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**OF**  
**THE ORCHARD OWNERS' ASSOCIATION, INC.**

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**OF**

**THE ORCHARD OWNER'S ASSOCIATION, INC.**

**THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS** (this "Declaration") is made this 7<sup>th</sup> day of April, 2021, by MK Development, LLC, an Alabama limited liability company, hereinafter referred to as the "Declarant";

**WHEREAS**, Declarant is the owner of certain real property in the City of Dothan, Dale County, Alabama which is more particularly described in Exhibit "A" (hereinafter referred to as the "Property"), attached hereto and incorporated herein by reference;

**WHEREAS**, Declarant intends to develop the Property subject to the easements, covenants, conditions, limitations, restrictions, reservations, liens, development standards and charges, as set forth in this Declaration;

**NOW, THEREFORE**, Declarant hereby declares that the Property, and such additions and annexations as may hereafter be made pursuant to Article XIII of this Declaration, is, and shall be held, transferred, sold, conveyed, mortgaged, encumbered or improved subject to the following easements, covenants, conditions, limitations, restrictions, reservations, liens, development standards and charges contained herein, which shall run with the land, and be binding on all parties having any rights, title or interest in the Property or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each owner thereof. The provisions of this Declaration shall not apply to or affect any portion of the Property which is not subjected specifically by written instrument to this Declaration or later annexed or added to this Declaration.

**ARTICLE I**

**DEFINITIONS**

"Access Easement" shall mean the easement or easements for vehicles and pedestrian ingress and egress depicted on the Subdivision Map (hereinafter defined) and further referred to in Article II hereof.

"Architectural Committee" shall mean the committee created pursuant to Article IV hereof.

"Area of Common Responsibility" shall mean the Common Area (hereinafter defined), together with those areas, if any, which by the terms of this Declaration, any supplemental Declaration or other applicable covenants, contract, or agreement become the responsibility of the

Association.

“Additional Property” shall mean any real property that is contiguous to or touches the Property or that is located directly across any roadway from the Property and but for such roadway would be contiguous to or touch the Property that is later added to or annexed to this Declaration by Supplementary Declaration. In the event any Additional Property exists, any reference herein to “Property” shall also be a reference to such Additional Property.

“Association” shall mean and refer to The Orchard Owners Association, Inc., an Alabama Nonprofit Corporation as described further herein, and its successors and assigns.

“Base Assessment” shall have the meaning ascribed in Section 2 of Article VIII hereof.

“Benefited Assessments” shall have the meaning ascribed in Section 2 of Article VIII hereof.

“Board” or “Board of Directors” shall mean the Board of Directors of the Association.

“Bylaws” shall mean the Bylaws of the Association, as such Bylaws may be amended from time to time.

“Common Area” shall mean all real property (including improvements thereto) now owned, hereinafter owned or held by the Association for the common use and enjoyment of the Owners, as shown on the Subdivision Map, as the same may be amended or supplemented from time to time.

“Common Expenses” shall mean and include the actual and estimated expenses of operating the Association such that the Association can fulfill its obligations hereunder, including any reasonable reserve, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, and/or the Certificate of Formation and Bylaws of the Association, said Common Expenses to include, without limitation, expenses for the maintenance, operation, construction, repair, replacement, refinishing and/or improvement of the Access Easement, as well as for the maintenance, operation, construction, repair, replacement, refinishing and/or improvement of the Area of Common Responsibility, and any other services which may be approved or authorized by the Association, for the upkeep of the Property and for the general benefit of all Lot Owners on the Property.

“Certificate of Formation” shall mean the Certificate of Formation of the Association, as said Articles may be amended from time to time.

“Declaration” shall mean this entire document, as same may from time to time be amended

or supplemented.

“Declarant” shall mean MK Development, LLC, an Alabama limited liability company, and its successors, or assigns.

“Guidelines” shall mean the architectural and building guidelines as adopted by the Declarant or the Architectural Committee to date, as further described in Article IV herein, as the same may be amended from time to time.

“Lot” shall mean and refer to an individual lot (or, collectively, “Lots”) as reflected in the Subdivision Map, as the same may be amended from time to time. A Lot shall be deemed “developed” when the offsite streets and utilities have been completely installed. A Lot shall be deemed “improved” when a residence has been completely constructed thereon. All other Lots shall be deemed “undeveloped Lots”.

“Member” shall mean any person who is a member of the Association. Every Owner shall be a Member. Unless otherwise specified, any required vote of the Members shall be computed by allowing each Member the number of votes equal to the number of Lots owned by such member.

“Neighborhood” shall mean and refer to a geographical area or areas on the Property, comprised of one or more types of housing areas, either designated initially or made subject to this Declaration by amendment of Supplementary Declaration. In the absence of a specific designation of separate Neighborhood status, all property made subject to the Declaration shall be considered a part of the same Neighborhood.

“Owner” shall mean and refer to the record owner of a Lot or Lots, whether one or more persons or entities of fee simple title to any Lot or residence. “Owner” shall include the Declarant. The foregoing does not include persons or entities that hold an interest in any Lot merely as security for the performance of an obligation. Unless otherwise specified, any required vote of the Owners shall be computed by allowing each Owner the number of votes equal to the number of Lots owned by such Owner.

“Property” shall have the same meaning as set forth in the recitals to this Declaration, i.e., meaning and referring to all of the real property described in Exhibit “A” attached hereto and incorporated herein by reference, and shall further refer to such additional real property as may hereinafter be annexed by subsequent amendment of Supplementary Declaration to this Declaration, or which is owned or acquired by the Association.

“Single Family Unit” shall mean a group of one or more persons each related to the other

by blood, marriage or legal adoption or a group of not more than three persons not all so related, who maintain a common household in a dwelling.

“Special Assessments” shall have the meaning ascribed in Section 2 of Article VIII hereof.

“Street Trees” shall mean any and all trees or shrubbery that are located within the right of way as shown on the Subdivision Map, including those that are planted by the Declarant.

“Subdivision Map” shall mean any recorded subdivision map, plat or survey covering all or any portion of the Property referred to in this Declaration, or any Supplementary Declaration, and any amendments or supplements thereto, which may be recorded in the Office of the Judge of Probate of Dale County, Alabama.

“Supplementary Declaration” shall mean any amendment to this Declaration either subjecting additional property to the Declaration or otherwise amending the same.

## ARTICLE II

### **EASEMENTS**

Section 1. Easements and Use Agreements. The Declarant hereby declares that the land initially covered by this Declaration, being the Property as described on Exhibit “A”, shall be owned, held, leased, transferred, sold, occupied, mortgaged, encumbered and/or conveyed, by Declarant or any subsequent owner of all or any part thereof, is subject to the easements, covenants, conditions, limitations, restrictions, and reservations set forth in this Declaration, which shall run with the land and be binding on all parties having any right, title or interest in or to the Property, or in any Lot or other part thereof, and their heirs, successors and assigns, are hereby created as follows:

(a) Easements Dedicated by Subdivision Map. Easements across the Common Area or other parts of the Property for access, parking, water, gas, telephone, electricity, sewer or other utilities, and drainage, which will be dedicated to the utility companies, municipality, county or other supervisory jurisdiction, as from time to time may be necessary, are hereby created as set out in the Subdivision Map. Every Owner shall have a right and nonexclusive easement of use, access and enjoyment in and to the Common Area which is appurtenant to and passes with title to each Lot, subject to this Declaration and the right of the Board to adopt, amend and repeal rules regulating the use and enjoyment of the Common Area. There is hereby reserved, created and granted a blanket easement upon, across, over and under all of the areas of the Property upon

which buildings and structures are not erected for all utility companies for providing necessary utilities to any dwelling situated on any Lot, for ingress, egress, installation, replacing, repairing, and maintaining the same, including but not limited to water, garbage, sewer, gas, telephone, electricity and television transmission systems, and by virtue of this easement, it shall be expressly permissible for the providing electrical and/or telephone company to erect and maintain the necessary poles, wires and other necessary equipment and appliances on said property. An easement is granted to all police, fire protection, ambulance and similar persons to enter upon all non-closed areas in the performance of their duties. Notwithstanding anything to the contrary contained in this paragraph, no sewers, electrical lines, water lines or other utilities may be installed or relocated on any Lot except as initially provided and approved by the Architectural Committee without the prior written approval of the Architectural Committee. In the event any utility company furnishing a service covered by the general easement herein provided shall request a specific easement by separate recordable document, Declarant shall have the right to grant such easement and it is further stipulated that the easements provided herein shall in no way affect any other recorded easement on said premises. Meters, transformers and other utility installations as shown on recorded plat and as located as of the date of this instrument shall remain as located. No Lot Owner shall erect any improvements or place any plantings on his lot which interfere with or impair the easements granted or reserved hereunder.

(b) Additional Agreements. This Declaration is further made subject to any other easements, covenants, conditions, limitations, restrictions, or agreements that may be required by any other governmental agency having regulatory or supervisory authority over the Property.

(c) Additional Covenants and Easements. The Declarant may unilaterally subject all or a portion of the Property submitted to this Declaration initially, or any portion of any Additional Property, by Supplementary Declaration, to additional easements, covenants, conditions, limitations, and restrictions, including covenants obligating the Association to maintain and insure such property on behalf of the Owners and obligating such Owners to pay the costs incurred by the Association through assessments. Such additional easements, covenants, conditions, restrictions, and easements shall be set forth in a supplementary Declaration filed either concurrent with or after the annexation of the subject property, and shall require the written consent of the majority of the owner(s) of such property, if other than the Declarant.

