8.6 or any capital improvement not required to be approved by an Association's Members may be paid by Special Assessment.

B. **Emergency Assessment.** By a two-thirds (2/3) vote, an Association Board may impose a Special Assessment for any unusual or emergency maintenance or repair or other expense which this Declaration or the law requires the Association to pay (including but not limited to, after depletion of reserves, any unexpected expenditures not provided by the budget or unanticipated increases in the amounts budgeted).

C. **Discretion of Association Board.** When determining the Special Assessment due from each Lot Owner, each Association Board may, in its sole discretion, but is not obligated to, distinguish between Lots on which Buildings have not been constructed, Lots on which Buildings have been constructed and Lots on which Buildings are in the process of being constructed.

Section 14.6 Neighborhood Assessment. The Association Boards may levy Neighborhood Assessments for expenses approved in accordance with the terms of this Declaration.

Section 14.7 Individual Lot Assessments. The Association Boards may levy at any time an Individual Lot Assessment against a particular Lot for the purpose of defraying, in whole or in part, the cost of any special services to that Lot or any other charges designated in this Declaration as an Individual Lot Assessment.

Section 14.8 Capital Contribution Assessment. At the closing and transfer of title of each Lot to the first Owner other than Declarant, the Owner shall contribute an amount equal to two months' Assessments (which shall include at least the General Assessment and Institute Assessment for Lots on which no Buildings have been constructed and on which no Buildings are being constructed) or such greater amount as required by Declarant by contract with the Person to whom it may sell a Lot. This contribution shall be used by each Association and the Institute for the purposes of initial and nonrecurring capital expenses of such Association and the Institute, respectively, and for providing initial working capital for the Associations and the Institute, and shall not be considered as a pre-payment of Assessments (including without limitation the General Assessment and Institute Assessment).

Section 14.9 Effect of Nonpayment of Assessment; Remedies.

A. **Personal Obligation.** All Assessments, together with any interest and cost of collection when delinquent, including a reasonable attorney's fee whether or not suit is brought (collectively, the "Assessment Charge") shall be the personal obligation of the person or entity who was the Owner of the Lot at the time when the Assessment was levied, and of each subsequent Owner. No Owner may waive or otherwise escape liability for the Assessment Charge by abandonment of the Lot.

B. **Creation of Lien.** The Assessment Charge shall also be an encumbrance on the land and shall be a continuing lien upon the Lot against which the Assessment Charge is made, which may be enforced upon recording of a claim of lien. This encumbrance and lien, in favor of the Association to which it is owed, shall secure the Assessment Charge which is then due and which may accrue subsequent to the recordation of the claim of lien and prior to the entry of final judgment of foreclosure. Any subsequent Owner of the Lot shall be deemed to have notice of the Assessment Charge on the land, whether or not a lien has been filed. The Associations and the Institute may, in their sole discretion, but without any obligation to do so, notify any Person in whose favor a mortgage or other lien has been granted with respect to any Lot whenever the Association or Institute files a claim of lien with the Clerk of Court pursuant to this Section 14.9.

C. **Suit for Payment; Foreclosure of Lien.** Each Association may bring an action at law against the Owner personally obligated to pay the Assessment Charge(s), or may foreclose the lien in a manner similar to foreclosure of a mortgage lien, or both; with the consent

of the Institute, the Residential Association may include with its claim any amounts due to the Institute as Institute Assessments. Each Association, acting on behalf of the Owners who are members thereof, shall have the power to bid for an interest in any Lot foreclosed at such foreclosure sale and to acquire, hold, lease, mortgage and convey the Lot.

D. **Other Remedies.** The Association Boards shall have the right to assess fines up to a maximum of \$10.00 per day, and to suspend the voting rights and right to use of the Commons by an Owner for any period during which any Assessment against the said Owner's Lot remains unpaid.

Section 14.10 Certificate of Payment. The treasurer of each Association, upon request of any Owner, shall furnish a certificate signed by a member of such Association's Board stating whether any Assessments are owed by that Owner. Such certificate, when co-signed by the secretary of the relevant Association, may be relied upon by a good faith purchaser or mortgagee as conclusive evidence of payment of any assessment therein stated to have been paid.

