



DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS
FOR
MAGNOLIA PLACE PHASE TWO
A PLANNED UNIT DEVELOPMENT

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**DECLARATION OF COVENANTS,
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FOR
MAGNOLIA PLACE PHASE TWO,
A PLANNED UNIT DEVELOPMENT**

STATE OF ALABAMA :

COUNTY OF BALDWIN :

This Declaration of Covenants, Conditions and Restrictions for Magnolia Place Phase Two, a Planned Unit Development (this "Declaration") is made to be effective as of the Effective Date (as defined in this Declaration) by Tahoe Associates, Inc., an Alabama Corporation (the "Declarant").

RECITALS:

A. The Declarant is the owner of that certain real property which is known as **Magnolia Place Phase Two, a Planned Unit Development**, as per plat (the "Plat") thereof recorded in the Office of the Judge of Probate of Baldwin County, Alabama, in Slide 2310-B, together with all Improvements and appurtenances (sometimes referred to in this Declaration as "**Magnolia Place Phase Two**").

B. The Declarant intends by this Declaration to impose upon **Magnolia Place Phase Two** mutually beneficial restrictions under a general plan of improvement for the benefit of all Owners in **Magnolia Place Phase Two**.

C. The Declarant has caused **Magnolia Place Phase Two Property Owners' Association, Inc.** (the "**Association**") to be formed for the purpose of providing an **Alabama Nonprofit Corporation** to serve as representative of the Declarant and Owners in **Magnolia Place Phase Two**.

D. The **Association** and **Magnolia Place Phase Two** shall be subject to the terms and conditions of this Declaration.

NOW, THEREFORE, subject to the terms, conditions and limitations described in this Declaration, the Declarant declares that **Magnolia Place Phase Two** is and shall be held, owned, transferred, sold, conveyed, given, purchased, hypothecated, encumbered, rented, leased, used, occupied, built upon, developed, improved, and otherwise used, improved and maintained, subject to this Declaration and which shall run with **Magnolia Place Phase Two** and any Lot or Common Area and shall be binding upon and inure to the benefit of the Declarant and all parties having any right, title or interest in **Magnolia Place Phase Two**, their heirs, successors and assigns.

**Article I
Definitions**

The bolded words and terms as used in this Declaration shall have the following meaning, unless the context clearly shall indicate otherwise:

Section 1.01. "Architectural Committee" shall mean and refer to the **Architectural Committee** described in **Article IV** of this Declaration.

Section 1.02. "Articles of Incorporation" shall mean and refer to the **Articles of Incorporation** of the **Association** and all amendments. This is the Declaration to which the **Articles of Incorporation** and **By-Laws** of the **Association** make reference.

Section 1.03. "Assessments" shall mean and refer to the **Assessments** described in this Declaration.

Section 1.04. "Association" shall mean and refer to **Magnolia Place Phase Two Property Owners' Association, Inc., an Alabama Nonprofit Corporation**, and the successors and assigns of the Association.

Section 1.05. "Board of Directors" shall mean and refer to the **Board of Directors** of the Association and their duly elected successors as may be provided in the **Articles of Incorporation and By-Laws**, as the same may be amended from time to time. **"Director"** shall mean and refer to individual members of the **Board of Directors**.

Section 1.06. "By-Laws" shall mean and refer to the **By-Laws** of the Association, as the same may be amended from time to time.

Section 1.07. "Common Area" shall mean and refer to all real property so designated on any recorded subdivision plat of **Magnolia Place Phase Two** or any property, building, fixtures, facilities or personal property now owned or otherwise acquired by the Association by purchase, gift, lease or otherwise to be devoted to the common use and enjoyment of the **Lot Owners in Magnolia Place Phase Two**. The initial **Common Area** to be owned by the Association is as described on the **Plat of Magnolia Place Phase Two**.

Section 1.08. "Common Expenses" shall mean and include all expenditures made and incurred by or on behalf of the Association, including, without limitation, those expenses described in this Declaration and all funds assessed for the creation or maintenance of reserves pursuant to the provisions of this Declaration.