(d) Owner's Easements of Enjoyment. Every owner of a Lot shall have a right of use

and enjoyment in and to the Common Areas which said right of use and enjoyment shall be appurtenant to and shall pass with the title for every Lot, subject, however, to the following provisions:

1. The Association shall have the right from time to time to make and amend reasonable regulations and rules concerning the use of the Common Areas of the property in accordance with the provisions regarding the same in the Articles of Incorporation and Bylaws. Copies of all such regulations and amendments shall be furnished by the Association to all owners and residents upon request;

2. The Association shall have the right to suspend the voting rights and right to use and enjoyment of the recreational facilities on any Common Area by any Owner for any period during which any assessment against his or her Lot remains unpaid, and also for an infraction of this Declaration or of any published rules and regulations the Association may formulate, for a period not be exceed sixty (60) days following when such assessment is paid or the infraction cured;

3. The Association shall have the right to dedicate or transfer all or any part of the Common Areas to any public agency, authority, utility for such purposes and subject to such conditions as may be agreed upon by the members of the Association. No such dedication or transfer shall be effective unless an instrument signed by a majority of the Class "A" Members and also the Class "B" Member, if existing at the time, agreeing to such dedication or transfer has been recorded.

(e) Delegation of Use. Any Owner may delegate, in accordance with the Bylaws, his right of use and enjoyment to the Common Area and facilities to the members of his family, his family guests, lessees, or contract purchasers who reside on the property.

(f) Indemnity for Damages. Each and every Owner and future Owner, in accepting a deed or contract for any Lot subject to this declaration, agrees to indemnify the Association and Declarant, its successors and assigns for any damage caused by such Owner, or the contractor, agent or employees of such owner, to roads, street, gutters, walkways or other portions or aspects of the Common Area including all surfacing thereon, or to water, a drainage or a storm sewer lines or sanitary sewer lines.

(g) Indemnification of Declarant. The Association agrees to indemnify and hold harmless Declarant, and his/her/its Owners, employees, agents, attorneys, accountants, heirs,

assigns and successors, from any and all liability arising out of accidental death or injury on the Common Area, including all costs and attorneys' fees resulting from or arising out of such death or injury.

Section 2. Easement for Emergency. Authorized agents of the Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Property, including each Lot, for emergency, security, and safety reasons. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner thereof. This easement includes the right to enter any Lot to cure any condition which increases the risk of fire or other hazard if an Owner fails or refuses to cure the condition within a reasonable time after request by the Association, but does not authorize entry into any dwelling without permission of the Owner.

Section 3. Easements for Maintenance and Enforcement. Authorized agents of the Association shall have the right, but not the obligation, and a perpetual easement is hereby granted to the Association, to enter all portions of the Property, including each Lot to (a) perform its maintenance responsibilities under Article VIII, and (b) make inspections to ensure compliance with this Declaration, any Supplementary Declaration, Bylaws, and any rules or regulations of the Association. Except in emergencies, entry onto a Lot shall be only during reasonable hours and after notice to and permission from the Owner of the Lot. This easement shall be exercised with a minimum of interference to the quiet enjoyment to Owners' property, and any damage shall be repaired by the Association at its expense. This easement does not authorize entry into any dwelling without permission of the Owner.

The Association also may enter a Lot to abate or remove, using such force as may be reasonably necessary, any structure, thing or condition which violates this Declaration, any Supplementary Declaration, the Bylaws, or any rules promulgated by the Association. All costs incurred, including reasonable attorneys' fees, shall be assessed against the violator as a Benefited Assessment.

Section 4. Easements of Declarant on Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, improvement, development and construction of improvements on the Property or in a Common Area. This easement includes, but is not limited to, a right of ingress and egress over the Common

Area for construction of roads and for connecting and installing utilities on such property

Section 5. Easements of Declarant for Adjoining Property. The Declarant hereby reserves for itself and its duly authorized agents, representatives, and employees, successors, assigns, licensees, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, improvement and development of any Additional Property, whether or not such property is made subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of vehicular traffic connected with development of such property. Declarant further agrees that if the easement is exercised for a permanent access to such property and such property or any portion thereof is not made subject to this Declaration, the Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the costs of maintenance of the access roadway serving such property.

### **ARTICLE III**

#### **ADDITIONAL DOCUMENTS**

All Owners shall be and are required to execute such other documents as are necessary or convenient to effectuate the intent of this Declaration, as the same may amended from time to time, with respect to all easements, covenants, conditions, limitations, and restrictions which may be created pursuant to this Declaration.

### **ARTICLE IV**

#### **ARCHITECTURAL CONTROL**

Section 1. The general architectural objective of the Declarant is to create parcels of residences that are constructed of traditional styles, and within architectural Guidelines to be formulated by the Architectural Committee. The Guidelines of the Architectural Committee will be designed to enhance the appearance of the entire project to be developed on the Property and to maintain the value and integrity of the Property. The Guidelines developed shall be those of the Association, and the Architectural Committee shall have full authority to prepare and amend the same from time as it deems necessary in its sole discretion. The Guidelines shall be made available to owners who seek to engage in development of or construction upon any portion of the property subject to this Declaration. A copy of the current Guidelines as they exist as of the date

hereof are attached hereto as Exhibit "B".

Section 2. Method of Architectural Control. So as to establish and maintain the above architectural criteria, no improvement or structure of any kind, including, without limitation, any building, fence, wall, sign, roofing, lighting systems, site paving, grading, parking lot or area, screen enclosure, sewer drain, disposal system, decorative building, landscaping, landscape device or object, shall be commenced, erected, placed or maintained upon a Lot, nor shall any improvement, remodeling, re-roofing, addition, change or alteration therein, thereof or thereto be made, unless and until the plans and specifications, showing the color, nature, kind, shape, materials and location of the same shall have been submitted to and approved in writing by the Architectural Committee, said approval to be within the sole discretion of the Architectural Committee. Such approval, or waiver or variance, must be signed by at least one member of the Architectural Committee. All plans and specifications must meet the written Guidelines formulated by the Architectural Committee and shall be evaluated as to, among other things, the harmony of external design and location in relation to the surrounding structures and topography.

Section 3. Architectural Committee Membership. The Architectural Committee shall consist of three (3) members, none of which shall be required to be an Owner, or to meet any other particular requirements. The initial three (3) members of the Architectural Committee appointed by the Declaration are as follows: **Mary S. Reeves, Alec Reeves, and Steven Douglas Shaw, Jr.** The term of the initial members, and the appointment of their successors, shall be at the sole discretion of the Declarant.

Section 4. Release. Neither the Architectural Committee nor any member, architect or agent thereof nor the Declarant or the Association nor any member thereof shall be liable to any Owner or to any other party for any damage, loss or prejudice suffered on account of the approval or disapproval of any plans, drawings or specifications, whether or not defective, or the execution or filing of any action, motion, certificate, petition or protest in the courts of the United States or the State of Alabama, or with any other governmental board or body, whether or not the facts stated therein are true and correct. Neither the Architectural Committee nor any member, architect or agent thereof nor the Declarant or the Association nor any member thereof shall be responsible to check for any defects in any plans or specifications submitted, revised or approved in accordance with the foregoing provisions, nor for any structural or other defects in any work done according to such plans and specifications. The scope of review by the Architectural Control Committee is

limited to appearance only and does not include any responsibility or authority to review for structural soundness, compliance with building or zoning codes or standards or any other similar or dissimilar factors.

Section 5. Powers and Duties. The Architectural Committee shall have the following powers and duties:

(a) To formulate the Guidelines consistent as contemplated herein.

(b) To form committees to regulate and be responsible for the control of new construction and modification.

(c) To require submission to the Architectural Committee of plans and specifications for any improvement or structure of any kind, and any change, modification or alteration thereof, including, without limitation, any such improvement or change to any home, fence, wall, sign, lighting system, site paving, grading, screen enclosure, sewer, drain, disposal system, landscaping or landscape device or object, the construction or placement of which is or has been proposed upon any Lot. Such plans and specifications shall be in such form and contain such information as may be reasonably required by the Architectural Committee and shall include but not necessarily be limited to:

1. An accurately drawn and dimensional plot plan showing all setbacks, easements, drives and walks.

2. Floor plan and exterior elevations of the Single Family Unit residence.

3. Landscape plan, including construction details for walkways, fences, screens, walls and the like.

4. Utility connections, including routing of electrical and telephone cables.

5. Exterior illumination, including location and manufacturer's specifications.

6. All plans must include a specifications list of proposed materials and samples of exterior materials, including roofing, which cannot be adequately described on the plans, and of materials with which the Architectural Committee is unfamiliar.

4. The name and address of the Lot Owner's general contractor who will construct the residence or any other improvements to the Lot.

5. The Architectural Committee may also require such additional information, including building materials samples, as reasonably may be necessary for the Architectural Committee to evaluate completely the proposed structure or improvement or general contractor in

accordance with this Declaration. All information submitted to the Architectural Committee shall be and remain the property of the Architectural Committee.

(d) To approve or disapprove the submitted plans and specifications or the general contractor for any improvement, residence or structure as hereinabove described prior to commencement of construction of such improvement, home or structure. Partial submissions shall not be permitted, and a submission shall not be deemed completed until all information required or requested has been submitted in full. The approval by the Architectural Committee of plans and specifications or the general contractor submitted for its approval, as herein specified, shall not be deemed to be a waiver by the Architectural Committee of the right to object to any other features or elements embodied in such plans or specifications if and when the same features and elements are embodied in any subsequent plans and specifications submitted for approval for use on other Lots. If any improvement or structure as aforesaid shall be completed, changed, modified or altered without the prior approval of the Architectural Committee, or otherwise is not completed, changed, modified or altered in accordance with the approvals granted by the Architectural Committee, or if the Lot Owner engages a general contractor other than the approved general contractor, then the Owner shall, upon and in accordance with a demand by the Architectural Committee, cause the property, improvement or structure either to be restored to its original condition or to comply with the plans and specifications as adopted by the Architectural Committee, or engage another approved general contractor, and shall bear all costs of the same, including reasonable attorneys fees, of the Architectural Committee. Any agent or member of the Architectural Committee may, and shall have a license to, at any reasonable time, enter upon any building or property subject to the jurisdiction of the Architectural Committee which is under construction or owned or in which the agent or member may believe that a violation of these protective covenants is occurring or has occurred. Prior to the use or occupancy of any improvement or structure constructed or erected on any Lot, the Owner thereof shall apply for a certificate from the Architectural Committee that the construction thereof has been completed in accordance with the plans and specifications approved by the Architectural Committee. The Architectural Committee may from time to time, designate to a person or persons the right to approve or disapprove plans or specifications and to issue such certification.