ARTICLE 15. INSURANCE

Insurance is essential to protect the interests of the various Owners and to assure that funds will be available for rebuilding after a casualty. However, because insurance costs may increase significantly or new types of coverage made available, this Article gives some flexibility to the Association Boards to select insurance coverage that is reasonable for the conditions that exist at that time.

Section 15.1 Review of Coverage. The Association Boards shall review limits of coverage for each type of insurance at least once each year.

Section 15.2 Casualty Insurance. The Residential Association Boards may obtain and, if additional Commons with significant insurable Improvements are added to Americana, shall be required to obtain and maintain casualty insurance on the Commons for fire damage. Endorsements for extended coverage, vandalism, malicious mischief, flood and windstorm should be obtained where available at reasonable cost. Coverage shall be in an amount not less than necessary to comply with the coinsurance percentage stipulated in the policy, but in any event not less than 80% of the insurable value (based upon replacement) of the Improvements constructed on the Commons.

Section 15.3 Public Liability. The Association Boards may obtain public liability insurance in such limits as the Association Board may from time to time determine, insuring against any liability arising out of, or incident to, the ownership and use of the Commons and any water access located on or adjoining Americana. Whenever practicable, such insurance should be issued on a comprehensive liability basis and should contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of an Association, the Association Boards or other Owners.

Section 15.4 Director Liability Insurance. The Association Boards may obtain liability insurance insuring against personal loss for actions taken by members of the Association Boards and advisory members in the performance of their duties. Such insurance shall be of the type and amount determined by each Association Board in its discretion.

Section 15.5 Other Coverage. The Association Boards shall obtain and maintain workman's compensation insurance if and to the extent necessary to meet the requirements of law, and such other insurance as the Association Board may determine or as may be requested from time to time by a majority vote of the Members.

Section 15.6 Lot Coverage. Each Owner shall obtain casualty insurance for Improvements on his/her/its Lot, naming the Association of which it is a member as an additional insured. Coverage shall be in an amount not less than necessary to comply with the co-insurance percentage stipulated in the policy, but in any event not less than 80% of the insurable value (based upon replacement) of the Improvements constructed on the Lot. Each Owner by accepting title to a Lot in Americana agrees that each policy of casualty insurance insuring the Lot and any Improvements thereon shall contain a waiver of all subrogation rights as against the Association of which it is a member.

Section 15.7 Repair and Reconstruction after Fire or Other Casualty.

A. **Commons.** If fire or other casualty damages or destroys any of the Improvements on the Commons, the Residential Association Board shall arrange for and supervise the prompt repair and restoration of the Improvements. The Residential Association Board shall obtain funds for such reconstruction first from the insurance proceeds, then from reserves for the repair and replacement of such Improvements, and then from any Special Assessments that may be necessary after exhausting insurance and reserves. The Residential Association Board is under no obligation to replace any damaged improvements to their previously existing condition, and, may instead authorize the construction of different types and designs of new improvements.

B. **Lot Improvements.** If fire or other casualty damages or destroys a Building or any other Improvements on a Lot, the Owner of that Lot shall immediately proceed to rebuild and restore the Improvements to the condition existing immediately prior to such damage or destruction, unless other plans are approved by the Design Review Board. In doing so, the Owner shall comply with the provisions of this Declaration. If the Owner fails to clean and secure a Lot within 30 days after a casualty, the Association of which such Owner is a member may, in accordance with the provisions of Section 12.10, Subpart E, remove debris, raze or remove portions of damaged structures and perform any other clean up the Association deems necessary to make the Lot safe and attractive. The cost of such clean-up shall be assessed to the Lot Owner as an Individual Lot Assessment pursuant to Section 14.7.

ARTICLE 16. AMENDMENT AND TERMINATION

Property Owners should be able to rely on the Declaration and the general principles it states. Amendment should not be easy. However, the Declaration must change over time, just as land uses will inevitably change over time. New solutions will be proposed from time to time to make the Associations operate more efficiently or to adjust to these changing conditions. Where clearly to the community's benefit, these new provisions should be incorporated into the Declaration.

Section 16.1 Amendment.