(e) To adopt fees which shall be designed to reimburse the Architectural Committee for the necessary and reasonable costs incurred by it in processing requests for Architectural

Committee approval of any matters under its jurisdiction. Such fees, if any, should be payable to the Architectural Committee, in cash, at the time that any application for approval is sought from the Architectural Committee.

(f) To enforce the provisions of this Declaration regarding Architectural control, or any Guidelines formulated by the Architectural Committee, or any other applicable rules and regulations pertaining to Architectural Control, by initiation of an action for damages and/or injunctive relief and/or specific performance, by way of example but not limitation, and in the event an action at law or in equity is brought or initiated by the Architectural Committee, the Architectural Committee shall be entitled to recover a reasonable attorneys' fee in addition to any other relief which may be awarded as a result of such action.

Section 5. Amendment. This Article may not be amended without Declarant's written consent so long as the Declarant owns any portion of the Property or any Additional Property.

## ARTICLE V

### GENERAL RESTRICTIONS

The Property, and each Lot thereon, shall be subject to the following covenants, conditions, limitations, and restrictions, which shall run with the land and be binding on all parties having any right, title or interest in the Property, or in any Lot or other part thereof, and their heirs, successors and assigns. The Association is hereby empowered to enforce the following general restrictions as set forth in the policy for enforcement contained herein.

Section 1. Residential Use. All Lots shall be used for Single Family Unit residential purposes exclusively, and no Lot shall be further subdivided. No business or business activity shall be carried on in or upon any residence at any time except with the written approval of the Association. Leasing of a residence shall not be considered a business or business activity, however, the Association may require, by resolution or otherwise in accord with its Bylaws, a prior Board approval of any residential leasing or leases, which consent may be withheld in the Association's sole discretion. Furthermore, the Association may permit residences to be used for business purposes so long as such business, in the sole discretion of the Association, does not otherwise violate the provisions of the Declaration or Bylaws, and does not create a nuisance or disturbance. The Association may issue rulings regarding permitted business activities. Notwithstanding the foregoing, the following uses shall be prohibited in all instances, and the Association shall not have the discretion to permit the same:

(a) Dangerous, noxious, offensive or excessively noisome activities which may be or become an annoyance or nuisance to Owners; and

(b) Raising, breeding, or keeping of any animals, bird or fowl, including, without limitation, commercial or fighting animals, chickens, exotic pets, or hooved animals; provided that an Owner shall be permitted to keep not more than two, in total, dogs and/or cats, or any combination thereof, as domestic pets on a single Lot and provided further that the Architectural Committee or Association may approve more animals to be kept as domestic pets on a Lot if such animals are to be kept in an enclosed area approved by the Architectural Committee;

(c) Exploring, mining, boring, quarrying, drilling, or otherwise removing oil or other hydrocarbons, minerals, gravel or natural gas;

(d) Use of a dwelling house by more than a Single Family Unit.

Any owner may request from the Association at any time a determination of whether a prospective use of a Lot is permitted. A certificate to that effect signed by a majority of the Board of Directors shall be deemed to be dispositive of the issue.

Section 2. Limitation on Size and Location of Structures. In addition to the general restrictions contained in this Declaration, the following specific limitations shall apply in all events to all Lots on the Property:

(a) No structure (including, without limitation, structures for pets) shall be erected, altered, placed or permitted to remain on any Lot other than a main Single Family Unit dwelling not to exceed two and one-half stories (or 35 feet in height) and a private garage for not more than two (2) cars unless otherwise approved in writing by the Architectural Committee. No detached building other than the main Single Family-Unit dwelling shall be constructed or permitted on any Lot unless previously approved by the Architectural Committee.

(b) No building or structure shall be located on any Lot nearer to the front Lot line of said Lot as shown by the minimum building set back line shown on the Subdivision Map or plat. For the purpose of this covenant, eaves, steps and open decks, or terraces shall not be considered part of the building.

(c) **Each main structure residential building, including outbuildings, shall be built according to the Guidelines of The Orchard promulgated by the Architectural Committee, in its sole discretion, as the same may be amended from time to time.**

(d) No device may be constructed or installed upon any Lot which shall in any way

alter the course or natural boundaries of the waterway or which shall involve or result in the removal of water from any waterway without the prior written approval of the Architectural Committee.

(e) The owner of each Lot abutting any water's edge shall, and hereby does, release and discharge the Declarant, and the Association from any and all claims for debt or damage sustained by Owner or existing Owner's favor, to Owner, Owner's property, or property rights hereafter to be sustained or to accrue by reason or account of the use of said water's edge.

(f) No building shall be located nearer to the front or rear of said Lot than the minimum building set back line as shown on the Subdivision Map or plat.

Section 3. Exterior Lighting. All exterior lighting shall be subject to the review, and written approval of, the Architectural Committee, and must be included within the plans and specifications submitted to the Architectural committee as contemplated herein.

Section 4. Utilities. No Owner of a Lot shall erect, or grant to any person, firm or corporation the right, license, or privilege to erect, or to use or permit the use of, overhead wires, poles, or overhead facilities of any kind for electrical or telephone service on said real estate without the prior written consent of the Architectural Committee. All electrical and telecommunication lines located upon any Lot and property subject to this Declaration shall be installed and maintained underground, and all transformer boxes, pedestals, meters or other such fixtures shall be located at the back or side of any building to ensure it is not visible from the front of the street or front of building, adequately screened with plants or other materials approved by the Architectural Committee; provided that no planting or screening devices shall be placed as to obstruct the normal servicing of either transformers, telephone pedestals or other utility hardware. Unless approved in writing in advance by the Architectural Committee in its sole discretion, any transformer boxes, pedestals, meters or other such fixtures that for any reason must be located in the front of any building, whether on a Lot or in the right of way, must be flush mounted, such that the same are not visible from the front of the building. Utility providers have the rights and easements in connection with any construction, operation and maintenance and removal of underground service on each Lot and may enter said Lot for these purposes.

Section 5. Maintenance. All structures, landscaping and other improvements upon individual Lots shall be continuously maintained by the owner thereof so as to preserve a well kept appearance, including a vacant Lot. Lots must be kept neat, clean, orderly, and free of unsightly

debris, contaminants and litter, mowed, and/or trimmed on a regular and continuous basis, and the maintenance obligation shall also include natural areas and trees, all the way up to the curb, including any right of way in front of a Lot. Landscaping, including grassing, planting of shrubs, trees, flowers and other aesthetic features as described in the architectural Guidelines of the Association shall be completed within one (1) month from the completion of the main structure of any residence.

Section 6. Accumulation of Refuse. No lumber, metals, bulk materials (except lumber, metals, bulk materials as is usual in the maintenance of a private residence and which must be stored in such a manner so that it cannot be seen from adjacent and surrounding property) refuse or trash shall be kept, stored, or allowed to accumulate on any Lot or any part of the Property except for building materials being used during the course of construction of an approved structure. Builders must provide dumpsters on the property during the construction period. If trash or other refuse is to be disposed of by being picked up and carried away on a regular and recurring basis, containers may be placed in the open on any day that a pickup is to be made, at such place on the Lot to provide access to persons making such pickup. Garbage containers shall be kept in a clean and sanitary condition and shall be so placed or screened by shrubbery or other appropriate material approved in writing by the Architectural Committee as not to be visible from any road or from adjacent and surrounding property. The Architectural Committee, in its discretion, may adopt and promulgate reasonable rules and regulations relating to the size, shape, color and type of containers permitted and the manner of storage of the same on any Lot (see also Section 31). No outside burning of wood, leaves, trash, garbage or household refuse shall be permitted, except during the construction period, or except as specifically approved by the Architectural Committee.

Section 7. Landscaping. No weeds, underbrush or other unsightly growth shall be permitted to grow or remain upon any part of a Lot, including natural areas, and no refuse pile or unsightly object shall be allowed to be placed or suffered to remain upon any part of a Lot, including undeveloped Lot. Owners will be required to keep undeveloped Lots safe, neat, clean, orderly, free of debris and litter, mowed and/or trimmed within thirty (30) feet of the front line of said Lot or parcel and thirty (30) feet of the side line of any corner Lot or parcel, and sodded according to the Guidelines. The determination of whether or not growth is unsightly shall be within the sole discretion of the Architectural Committee. This provision shall not apply to the Declarant. All landscaping should be aesthetically pleasing, as determined by the Architectural

Committee. All landscape edging and bed edging must be neutral, earth tone colors, with no bright or shiny colors. All beds in the landscaping must use and be covered with pine straw or dark mulch; no other substances are allowed.

Section 8. Tree Removal. No trees shall be removed without the expressed consent of the Architectural Committee, except for trees needing to be immediately removed for safety reasons.

Section 9. Outbuildings, Exterior and Temporary Structures. No structure of a temporary character, trailer, tent, lean-to or shack shall be used at any time at or as a residence, or in any other manner on a Lot, either temporarily or permanently. No storage building or outbuilding of any type, including, without limitation, storage sheds, guest houses, cabanas, and the like, shall be permitted unless such building is constructed of identical material and design to the main residential structure and approved in advance by the Architectural Committee. Walls, pools, hedges, ornamental garden structures and/or statues shall be approved in advance by the Architectural Committee. Screen pool enclosures must be approved in advance by the Architectural Committee.

Section 10. Fences and Hedges. No chain link fences shall be used. No fence of any type will be erected on or around the front yard of any Lot or extend beyond the back line of the residence. A wooden, wrought iron or vinyl fence or privacy screening may be used at the rear of a Lot, provided that material for such fence, the location thereof, and the fence itself is approved in advance by the Architectural Committee as provided in this Declaration. All pools and pool equipment must be enclosed within an Architectural Committee approved fence.

Section 11. Signs, Banners or Flags. No sign, banner or flag of any kind shall be displayed to the public view on any Lot without the prior written consent of the Architectural Committee. This provision shall not apply to the Declarant. Notwithstanding the foregoing, if a Lot is for sale, a commercially produced single, real estate sales sign or reasonable dimension and design that is aesthetically pleasing, as determined by the Board in its discretion, shall be allowed.

Section 12. Garages and Parking Areas. Garage openings shall be front-entry garages on any structure located on a Lot. The Architectural Committee may, in its discretion, designate one or more Lots, or contiguous areas containing more than one Lot, as suitable for different garage facing openings, and this pre-approval shall be deemed to satisfy the requirement of prior written approval contemplated herein. No covered parking areas or similar structures shall be allowed.

Section 13. Outside Equipment (includes A/C and Heating). For purposes of this Section

13, "Equipment" shall be deemed to include air conditioning and heating units, generators, or any other machinery equipment used in connection with any structure on any Lot, and the following restrictions shall apply:

(a) Equipment of any type shall not be located in the front yard. All Equipment located outside, including air conditioning units, shall be hidden from view by shrubbery, or other foliage or fence that otherwise satisfies the requirements hereof.

(b) No wall or window air conditioning unit shall be permitted in any event.

(c) No plumbing or heating vent shall be placed on the front side of the roof. All vents protruding from roofs shall be painted the same color as the roof covering.

Section 14. Satellite Dishes. No satellite dish will be allowed on the front or side of any Lot without the prior written approval of the Architectural Committee.

Section 15. Solar Collectors. No solar collectors shall be permitted without the prior written consent of the Architectural Committee and if approved, shall be installed so as not to be visible from any street.

Section 16. Animals and Pets. All pets shall be reasonably controlled by the owner whenever outside of home or anywhere on the properties and shall be kept in such a manner as to not become a nuisance by loud and obnoxious noises or other acts. The owners of the pets shall be responsible for all of the pet's actions. Pets must be restrained on a leash whenever outside of the home, and all local municipal leash laws shall be observed at all times. Owners must retrieve and dispose of pet's solid waste. If, in the sole opinion of the Association, any animal becomes dangerous or an annoyance or nuisance to the nearby properties, the Association may require that the Owner remove the animal from or request the local animal control department or police department to have said animal removed. No hoofed animals, exotic animals, snakes, reptiles, domesticated wild animals, livestock, or other animals not normally maintained as pets, as determined by the Board, shall be allowed.

Section 17. Recreational vehicles; Mobile Storage Units. No boat, boat trailer, house trailer, horse trailer, utility trailer, motorcycle trailer, motorcycle, jet ski, golf cart, personal watercraft, ATV or UTV, lawnmower, camper, motor home, or any similar items, shall be stored on or at any Lot for a period of time in excess of twenty-four (24) hours in any one week period, unless housed in a carport or garage, or otherwise screened so that it cannot be seen from the street or from adjacent and surrounding property. In the case of a mobile storage unit, such as one

provided by PODS, Mobile Attic, or the like, an Owner shall be allowed to locate such a unit on the Owner's lot on a temporary basis to assist with moving or construction, but in no event shall it remain on any Lot, for more than a one week period. Any attempt to circumvent the restrictions contained herein by "re-starting the clock" by temporarily moving the offending item off the premises or onto other Lots may, in the Association's sole discretion, be deemed to be a violation of this provision.

Section 18. Commercial Trucks. No commercial truck or vehicle, or any type limousine, or any other commercial equipment, shall be permitted to be parked or to be stored in open view on any place of any Lot. This prohibition on parking shall not apply to temporary parking of trucks and commercial vehicles used for pickup and delivery. This applies to any commercial type vehicle or equipment even if for an Owner's personal use.

Section 19. Vehicles. All vehicles shall be parked only in the garage or driveway serving the Lot, unless otherwise approved by the Association. Guest parking will be allowed in the street only for a reasonable length of time to be determined by the Association. There shall be no parking in the yard of a lot or on any grassed or landscaped area, on any sidewalk, or any in any right of way. All unlicensed vehicles or any vehicle in such condition that it is incapable of being operated on a public highway must be garaged. No tarps covering vehicles will be allowed unless garaged. Owners shall not allow any legally underage drivers to drive vehicles of any type, nor shall they allow any vehicle not authorized by law and properly licensed to be driven on public streets or on any Common Area.

Section 20. Vehicle Maintenance and Repair; Machinery and Equipment. No maintenance or repairs shall be performed on any vehicle upon any portion of the Property, unless performed in a garage, except in an emergency situation. Notwithstanding the foregoing, all repairs to disassembled vehicles within the Property must be completed within four (4) hours from its immobilization or the vehicle must be removed. Should the Association own any maintenance vehicles, it shall be allowed to maintain and store its maintenance vehicles on specific areas of the property designated by the Association. Unless approved by the Association, no power machinery or equipment shall be permitted within The Orchard except as is necessary in connection with approved construction or approved resident's non-commercial use. In determining whether to grant approval, the Association may consider the effects of noise, air pollution, dirt, grease, fire hazard, and any other relevant factor.

Section 21. Remedies for Vehicle and Recreational Equipment Violations. Any such vehicle, recreational vehicle, machinery, or similar item or vehicle described in this Declaration that is stored or parked in violation of these or other regulations contained herein or in the rules and regulations now or hereinafter adopted by the Association may be towed by the Association at the sole expense of the owner of such vehicle or recreational equipment if it remains in violation for a period of twenty-four (24) hours, after the Association provides written notice of the violation to the offending Lot Owner, the form of such notice and deliver method to be at the Association's sole discretion. The Association shall not be liable to the owner of such vehicle or recreational equipment or trespass, conversion or otherwise, nor guilty of a criminal act by reason of such towing and neither its removal nor failure of the owner to receive any notice of said violation shall be grounds for relief of any kind.

Section 22. Leasing. Leasing is allowed for residential purposes only provided that the tenant acknowledges receipt of a copy of this Declaration and any other rules or regulations promulgated by the Association, and the lease shall obligate the tenant to comply with the foregoing. The Association may, in its discretion, by resolution or otherwise, require that any residential leases within the Property require the prior written consent of the Association.

Section 23. Rules and Regulations. In addition to the rules and regulations in this Declaration, the Association may, from time to time, without consent of the Members, promulgate, modify, or delete rules and regulations applicable to the Property that are consistent with the purposes of this Declaration. Such changes will be distributed to the Association Members prior to the date such rules and regulations will become effective and will be binding on all Members.

Section 24. Guns, firearms, fireworks. The discharge of guns, pellet guns, bb guns, firearms of all types, and fireworks are prohibited, however, the Association has no obligation to take action to prevent or stop such discharge. Notwithstanding the foregoing, the Association may, in its discretion, organize fireworks shows or displays on or about the Common Areas on holidays such as Memorial Day, July Fourth, Labor Day, and the like, or at such other times or for such other events as the Association may deem appropriate in its discretion.

Section 25. Drainage. Each Owner is responsible for maintaining all drainage areas located on its Lot. Required maintenance shall include, but not be limited to, maintaining ground cover in drainage areas, and removing any accumulated debris from drainage areas. Each Owner shall be responsible for controlling the natural and man-made water flow from its Lot. No Owner

shall be entitled to overburden the drainage areas from its property. No Owner shall change the flow of drainage from its Lot to another Lot or other properties. All Owners shall comply with the local municipal, state and federal erosion control rules, regulations, and ordinances.

Section 26. Common Areas. All Members, as well as their families, guests and pets shall refrain from any actions which deter from the enjoyment by other Members of the areas designated as Common Areas. Certain Common Areas can or may be designated green spaces by Declarant, and may be kept in a natural state, to be determined by Declarant. Owner's rights to use such Common Areas or green spaces may be prohibited or rescinded by the Association for noncompliance with these Declarations. Any Member and their families and guests shall be responsible for removing any pet feces from any right-of-ways, parks, common areas, and the like.

Section 27. Play Equipment, Treehouses, etc. Swing sets, play equipment, sports equipment, basketball hoops, playhouses, treehouses, trampolines, and any similar items must be approved by the Association in its discretion in advance of placement of such structures.

Section 28. Street Trees. All Street Trees planted by Declarant and all of the existing trees in the common areas, including the pecan trees, shall be the responsibility of the Association to maintain, remove and replace as necessary, which responsibilities shall including trimming, pruning, and the like.

Section 29. Clothes lines. No clothing or other household fabrics shall be hung in the open on any Lot or property unless the same is not visible from any adjoining property or public view.

Section 30. Mailboxes. The Architectural Committee shall provide, in the Guidelines, design specifications for mailboxes to used by the Lots. Owners are responsible for the purchase of, and for maintaining in good repair said mailbox, provided, however, that if, after written notice to an Owner that such Owner's mailbox is noncompliant or is in disrepair, such Owner, within two weeks of delivery of such notice, fails to repair or replace the mailbox, the Association may repair or replace said mailbox, and assess all costs associated with the same as a Benefitted Assessment against the Owner's Lot.. In the event that the Guidelines designate double box/single pole mailboxes, the two Lots sharing such mailbox agree to be jointly and severally responsible for maintaining such mailbox(s) as contemplated herein.