A. **By Members.** Except as stated elsewhere in this Declaration (including without limitation in Subparts B and F of this Section 16.1), this Declaration may be amended at any time by the affirmative vote of two-thirds of all Owners; such amendment shall be evidenced by an instrument signed by the president or vice-president and secretary of the Residential Association, certifying approval in writing by two-thirds (2/3) of the total votes. Notwithstanding the foregoing, Article 8 and any other provision of this Declaration that solely affects Commercial Owners (including but not limited to the right to impose any charge, fee or assessment against the Commercial Owners) may only be amended by the affirmative vote of two-thirds of the Commercial Owners; such amendment shall be evidenced by an instrument signed by the president or vice-president and secretary of the Commercial Association, certifying approval in writing by two-thirds (2/3) of the total votes. Rights reserved to Declarant may not be amended without the specific consent of Declarant. It is expressly stated that any Supplemental Declaration may, without any approval of the Owners, add, modify or otherwise supplement provisions of this Declaration, as originally filed or as same may be subsequently amended, and which will effectively (1) change (whether through increasing, lessening or otherwise) any or all restrictions on use otherwise, which would otherwise be applicable to property added to Americana pursuant to a Supplemental Declaration, but such changes shall only relate to and affect the Lots and other property added to Americana pursuant to the Supplemental Declaration, and (2) change (whether through increasing, lessening or otherwise) any or all building restrictions and/or other covenants, which would otherwise be applicable to property added to Americana pursuant to a Supplemental Declaration including without limitation all such building restrictions and/or other covenants contained in Article 6, in the Guiding Principles and in the Landscape Code, but such changes shall only relate to and affect the Lots and other property added to Americana pursuant to the Supplemental Declaration. Notwithstanding any inference herein to the contrary, no Supplemental Declaration shall be deemed to have modified any provisions of this Declaration applicable to Lots included within Americana prior to the filing of such Supplemental Declaration unless Supplemental Declaration expressly states such intention and unless the Supplemental Declaration also qualifies as an amendment to this Declaration pursuant to this Subpart A, or the following Subpart B.

B. **By Declarant.** Notwithstanding any statement or inference to the contrary in this Declaration, Declarant specifically reserves and has the absolute and unconditional right, so long as it is a Class B Member, to amend this Declaration without the

consent or joinder of any party (i) to conform to the requirements of the Federal Home Loan Mortgage Corporation, Veterans Administration, Federal National Mortgage Association or any other generally recognized institution involved in the guarantee or purchase and sale of home loan mortgages, (ii) to conform to the requirements of institutional mortgage lenders or title insurance companies, or (iii) to clarify the Declaration's provisions or correct errors.

C. **Limitation.** Whenever any action described in this Declaration requires approval of greater than two-thirds (2/3) of the total votes of an Association's Members, amendment of that provision shall require the same percentage vote as would be required to accomplish that action directly.

D. **Recording.** Any amendment to this Declaration shall take effect upon recording in the public records.

E. **Effective Date of Amendments.** Notwithstanding any inference herein to the contrary, no amendment or modification of this Declaration shall affect or bear on the construction of Buildings within Americana to the extent that such Buildings have been constructed prior to the adoption of such modifications or other amendment; but such modifications and changes shall be effective with respect to any alterations or other additions to Buildings constructed after the date of such amendments or modifications to this Declaration. Amendments and modifications to this Declaration shall be effective with respect to any conduct within Americana, or use of Lots, made after the date of such amendment or modification including without limitation thereto any such conduct or use occurring prior to such amendment or modification, and whether or not such conduct or use is continuing at the time of such amendment or modification.

F. **Supplemental Declarations and Amendments to Guiding Principles.** Notwithstanding any inference herein to the contrary, (i) Declarant and the Associations shall always have the right to make Supplemental Declarations pursuant to Section 2.2, without the consent of any Association Members, (ii) the Design Review Board shall always have the right to amend and modify the Guiding Principles as provided in Section 5.4, without the consent of Association Members, (iii) the Association Boards shall always have the right to adopt and have filed amendments to this Declaration which contain modifications of the Guiding Principles adopted by the Design Review Board pursuant to Section 10.5F, and (iv) the rights of Declarant and the Associations set forth in Subpart B of this Section 16.1, and in this Subpart F, may not be withdrawn or otherwise modified without the consent of Declarant and the Association Boards.