Section 31. Trash and Garbage Receptacles. All garbage cans shall be screened so as to conceal from public view of any adjacent properties. All trash and garbage shall be regularly removed and shall not be allowed to accumulate. Receptacles must be placed and removed at the

curb only on day of pickup, and cannot be placed on the street or any Common Area in any event, even temporarily. The Association may at any time require certain types of receptacles to be used or regulate the screening or placement of receptacles.

Section 32. Transmission Equipment. No visible ham radios or radio transmission equipment shall be operated or permitted to be operated on any Lot. No television or radio antennas or other visible transmission structure shall be permitted on the Property.

Section 33. Garage or Yard Sales. Garage or yard sales shall not be allowed on any Lot.

Section 34. Window Coverings. Drapes, window shades or other window coverings installed in windows of any house on a Lot shall be aesthetically pleasing (as determined by the Architectural Committee) and of a neutral color, and in no event may aluminum foil, newspaper, cardboard, blankets, sheets or the like be placed in windows.

Section 35. Further Subdivision. No Lot may be further subdivided.

Section 36. Drainage. No Owner of a Lot shall in any way interfere with or change the established drainage pattern over his or her Lot.

Section 37. Utility Service. No lines, wires, or other devices for the communication or transmission of electric current or power, including telephone, television, or radio signals, or installation of lines for solar equipment, unless approved in advance by the Association and placed and maintained underground or concealed in, under, or on buildings that are approved by the Association.

Section 38. Pool and Pool Area. No Owner or Member shall allow any family member or friend or guest to utilize the pool, pool house and surrounding areas (including parking) without the Member being physically present at the pool area and the surrounding areas with such family member or guest(s). Every Owner or Member will strictly adhere to any rules promulgated by the Association with respect to the pool, and by becoming an Owner or Member do release and hold harmless the association from any liability, claim and/or damages whatsoever with respect to an Owner's or Member's use of the pool or the use of the pool by an Owner's or Member's guests or family.

## **ARTICLE VI**

### **ASSOCIATION MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Every Owner shall be a Member of the Association. No Owner, whether one or more persons, shall have more than one (1) membership per Lot owned. If a Lot is

owned by more than one person, all co-Owners shall be entitled to the privileges of membership; however, there shall be only one vote per Lot. All such co-Owners shall be jointly and severally obligated to perform the responsibilities of Owners hereunder. The membership rights and privileges of an Owner who is a natural person may be exercised by the Member or the Member's spouse. The membership rights of an owner which is a corporation, partnership or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary of the Association.

Section 2. Voting Rights. The Association shall have two (2) classes of membership, Class "A" and Class "B", as set forth below:

(a) Class "A". The Class "A" members shall be the Owners, with the exception of Class "B" members, if any.

Class "A" members shall be entitled to one (1) vote in the association for each Lot owned. When more than one person is the owner of any Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the secretary of the Association prior to any meeting. In the absence of such advice, the Lot's vote shall be suspended in the event more than one person seeks to exercise it.

(b) Class "B". The Class "B" member shall be the Declarant, or any successor or assignee of Declarant, who takes title for the purpose of development and sale, and who is designated as such in a recorded instrument executed by Declarant. The Class "B" member shall be a voting member and shall be entitled to cast the number of votes which are contained in the total of all Class "A" members, plus one (1) vote (such that the Class "B" member shall always have a majority), until such time the Class "B" membership terminates.

The Class "B" membership shall terminate upon the happening of the earlier of the following:

1. At such time as when Class "A" members, other than the Declarant, own one hundred percent (100%) percent of the Lots that are located on the Property and permitted by the Declarant's master site plan for the Property, as the same may be amended from time to time; or

2. When, at its discretion, the Declarant so determines, with the approval of any mortgagee of Declarant, if necessary.

From and after the happening of these events, whichever occurs earlier, the Class "B"

membership shall terminate and any Lots owned by Declarant shall be deemed to have Class “A” membership, with Declarant having one (1) vote for each Lot owned. At such time, the Declarant shall call a meeting, as provided in the Bylaws of the Association for special meetings of the Association, to advise the membership of the termination of Class “B” status and to elect the members of the Board of Directors.

Section 3. Acts of Association. The Association shall be authorized to act to exercise its rights and obligations hereunder and to enforce the protective covenants described herein by action of its Board, and also by and through any duly appointed committees, agents or officers of the Association elected or appointed in accordance with the Association’s Bylaws.

**ARTICLE VII**  
**MAINTENANCE**

Section 1. The Association's Responsibility. The Association shall maintain and keep in good repair the Area of Common Responsibility, said maintenance and upkeep to include, but need not be limited to:

(a) landscaping and other flora, parks, lakes, structures and improvements, including any private street, alley, bike and pedestrian pathway/trails, situated upon the Common Area;

(b) landscaping within public rights-of-way within or abutting the Property, and landscaping and other flora within any public utility easement within the Property (subject to the terms of any easement agreement relating thereto);

(c) maintenance of such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplementary Declaration, or any contract or agreement from maintenance thereof entered into by the Association;

(d) maintenance of all ponds, streams and/or wetlands located within the Property which serve as part of the drainage and storm water retention system for the Property, including any retaining walls, bulkheads or dams (earthen or otherwise) retaining water therein, and any fountains, lighting, pumps, conduits, and similar equipment installed therein or used in connection therewith;

(e) maintaining any property and facilities owned by the Declarant and made available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members, such property and facilities to be identified by written notice from the Declarant to the Association and to remain a part of the Area of Common Responsibility and be maintained by the

Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association;

(f) maintaining any Street Trees; and

(g) maintaining the pools, pool house, and pool area and maintaining and replacing pool equipment, pool furniture, and the like.

The Area of Common Responsibility shall not be reduced by amendment of this Declaration or any other means except with the prior written approval of the Declarant.

The Association may assume maintenance responsibility for any Lot, or for property in any Neighborhood, in addition to that designated by any supplementary declaration, either by agreement with the Neighborhood or because, in the opinion of the Association, the level and quality of service then being provided on the Lot, or in the neighborhood, is not consistent with the community-wide standard. All costs of maintenance pursuant to this paragraph shall be assessed as a neighborhood assessment only against the Lots, or the Lots within the Neighborhood, as the case may be, to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Association determines that such maintenance is necessary or desirable to maintain the community-wide standard.

Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement of the Area of Common Responsibility shall be a Common Expense to be allocated among all Lots as part of the Base Assessment, without prejudice to the right of the Association to seek reimbursement from the owner(s) of, or other persons responsible for, certain portions of the area of common responsibility pursuant to this Declaration, other recorded covenants, or agreements with the owner(s) thereof.

Section 2. Owners Responsibility. In accordance with this Declaration and any subsequent amendments thereto, all maintenance of a Lot and all structures, and other improvements within a Lot shall be the sole responsibility of the Owner thereof, who shall perform such maintenance in a manner consistent with this Declaration and the applicable covenants or any other rules or regulations adopted by the Board not inconsistent with this Declaration; provided further, if this work is not properly performed by the Owner, the Association may perform it and assess the Owner as a Benefited Assessment; provided however, whenever entry is not required in an

emergency situation, the Association shall afford the Owner ten (10) days reasonable notice and an opportunity to cure the problem prior to entry and performance.

## ARTICLE VIII

### **COVENANTS FOR ASSESSMENTS**

Section 1. Purpose of Assessments. The assessments levied by the Association shall be used for the general purposes of promoting the recreation, health, safety, welfare, common benefits, and enjoyment of the Owners and occupants in the residential community on the Property, including the maintenance of real and personal property, all as may be more specifically authorized by the Association, including by way of example, but not limited to, the improvement, construction, reconstruction, repair, or refinishing of any portion of the Access Easement, the procuring of services for the Owners, including, but not limited to, the maintenance, operation, construction, repair, replacement, or refinishing of all or a portion of the Area of Common Responsibility, and the repair, maintenance or replacement of capital improvements on the Access Easement or in the Area of Common Responsibility. Notwithstanding the foregoing, any excess funds accumulated from assessments over the total amount of regular assessments for the preceding year may be used for capital expenditures to benefit the Access Easement or Area of Common Responsibility and fulfill the purposes of the Association.

Section 2. Creation of Assessments; Lien and Personal Obligation for Assessments. There are hereby created assessments to collect funds for the above described expenses or other expenses contemplated herein, as the Association may specifically authorize from time to time. There shall be three types of assessments, to-wit; (i) Base Assessments, (ii) Special Assessments, and (iii) Benefited Assessments, as defined immediately below:

(a) “Base Assessments” shall mean any assessments established and levied by the Association on an annual basis as hereinafter provided to fund the Common Expenses for the general benefit of all Lots.

(b) “Special Assessments” shall mean any assessments established and levied by the Association from time to time to pay for any non-budgeted expenses, or expenses in excess of those budgeted (Common Expenses or otherwise).

(c) “Benefited Assessments” shall mean assessments specifically assessed against a Lot or Lots receiving benefits, items, or services not provided to all other Lots, or to a Neighborhood receiving benefits, items or services not provided to all other Lots or

Neighborhoods, or to one Neighborhood to the exclusion of other Neighborhoods, or within the Property, that are incurred upon request of the Owner(s) of a Lot or Lots, for specific items or services relating to the Lot or Lots, including, without limitation, assessments for the maintenance or repair of paved streets or alleys that serve a lot or group of lots, or assessments that are a consequence of the conduct of less than all Owners, their licensees, invitees, or guests, and also assessments of any expense, fine, or charge contemplated herein, and also any assessment of an expense, fine or charge attributable to a violation of this Declaration, any Supplementary Declaration, the Articles, the Bylaws, the Guidelines, or any other rules promulgated by the Association pursuant to its authority granted herein, and also any other assessment contemplated herein that is not in the nature of a Base Assessment or a Special Assessment.

Each Owner, by accepting a deed or entering into a recorded contract of sale for any portion of the Properties, is deemed to covenant and agree to pay these assessments, whether or not said obligation is expressed in such deed or not.

All assessments, together with interest as imposed by the Board (at a rate not to exceed the highest rate allowed by Alabama law) as computed from the date the delinquency first occurs, late charges, costs, and reasonable attorneys' fees, shall be a charge and continuing lien upon each Lot against which the assessment is made until paid, as more particularly provided herein. Each such assessment, together with interest, late charges, costs and reasonable attorneys' fees, also shall be the personal obligation to the person who was the owner of such Lot at the time the assessment arose. Upon a transfer of title to a Lot, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. However, no first Mortgagee who obtains title to a Lot by exercising the remedies provided in its Mortgage shall be liable for unpaid assessments which accrued prior to such acquisition of title.

The Association shall, upon request, furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

Assessments shall be paid in such manner and on such dates as the Association may establish. If the Association so elects, assessments may be paid in two or more installments.

No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Lot, or by any other means. The obligation to pay assessments is

a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes.

During any time the Declarant controls the vote of the Members due to Declarant's ownership of the Class "B" voting interest, the Declarant may annually elect either to pay regular assessments on Lots owned by Declarant, notwithstanding the commencement date for assessments set forth herein, or to pay the difference between the amount of assessments collected on all other Lots subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless the Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, the Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. The Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these.

During any time the Declarant controls the vote of the Members due to Declarant's ownership of the Class "B" voting interest, the Declarant may, in its sole discretion, reduce the amount of any assessment to a builder or contractor who is purchasing a Lot or Lots for the sole purposes of constructing a residential structure thereon for resale, said reduction to be on such terms and conditions as Declarant may deem suitable.

The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services, materials, or a combination of services and materials with the Declarant or other entities for payment of Common Expenses.

Section 3. Computation of Base Assessment. At least 30 days before the beginning of each fiscal year, the Association shall prepare a budget covering the estimated Common Expenses of The Orchard during the coming year, including a capital contribution to establish a reserve fund in accordance with a budget separately prepared as provided herein.

The Base Assessment shall be levied equally against all Lots and shall be set at a level which is reasonably expected to produce total income for the Association equal to the total budgeted Common Expenses, including reserves. In determining the level of assessments, the Board, in its discretion, may consider other sources of funds available to the Association. In addition, the Board shall take into account the number of Lots subject to assessment hereunder on

the first day of the fiscal year for which the budget is prepared and the number of Lots reasonably anticipated to become subject to assessment during the fiscal year.

So long as the Declarant has the right unilaterally to annex additional property pursuant to Article XIII, the Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant hereunder), which may be either a contribution, an advance against future assessments due from the Declarant, or a loan, in the Declarant's discretion. Any such subsidy shall be conspicuously disclosed as a line item in the Common Expense budget and shall be made known to the membership. The payment of such subsidy in any year shall under no circumstances obligate the Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and the Declarant.

The Association shall send a copy of the budget and notice of the amount of the Base Assessment for the following year to be delivered to each Owner at least 15 days prior to the beginning of the fiscal year for which it is to be effective. Such budget and assessment shall become effective unless disapproved at a meeting by Members holding at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if such member exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in the Bylaws, which petition must be presented to the Board within ten (10) days after delivery of the notice of assessments.

If the proposed budget is disapproved or the Association fails for any reason to determine the budget for any year, then until such time as a budget is determined, the budget in effect for the immediately preceding year shall continue for the then current year.

Section 4. Reserve Budget and Capital Contribution. The Association shall annually prepare reserve budgets for general purposes which take into account the number and nature of any anticipated replacement or repair costs., including, without limitation, for maintenance or repair of to the Common Areas, including upkeep or replacement of equipment or structures located thereon. The Association may set a capital contribution in an amount sufficient to permit meeting the projected needs of the Association, as shown on the budget, with respect both to amount and timing by annual Base Assessments, as appropriate, over the budget period.

Section 5. Special Assessments. In addition to other authorized assessments, the Association may levy Special Assessments from time to time to cover unbudgeted expenses or

expenses in excess of those budgeted. Such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against individual Lots or groups of Lots, if for expenses that benefit less than all of the Lots (including, without limitation, expenses for the repair or maintenance of paved streets or alleys). Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of Members holding at least 51% of the total votes allocated to Lots which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such member exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

Section 6. Benefited Assessments. The Association shall have the power to specifically assess expenses of the Association (including, without limitation, expenses for the repair or maintenance of paved streets or alleys) (a) against a Lot or Lots receiving benefits, items, or services not provided to all other Lots, or to a Neighborhood receiving benefits, items or services not provided to all other Lots or Neighborhoods, or to one Neighborhood to the exclusion of other Neighborhoods, or within the Property, that are incurred upon request of the Owner(s) of a Lot or Lots, for specific items or services relating to the Lot or Lots, or assessments that are a consequence of the conduct of less than all Owners, their licensees, invitees, or guests. The Association may also levy a Benefited Assessment against any Lot to reimburse the Association for costs incurred in bringing the Lot, or the Neighborhood in which such Lot is located, into compliance with the provisions of the Declaration, any applicable Supplemental Declaration, the Articles, the ByLaws, and any Association rules, or in any instance in which a Benefitted Assessment is contemplated under this Declaration.

Section 7. Lien for Assessments. The Association shall have a lien against each Lot to secure payment of delinquent assessments, as well as interest, late charges (subject to the limitations of Alabama law), and costs of collection (including attorneys fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any first Mortgage of record (meaning any recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

The Association may bid for the Lot at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Lot. While a Lot is owned by the Association following foreclosures: (a) no right to vote shall be exercised on its behalf; (b) no assessment shall be levied on it; and (c) each other Lot shall be charged, in addition to its usual assessment, its equal pro rata share of the assessment that would have been charged such Lot had it not been acquired by the Association. The Association may sue for unpaid Common Expenses and costs without foreclosing or waiving the lien securing the same.

The sale or transfer of any Lot shall not affect the assessment lien or relieve such Lot from the lien for any subsequent assessments. However, the sale or transfer of any Lot pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to such sale or transfer. A Mortgagee or other purchaser of a Lot who obtains title pursuant to foreclosure of the Mortgage shall not be personally liable for assessments on such Lot due prior to such acquisition of title. Such unpaid assessment shall be deemed to be Common Expenses collectible from owners of all Lots subject to assessment hereunder, including such acquirer, its successors and assigns.

Section 8. Date of Commencement of Assessments. The obligation to pay Base Assessments shall commence as to each Lot on such date and time as is decided by the Association in its sole discretion, but in no event on less than an annual basis.

The obligation to pay Special Assessments or Benefited Assessments shall commence as to each affected Lot, and be due upon, the date specified by the Association in the document setting forth and levying said assessment.

Section 9. Failure to Assess. Failure of the Board to fix assessment amounts or rates or to deliver or mail each owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments on the same basis as for the last year for which an assessment was made, if any, until a new assessment is made, at which time the Association may retroactively assess any shortfalls in collections.

Section 10. Exempt Property. The following property shall be exempt from payment of Base Assessments, Benefited Assessments, and Special Assessments:

- (a) All Common Areas;
- (b) Any property dedicated to and accepted by any governmental authority or public

utility.

**ARTICLE IX**  
**MORTGAGEE PROVISIONS**

The following provisions are for the benefit of holders of first mortgages on residences in the Development. The provisions of this Article apply to both this Declaration and the Bylaws notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional holder, insurer or guarantor of a first mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, guarantor and the residence number, therefore becoming an “eligible holder”), will be entitled to timely notice of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the properties or which affects any residence on which there is a first mortgage held, insured, or guaranteed by such eligible holder;

(b) Any delinquency in the payment of assessments or charges owed by an Owner of a residence, subject to the mortgage of such eligible holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an owner of a residence of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days;

(c) Any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or

(d) Any proposed action which would require the consent of a specified percentage of eligible holders.

Section 2. Special FHLMC Provision. If any portion of the Property is a condominium, then so long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first mortgagees or at least two-thirds (2/3) of the total Association vote entitled to vote thereon consent, the Association shall not:

(a) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer common area which the Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area

shall not be deemed a transfer within the meaning of this subsection);

(b) Change the method of determining the obligations, assessments, dues, or charges which may be levied against an owner of a residence (a decision, including contracts, by the board or provisions of any supplementary Declaration regarding assessments for neighborhoods or other similar areas shall not be subject to this provision where such decision or supplementary Declaration is otherwise authorized by this Declaration);

(c) By act or omission, change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of residences and of the common areas (the issuance and amendment of architectural guidelines, standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision);

(d) Fail to maintain insurance, as required by this Declaration; or

(e) Use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

The first mortgagees may, jointly or singly, pay taxes or other charges which are in default in which may or have become a charge against the common area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of any association policy and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

Section 3. No Priority. No provision of this Declaration or the Bylaws gives or shall be construed as giving any Owner or other party priority over any rights of the first mortgagee of any residence in the case of distribution to such owner of insurance proceeds or condemnation awards for losses to or a taking of the common area.

Section 4. Notice to Association. Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any mortgage encumbering such owner's residence.

Section 5. Amendment by Board. Should the Veterans Administration, the Federal National Mortgage Association, or the Federal Home Loan Mortgage Corporation subsequently delete any of their respective requirements which necessitate the provisions of this Article or make any such requirements less stringent, the board, without approval of the Owners, may cause any amendments to this Article to be recorded to reflect such changes.

Section 6. HUD/VA Approval. As long as there is a Class “B” membership, the following actions shall require the prior approval of the Federal Housing Administration (“FHA”) or the US Department of Veterans Affairs (“VA”), if either such agency is insuring or guaranteeing the mortgage on any Lot: annexation of additional property other than that described on Exhibit “A”, dedication of common area, mortgaging of Common Area, or any material amendment of this Declaration. If either FHA or VA is insuring or guaranteeing the mortgage on any Lot, no portion of the Common Area may be mortgaged or conveyed unless at least sixty-seven percent (67%) of the total Class “A” members consent without regard to Lots owned by the Declarant.