Section 16.2 Duration; Termination. The covenants and restrictions contained in this Declaration shall run with and bind Americana and shall inure to the benefit of and be enforceable by Declarant, the Associations, and all Owners of Lots within Americana, their respective legal representatives, heirs, successors or assigns for twenty years, and shall be automatically extended for each succeeding ten year period unless an instrument signed by Owners representing 90% of the votes of the Owners shall have been recorded, agreeing to terminate the Declaration as of a specified date. This Declaration may also be terminated in any of the following ways:

A. **Unanimous Consent.** The Declaration may be terminated at any time by the consent in writing of all Owners.

B. **Dedication of Commons.** The Declaration may be terminated by consent in writing by Association Members representing two-thirds (2/3) of the votes in both Associations, if the Commons have been accepted for dedication or taken by eminent domain by the appropriate Governmental Authority (except that Alleys or footpaths between two Lots may be divided evenly between the adjacent Lot Owners in accordance with Section 7.6.

C. **Rerecording.** Unless this Declaration is terminated, the Association shall rerecord this Declaration or other notice of its terms at intervals, if any, necessary under Louisiana law to preserve its effect.

D. **Condemnation.** If all or part of the Commons is taken or condemned by any Governmental Authority having the power of eminent domain, all compensation and damages shall be paid to the Association charged with maintenance of such Commons. The Association Board shall have the right to act on behalf of such Association with respect to the negotiation and litigation of the taking or condemnation affecting such property.

**ARTICLE 17.
GENERAL PROVISIONS**

Section 17.1 Sales Offices. Notwithstanding any language in this Declaration to the contrary, as long as Declarant or any nominee of Declarant owns any immovable property in Americana, Declarant or its nominees shall have the right and privilege to maintain general and sales offices in and about Americana, including model homes and offices, and to have their employees present on the premises to show property within Americana, use the Commons and, without limitation, to do any and all other things necessary or appropriate by them to sell or lease Lots, homes, office space or other property, all without charge or contribution to the Associations except that Declarant will owe Assessments just as any other Owner; provided, however, that such activities shall be carried on in such a manner as will not unreasonably interfere with enjoyment of the Lot(s).

Section 17.2 Interpretation. The provisions of this Declaration shall be liberally construed to effectuate their purpose of creating a uniform and consistent plan for the development and operation of Americana as a community as a TND. The italicized portions at the beginning of each Article are intended to state the purposes for the provisions that follow and may be used as an aid to interpretation. However, if the italicized portion conflicts with the operative provision, the operative provision shall govern. The captions of the various articles and provisions in this Declaration are for convenience only and in no way define, limit, or describe the scope of this Declaration, or the intent of any provision hereof. All references to particular Sections or Articles shall, except as otherwise expressly stated, be deemed to be references to those particular Sections or Articles of this Declaration.

Section 17.3 MANDATORY DISPUTE RESOLUTION PROCEDURES AND RULES.

A. **Application.** The following Dispute Resolution Procedure ("**Dispute Resolution Procedure**") shall apply to and be mandatory for any and all claims or disputes that do not involve a Party's application for immediate injunctive or similar relief, or (b) in the case of an Owner, involve a situation that constitutes an immediate, material threat to its relationship with any Mortgagee (each a "Claim").

B. **Notice.** Any Party ("**Claimant**") having a Claim against or dispute with any other Party(ies) (whether one or more, "**Respondent**") (collectively, "**Affected Parties**") shall provide Notice to each Respondent in writing ("**MDR Notice**"), stating plainly and concisely:

- (1) the nature of the Claim, including the Persons involved and Respondent's role in the Claim;
- (2) the legal basis of the Claim (i.e., the specific authority out of which the Claim arises);
- (3) Claimant's proposed remedy (in the case of a refusal to provide Consent, the City/Parish shall provide what change should be made to achieve Consent); and
- (4) that Claimant will meet with Respondent to discuss in good faith ways to resolve the Claim.

C. **Negotiation.** The Parties shall make every reasonable effort to meet "in person" and confer for the purpose of resolving the Claim by good faith negotiation for a period of not less than fifteen (15) days.