Section 7. Applicability of Article IX. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, Bylaws, or Alabama law for any of the acts set out in this Article.

Section 8. Failure of Mortgagee to Respond. Any Mortgagee (or insurer or guarantor of a mortgage) who receives a written request from the board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the mortgagee within thirty (30) days of the date of the association's request.

## ARTICLE X

### ASSOCIATION INSURANCE

Section 1. Association Insurance. The Association, acting through its Board or its duly authorized agent, shall obtain blanket “all-risk” property insurance, if reasonably available, for all insurable improvements on the Common Area to the extent that it has assumed responsibility for maintenance, repair and/or replacement in the event of a casualty. If blanket “all-risk” coverage is not generally available at reasonable cost, then fire and extended coverage, including coverage for vandalism and malicious mischief, shall be obtained. The face amount of the policy shall be sufficient to cover the full replacement cost of the insured property.

The Association also shall obtain a public liability policy on the Common Area, insuring the Association and its Members for damage or injury caused by the negligence of the Association of any of its members, employees, agents, or contractors while acting on its behalf. If generally available at reasonable cost, the public liability policy shall have at least a \$1,000,000.00 combined single limit as respects bodily injury and property damage and at least a \$3,000,000.00 limit per occurrence and in the aggregate.

Except as otherwise provided, premiums for all insurance on the Common Area shall be

Common Expenses and shall be included in the Base Assessment.

The policies may contain a reasonable deductible and the amount thereof shall not be subtracted from the face amount of the policy in determining whether the insurance at least equals the coverage required hereunder. In the event of an insured loss, the deductible shall be treated as a Common Expense in the same manner as the premiums for the applicable insurance coverage. However, if the Association reasonably determines, after notice and an opportunity to be heard in accordance with Article XIV herein, that the loss is the result of the negligence or willful conduct of one or more Lot owners, then the Association may specifically assess the full amount of such deductible against such owner(s) and their Lots as a Benefitted Assessment.

All insurance coverage obtained by the Association shall:

(a) Be written with a company authorized to do business in Alabama which holds a Best's rating of A or better and is assigned a financial size category of IX or larger as established by A. M. Best Company, Inc., if reasonably available, or, if not available, the most nearly equivalent rating which is available.

(b) Be written in the name of the Association as Trustee for the benefitted parties. Policies on the Common Area shall be for the benefit of the Association and its members, and their Mortgagees, as their interests may appear.

(c) Vest in the Association the exclusive authority to adjust losses; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related to the loss.

(d) Not be brought into contribution with insurance purchased by individual owners, occupants or their Mortgagees.

(e) Have an inflation guard endorsement, if reasonably available. If the policy contains a co-insurance clause, it shall also have an agreed amount endorsement. The Association shall arrange for an annual review of the sufficiency of insurance coverage by one or more qualified persons, at least one of whom must be in the real estate industry and familiar with construction in the Houston County area.

(f) The Association shall be required to use reasonable efforts to secure insurance policies containing endorsements that:

(i) waive subrogation as to any claims against the Association's Board, officers, employees, and its manager, the Owners and their tenants, servants, agents, and guests;

- (ii) waive the insurer's rights to repair and reconstruct instead of paying cash;
- (iii) preclude cancellation, invalidation, suspension, or nonrenewal by the insurer on account of any one or more individual Owners, or on account of any curable defect or violation without prior written demand to the Association to cure the defect or violation and allowance of a reasonable time to cure;
- (iv) exclude individual Owners' policies from consideration under any "other insurance" clause; and
- (v) require at least 30 days' prior written notice to the Association of any cancellation, substantial modification, or non-renewal.

The Association shall also obtain, as a Common Expense, worker's compensation insurance if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, and flood insurance, if advisable.

The Association also shall obtain, as a Common Expense, a fidelity bond or bonds, if generally available at reasonable cost, covering all persons responsible for handling Association funds. The Board shall determine the amount of fidelity coverage in its best business judgment but, if reasonably available, shall secure coverage equal to not less than one-sixth of the annual Base Assessments on all Lots plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least 30 days' prior written notice to the Association of any cancellation, substantial modification or nonrenewal.

Section 2. Owners Insurance. By virtue of taking title to a Lot, each owner covenants and agrees with all other Owners and with Association to carry blanket "all-risk" property insurance on its Lot(s) and structures thereon providing full replacement cost coverage less a reasonable deductible, unless the Association carries such insurance (which they are not obligated to do hereunder).

Each Owner further covenants and agrees that in the event of damage to or destruction of structures on or comprising his Lot, he shall proceed promptly to repair or to construct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV of this Declaration. Alternatively, the Owner shall clear the Lot of all debris and ruins and maintain the Lot in a neat and attractive, landscaped condition consistent with this Declaration, the Bylaws, and any other rules and regulation of the Association. The Owner

shall pay any costs which are not covered by insurance proceeds.

Section 3. Damage and Destruction.

(a) Immediately after damage or destruction to all or any part of the Properties covered by insurance written in the name of the Association, the Board of Directors or its duly authorized agent shall file and adjust all insurance claims and obtain reliable and detailed estimates of the cost of repair or reconstruction. Repair or reconstruction, as used in this paragraph, means repairing or restoring the property to substantially the condition in which it existed prior to the damage, allowing for changes or improvements necessitated by changes in applicable building codes.

(b) Any damage to or destruction of the Common Area shall be repaired or reconstructed unless the Members holding at least 75% of the total Class "A" votes in the Association, and the Class "B" Member, if any, decide within 60 days after the loss not to repair or reconstruct.

If either the insurance proceeds or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not available to the Association within such 60-day period, then the period shall be extended until such funds or information are available. However, such extension shall not exceed 60 additional days.

(c) If determined in the manner described above that the damage or destruction to the Common Area shall not be repaired or reconstructed and no alternative improvements are authorized, the affected property shall be cleared of all debris and ruins and thereafter shall be maintained by the Association, as applicable, in a neat and attractive, landscaped condition consistent with this Declaration, the Bylaws, and any rules and regulations of the Association.

Section 5. Disbursement of Proceeds. Any insurance proceeds remaining after paying the costs of repair or reconstruction, or after such settlement as is necessary and appropriate shall be retained by and for the benefit of the Association, as appropriate, and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot.

Section 6. Repair and Reconstruction. If insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Association shall, without a vote of the Members, levy Special Assessments against those Lot owners responsible for the premiums for the applicable insurance coverage under Section 2 of this Article.

**ARTICLE XI**

**NO SECURITY**

Neither Declarant nor the Board nor the Association shall provide any security or surveillance to protect the person or property of any owner or occupant, their licensees, invitees or guests and nothing in this Declaration, the Bylaws or Articles shall be construed to imply or infer or require the Declarant, Association or Board to supply or provide security and protection for any owner or occupant, their licensees, invitees, or guests.

**ARTICLE XII**

**NO PARTITION**

Except as permitted in this Declaration or amendments hereto, there shall be no physical partition of the Common Area or any part thereof, nor shall any person acquiring an interest in any Lot or property of the subdivision seek any such judicial partition of the Common Area or any part thereof. This Article shall not be construed to prohibit the Association from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Declaration.

**ARTICLE XIII**

**ANNEXATION AND WITHDRAWAL OF PROPERTY**

1. Annexation without Approval of Membership. At any time until June 30, 2040, the Declarant may, but shall not be obligated to, unilaterally add or annex to the Property any Additional Property that was not initially made part of the Property in this Declaration provided that such additional property borders or otherwise adjoins the Property initially subject to this Declaration. Declarant also may unilaterally assign the right, privilege, and option to annex property to this Declaration which is herein reserved to the Declarant, provided that such transferee or assignee shall be the developer of at least a portion of the Property described in Exhibit "A" and that such assignment is memorialized in a written, recorded instrument executed by Declarant.

Such annexation shall be accomplished by filing a supplementary Declaration annexing such property to the public records of Dale County, Alabama. Such supplementary Declaration shall not require the consent of voting members, but shall require the consent of the owner of such property, if other than Declarant. Any such annexation shall be effective upon filing for record of such supplementary Declaration unless otherwise provided therein. Nothing in this Declaration shall be construed to require the Declarant or any successor to annex or develop any of the Total Property set forth in Exhibit "A" in any manner whatsoever.

Section 2. Annexation with Approval of Membership. The association may annex real property other than that described in Exhibit "A", and after June 30, 2040, any portion of the Total Property described in Exhibit "A", to the provisions of this Declaration with the consent of the owner of such property, upon the affirmative vote of members representing the majority of the Class "A" votes of the Association represented at a meeting duly called for such purpose, and the consent of the Declarant, so long as Declarant owns property subject to this Declaration or which may become subject to this Declaration.

Annexation shall be accomplished by filing a supplementary Declaration describing the property being annexed in the public records of Pike County, Alabama. Any such supplemental Declaration shall be signed by the President and the Secretary of the Association, and by the owner of the annexed property. Any such annexation shall be effective upon filing unless otherwise provided therein.

Section 3. Withdrawal of Property. The Declarant reserves the right to amend this Declaration so long as it has a right to annex Additional Property pursuant to this Article, without prior notice and without the consent of any person, for the purpose of removing property then owned by the Declarant, its affiliates, or the Association from the coverage of this Declaration, to the extent originally included in error or as a result of any changes in the Declarant's plans for the properties contemplated herein, provided such withdrawal is not unequivocally contrary to the overall, uniform scheme of development for the properties.

Section 4. Acquisition of Additional Common Area. Notwithstanding any other provision contained in this Declaration, Declarant may convey additional real estate, improved or unimproved, located within the Property described in Exhibit "A" and upon said conveyance or dedication to the Association said property shall be accepted by the Association, and thereafter shall be maintained by the Association at its expense for the benefit of all its members.