D. **Termination of Negotiations.** If the Parties do not resolve the Claim through negotiation ("**Termination of Negotiations**"), the Claimant shall have sixty (60) days following the Termination of Negotiation to submit the Claim to a facilitated minitrial in accordance with Subsection (e) below or the Claim shall be deemed abandoned, and the Respondent shall be released and discharged from any and all liability to Claimant arising out of such Claim; provided, nothing herein shall release or discharge the Respondent from any liability to Persons not a party to the foregoing proceedings.

E. **Facilitated Minitrial.**

- (1) After the Termination of Negotiations, Claimant may elect to require the Parties to participate in a facilitated minitrial with Notice to the other Party.

(2) A minitrial shall be presented before a neutral facilitator and one representative of each Party. At least three (3) days before the minitrial, each side will prepare and distribute to the representatives and the facilitator a written summary of its position, which may not exceed ten (10) double-spaced pages. At the minitrial, each side will have not more than three (3) hours to make an oral presentation, and thereafter the representatives will attempt in good faith and with the aid of the facilitator to resolve the dispute. Efforts to reach a settlement will continue until at least fifteen (15) days have passed since the minitrial and one Party provides Notice of its desire to proceed to non-binding arbitration under Subsection (f) below.

(3) The minitrial will be conducted according to the AAA Mini-Trial Procedures then in effect. The Parties will attempt to agree on a mutually accepted facilitator. If the Parties cannot agree within ten (10) days of the request to conduct a minitrial, the AAA will be asked to select the facilitator. The Parties will equally share any fees charged by the facilitator or AAA.

F. **Arbitration.** After the conclusion of the facilitated minitrial, either Party may elect to require the Parties to participate in nonbinding arbitration in accordance with the rules and procedures of the American Arbitration Association ("AAA") rules for non-binding arbitration. Except for issues related to Force Majeure, unless the Parties agree in writing to be bound by the arbitrator's decision ("Award") prior to the commencement of arbitration proceedings under the foregoing paragraph, any Party shall be free to reject the Award and sue in court of competent jurisdiction or initiate proceedings before any appropriate administrative tribunal.

G. **Allocation of Costs of Resolving Claims Prior to Litigation.** Each Party shall bear all of its own costs incurred prior to and during the proceedings described above, including the fees of its attorney or other representative. Each Party shall share equally all charges rendered by the facilitator or arbitrator.

Section 17.4 Written Consents of Members of the Associations and/or the Institute in Absence of Meeting. Whenever the vote of the Association Members or the Institute Members is required to authorize or constitute action by the Associations or the Institute, the consent in writing to such action signed only by those members of the entity whose authority or other decision is sought, holding that proportion of the membership interest that is required by law, the Articles of Incorporation of the entity in question or this Declaration (whichever provides the applicable voting requirements), to take such action shall be sufficient for the purposes of obtaining such authority or decision, without the necessity for a meeting of the members of that particular entity.

Section 17.5 No Waiver. The waiver by any party of a breach of any provision of this Declaration, the Guiding Principles or the Rules and Regulations of the Associations, shall not operate or be construed as a waiver of any subsequent breach of that provision by any party. Failure to enforce any provision of this Declaration, the Guiding Principles or the Rules and Regulations of the Associations, shall not be deemed a waiver of the right to do so at any time thereafter and shall not operate or be construed as a waiver of the right to enforce such provision at a later date, even if under identical circumstances and even if involving the same parties.

Section 17.6 Notices. Any notice required to be sent to the Owner shall be deemed to have been properly sent when mailed, postage prepaid, or hand delivered to the Lot and, if different, to the last known address of the person who appears as Owner of the Lot as that address is stated on the records of the Associations, as described in Section 11.4, at the time of the mailing. The date of mailing shall be deemed the date of giving of notice, except that the date of actual receipt shall be the date of the giving of any notice of change of address.

Section 17.7 Gender and Number. The use of the masculine gender in this Declaration shall be deemed to include the feminine, or neuter, and the singular shall include the plural, wherever the context so requires.

Section 17.8 Law to Govern. This Declaration shall be construed in accordance with the laws of the State of Louisiana.

Section 17.9 Validity. If any one or more of the provisions (or any part thereof) of this Declaration, the Guiding Principles or of the Rules and Regulations of the Associations, shall be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions (or any part thereof) shall not in any way be affected or impaired thereby and the balance of this Declaration, the Guiding Principles and the said Rules and Regulations

of the Associations shall remain in full force and effect. If any provision, or subpart of a provision, of this Declaration is for any reason and at any time determined to be invalid, illegal or unenforceable (a) it is expressly stated that such determination shall be applicable only to the parties involved in the arbitration or court proceeding in which such determination has been rendered, and then only to the particular facts and circumstances presented to the arbitrator(s) or court; (b) where a provision is determined to be invalid, illegal or unenforceable because it is determined to be excessively broad, the court or arbitrator(s) making that determination are requested and authorized, where reasonably possible, to reform the subject provision by declaring it limited and reduced to make it compatible with applicable law; and (c) the court or arbitrator(s) making that determination are requested and authorized, where reasonably possible, to declare that provision or subpart reformed so as to eliminate only the portion of same which is determined to be invalid, illegal or otherwise unenforceable, so that the balance of said provision is allowed to remain in full force and effect.

Section 17.10 Owner's Acceptance. By accepting title to any of the Lots or other property included now, or in the future, within Americana, each Owner agrees that he accepts title to said Lot or other property subject to the terms, provisions and acknowledges of: (a) this Declaration, (b) the Guiding Principles, (c) any Rules and Regulations of the Associations that may be subsequently adopted, from time to time, by the Associations or the Association Boards, and all modifications thereto, and (d) any future amendments to this Declaration and/or the Guiding Principles adopted pursuant to the terms and provisions of this Declaration.

ARTICLE 18. INTERVENTION

Now to the presents comes Old Towne Development Group, L.L.C., a Louisiana limited liability company, ("Old Towne") herein represented by its undersigned members, who after being sworn, declared that Old Towne is the owner of Tract 3 as shown on the Initial Plat and by its intervention in this Declaration, does hereby impose upon Tract 3 the servitudes, building restrictions, restrictive covenants, and charges imposed by the Declarant upon Commercial Lot(s) as defined in Article 1 (P) and the owner, from time to time, of Tract 3 shall be a "Commercial Owner" as defined in Article 1 and entitled to the rights and obligations of a Commercial Lot Owner as set forth in this Declaration. The servitudes, building restrictions, restrictive covenants, and charges herein imposed on Tract 3 shall be covenants running with the land and which shall apply against and affect all of the property defined herein as "Americana" to the same extent as if Daigle Americana Development, L.L.C. was the owner of Tract 3 and Tract 3 was included in this Declaration as "Initial Property" under Section 2.1 of this Declaration. Likewise, the provisions of this Declaration regarding Governance of Americana shall apply to Tract 3 as a Commercial Lot and to ownership of Tract 3 as a Commercial Lot Owner, subject to all of the rights and privileges herein granted and to all of the obligations, and restrictions herein imposed.

Declarant joins in with Old Towne and consents to the inclusion of Tract 3 as a Commercial Lot subject to the rights and privileges and the burdens of ownership, of a Commercial Lot under the provisions of this Declaration, and to the inclusion of the owner of Tract 3, from time to time, as a Commercial Lot Owner subject to the rights and privileges and the burdens of ownership of a Commercial Lot Owner under the provisions of this Declaration.

[The remainder of this page intentionally left blank.]

[Signatures on following pages.]

IN WITNESS WHEREOF, the undersigned has executed this Declaration on the day and
year first above written, before the undersigned competent witnesses,
Linda Malile and Annelle Martin.

WITNESSES:

DAIGLE AMERICANA DEVELOPMENT, L.L.C.

Linda Malile
Printed Name: LINDA MARILE

BY: **OLD TOWNE DEVELOPMENT GROUP,
L.L.C., sole member**

Annelle Martin
Printed Name: Annelle Martin

Old Towne Development Group, L.L.C.

By:

John M. Engquist

Authorized Representative

BY: **John M. Engquist, Managing Member**

John M. Engquist
Managing Member