Section 5. Amendment. This Article shall not be amended without the prior written consent of the Declarant, so long as Declarant owns any portion of the Property described in Exhibit "A".

Section 6. No Further Obligation to Annex Additional Property. Nothing contained herein shall be construed in any event to obligate the Declarant to annex to this Declaration by supplementary declaration any portion of the Property or to add to, annex to, or increase the size of the Property that was not initially subjected to this Declaration (for purposes of this Section 6,

“Excluded Property”), and the Declarant specifically reserves the right to bargain, sell, transfer or otherwise convey, to any person or entity, for any purpose, including without limitation commercial development, all or any portion of the Excluded Property, free of the provisions of this Declaration, to otherwise exclude all or any portion of the Excluded Property from The Orchard subdivision development, or to develop such Excluded Property for commercial purposes. It is the Declarant’s intent that only the Property initially subjected hereto by the initial recording of this Declaration and such property as the Declarant may, in its sole discretion, annex to this Declaration in the future by the recording of a supplementary Declaration shall be subject to the provisions of this Declaration.

#### **ARTICLE XIV**

##### **ASSOCIATION ENFORCEMENT**

Section 1. Enforcement. The Association shall have the right to enforce any easement, covenant, condition, restriction, limitation, obligation, lien, or charge now or hereafter imposed hereunder. All costs and expenses incurred by said parties for the collection of any sums due hereunder or the enforcement of any such easement, covenant, condition, restriction, limitation, obligation, lien, or charge now or hereafter imposed hereunder, or other provision hereof, shall be chargeable to the owner of the Lot violating the same and shall constitute a lien on such Owner(s) Lot. In the event of a violation or breach of any easement, covenant, condition, restriction, limitation, obligation, lien, or charge now or hereafter imposed hereunder, or other provision hereof herein or the Articles or the By-Laws, or any amendments hereto, by any Lot Owner or any family member, guest, agent employee, or lessee of such Owner, in addition to any other right or remedy available at law or in equity or otherwise, the Association, and its successors and assigns, shall have the right to pursue any one or more of the following remedies, to-wit:

(a) File a suit or other legal action or other proceeding at law or in equity for an injunction or to recover damages or other amounts due or to compel compliance with the terms and conditions hereof, and to file for and seek the recovery of all cost and expenses of such action, including, but not limited to, a reasonable attorneys fee.

(b) Prevent the violation or breach hereof by self help or abatement of the violation (including towing vehicles that are in violation of any of the vehicle provisions contained herein), and the expenses and charges incurred therefore shall be taxable against the violating

Lot owner and the Owner(s) Lot by the Association until such owner has reimbursed all such expenses, interest, attorney's fees and costs.

(c) Impose a fine, together with interest, costs and attorneys fees, against such violating Lot Owner in a reasonable amount, such fine, costs, attorney's fees and other expenses shall constitute and be a lien upon the lot owned by the violating owner and evidenced by the filing of a claim of lien in the Office of the Judge of Probate of Pike County, Alabama.

Any fine or charge described hereunder shall constitute a lien on the Lot of the violating Lot Owner and shall be collectable in the same manner as a Benefitted Assessment, and shall be due and payable within ten (10) days of the date of the levy of the same, and if such lien is not paid, said lien may be foreclosed and the lot sold as in the case of past due mortgages. In no event shall the award of damages in an action to enforce compliance herewith be deemed the only remedy or adequate compensation for any breach or violation hereof and shall be in addition to any other specific relief such as an injunction or any other available relief. Each and every remedy set forth herein shall be cumulative and in addition to all other remedies, whether available at law or in equity or otherwise.

Section 2. Notice. Prior to imposition of any sanction hereunder, the Association or its delegate, shall serve the alleged violator written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than five (5) days within which the alleged violator may present a written request to the Association for a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within five (5) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.

If a hearing is requested within the allotted five (5) day period, the hearing shall be held in front of the Board of Directors Association, or any covenants subcommittee as the same may be established by the Board of Directors, at a place and time designated by the Association, said hearing affording the alleged violator a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing

and the sanction, if any, imposed. The Association may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the five (5) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions of any rules by any person.

**ARTICLE XV**  
**GENERAL PROVISIONS**

Section 1. Term. All of the easements, covenants, conditions, limitations, restrictions, reservations, liens, development standards and charges of this Declaration shall run with and be binding on the Lots herein, and shall inure to the benefit of and shall be enforceable by the Association or the owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of thirty (30) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by majority of the then owners, has been recorded within the year proceeding the beginning of each successive period of ten (10) years agreeing to change the covenants, conditions, restrictions, and obligations in whole or in part, or to terminate the same. The covenants, conditions, restrictions and obligations and easements set forth herein are made for the mutual and reciprocal benefit of each Lot within the herein described The Orchard and are intended to create (i) mutual, equitable servitudes upon each Lot within such subdivision; (ii) reciprocal rights between and among the respective owners and future owners of each Lot within such subdivision; and (iii) as respects the Property, a privity of contract and estate between Declarant's grantees and such grantee's respective heirs, executors, administrators, successors and assigns.

Section 2. Amendment.

(a) By Declarant. Until the first Lot is conveyed by Declarant to a Purchaser, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, the Declarant may unilaterally amend this Declaration if such amendment is (i) necessary to bring any provision into compliance with any applicable governmental statutes, rule, regulation, or judicial determination; (ii) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (iii) required by an institutional or governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, to enable such lender or purchaser to make or purchase mortgage loans on

the Lots; (iv) necessary to enable any governmental agency or reputable private insurance company to insure mortgage loans on the Lots; or (v) otherwise necessary to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Lot unless the owner shall consent thereto in writing. Notwithstanding the foregoing, so long as the Declarant still owns property in The Orchard for development as part of the Properties, it may unilaterally amend this Declaration for any other purpose, provided the amendment has no material adverse effect upon any right of any Owner.

(b) By Owners. Thereafter and otherwise, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of 67% of the total Class "A" votes in the Association, and the consent of the Declarant, so long the Declarant has an option to subject additional property to this Declaration pursuant to Article XIV. In addition, the approval requirements set forth in Article X hereof shall be met if applicable.

Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. To be effective, any amendment must be recorded in the public records of Pike County, Alabama.

If an Owner consents to any amendment to this Declaration or the Bylaws, it will be conclusively presumed that such owner has the authority so to consent, and no contrary provision in any Mortgage or contract between the owner and a Third Party will affect the validity of such amendment.

No amendment may remove, revoke, or modify any right or privilege of the Declarant without the written consent of the Declarant or the assignee of such right or privilege.

Any procedural challenge to an amendment must be made within six (6) months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of the Declaration or Bylaws.

Section 3. Scrivener's Error. Notwithstanding the foregoing amendment provisions, the Declarant shall have the rights at any time within five (5) years from the date hereof to amend this Declaration to correct scrivener's errors and to clarify any ambiguities determined to exist herein, or to change or add provisions to this Declaration for the purpose of meeting the requirements of governmental agencies, including but not limited to the Federal Housing Administration and the Veteran's Administration. Such amendment needs to be executed and acknowledged by the

Declarant only, and need not be approved by the Association, owners, loaners, or mortgagees of Lots, whether or not elsewhere required for amendments. No amendments shall alter the subordination provisions of the Declaration without prior approval of any mortgagee enjoying such protection.

Section 4. Notices. Any notice required to be sent to any owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed by United States Mail, postage prepaid, to the street address of the Lot owned by such owner or the address as it last appeared on the records of the Association.

Section 5. Severability. Invalidation of any provision or provisions hereof by judgment or court order shall in no way affect any previous other provision, all of which shall remain in full force and affect.

Section 6. Governing Law. Should any dispute or litigation arise between any of the Parties whose rights or duties are affected or determined by this Declaration, as the same may be amended from time to time, said dispute or litigation shall be governed by the laws of the State of Alabama.

Section 7. Captions. The captions and titles of the various Articles and Sections in this Declaration are for convenience of reference only, and in no way defined, limit or describe the scope or intent of this Declaration.

Section 8. Effective Date. This Declaration shall become effective upon its recordation in the Office of the Judge of Probate of Dale County, Alabama.

[Intentionally Blank; Signature Page Follows]

IN WITNESS WHEREOF, the undersigned as the Co-Managers of the Declarant have duly executed this Declaration as of the date first above written.

MK DEVELOPMENT, LLC

By: \_\_\_\_\_  
Ronald A. Reeves, Co-Manager

By: \_\_\_\_\_  
Steven D. Shaw, Co-Manager

STATE OF ALABAMA )  
 )  
\_\_\_\_\_ COUNTY )

I, \_\_\_\_\_, a Notary Public, in and for said County in said State, hereby certify that **Ronald A. Reeves**, whose name as Co-Manager of **MK Development, LLC**, an Alabama limited liability, is signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the Declaration, he, in such capacity as such Co-Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company on this date.

Given under my hand this \_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

STATE OF ALABAMA )  
 )  
\_\_\_\_\_ COUNTY )

I, \_\_\_\_\_, a Notary Public, in and for said County in said State, hereby certify that **Steven D. Shaw**, whose name as Co-Manager of **MK Development, LLC**, an Alabama limited liability, is signed to the foregoing instrument and who are known to me, acknowledged before me on this day that, being informed of the contents of the Declaration, he, in such capacity as such Co-Manager and with full authority, executed the same voluntarily for and as the act of said limited liability company on this date.

Given under my hand this \_\_\_ day of \_\_\_\_\_, 2021.

\_\_\_\_\_  
Notary Public  
My Commission Expires: \_\_\_\_\_

**EXHIBIT "A"**

The Orchard Subdivision, a subdivision in Dale County, Alabama, as per map or plat of the same recorded in Plat Book 3, Page 107, with the Judge of Probate of Dale County, Alabama,