Section 1.09. "Declarant" shall mean and refer to **Tahoe Associates, Inc., an Alabama Corporation**, and the successors-in-title or successors and assigns of the Declarant, if such successors-in-title or successors and assigns should receive by assignment from the Declarant all, or a portion, of the rights of the Declarant as described in this Declaration, by an instrument expressly assigning such rights of the Declarant to such assignee.

Section 1.10. "Declarant Control" shall mean and refer to the period of time commencing on the date of the recording of this Declaration in the **Office of the Judge of Probate of Baldwin County, Alabama** and ending on the happening of either of the events described below, whichever shall last occur:

A. Until the Declarant has completed and sold all of the **Lots in Magnolia Place Phase Two**; or

B. Until the Declarant elects to give up the exclusive right to vote.

Section 1.11. "Declaration" shall mean and refer to this **Declaration of Covenants, Conditions and Restrictions**, which shall be recorded in the **Office of the Judge of Probate of Baldwin County, Alabama**, as the same may from time to time be supplemented or amended in the manner described in this Declaration.

Section 1.12. "Deed" shall mean and refer to any **Deed**, quitclaim, assignment, lease or other instrument conveying or quitclaiming fee simple title or a leasehold interest in any **Lot** or property in **Magnolia Place Phase Two**.

Section 1.13. "Dwelling" shall mean and refer to that portion of any **Improved Lot** intended for

use, or used, as a single-family detached residential housing. Wherever any of the phrases "**Lot or Dwelling**", "**Lots or Dwellings**", "**Lot and Dwelling**" or "**Lots and Dwellings**" appear in this **Declaration**, the terms "**Dwelling**" or "**Dwellings**" in those instances shall include the **Lot** or **Lots** upon which such **Dwelling** or **Dwellings** are constructed.

Section 1.14. "Effective Date" shall mean and refer to the date of the recording of this **Declaration** in the **Office of the Judge of Probate of Baldwin County, Alabama**.

Section 1.15. "Governmental Authority" shall mean and refer to any and all city, county, state and federal governmental or quasi-governmental agencies, bureaus, departments, divisions or regulatory authorities having jurisdiction over any portion of **Magnolia Place Phase Two**.

Section 1.16. "Improved" or "Improvement" shall mean and refer to all **Dwellings**, any building, structure, planting or device constructed, erected or placed upon any **Lot** or **Common Area** that affect the exterior appearance of any said **Dwelling**, building, structure, planting or device. **Improvements** shall include, by way of illustration and not limitation, buildings, sheds, foundations, covered patios, underground utilities, septic tanks, roads, driveway, walkways, paving, curbing, parking areas, trees, shrubbery, landscaping, fences, screening, walls, signs, satellite dishes, radio or television antennas, and any other artificial or man-made changes or alterations to the natural condition of any **Lot** or **Dwelling**. **Improvement** shall also mean any grading and any excavation or fill the volume of which exceed eight cubic yards, and any soil erosion controls, ponds, lakes, or drainage channels constructed on any **Lot** or **Common Area**.

Section 1.17. "Lot" shall mean and refer to any plot, parcel or portion of land shown upon the **Plat of Magnolia Place Phase Two** or any recorded final subdivision plat of **Magnolia Place Phase Two**, with the exception of the **Common Area** and streets and shall include, where the context may indicate, any **Improvement** or fixture located on said **Lot**.

Section 1.18. "Magnolia Place Phase One" shall mean and refer to **Magnolia Place, Phase One**, a **Planned Unit Development**, recorded in **Slide 1971-B** and **Slide 1972-A** in the records of the **Office of the Judge of Probate of Baldwin County, Alabama**.

Section 1.19. "Magnolia Place Phase Two" shall mean and refer to the subdivision known as **Magnolia Place Phase Two** and as shown on the **Plat**.

Section 1.20. "Magnolia Place Phase Two Documents" shall mean and refer to the **Declaration, Articles of Incorporation, By-Laws, Rules and Regulations** and any other documents pertaining to **Magnolia Place Phase Two**.

Section 1.21. "Majority" shall mean and refer to those eligible votes, **Owners** or other groups as the context may indicate, totaling more than **fifty percent (50%)** of the total eligible number.

Section 1.22. "Member" shall mean and refer to every **Person** or entity who holds membership in the **Association**, as provided in this **Declaration**.

Section 1.23. "Mortgage" shall mean and refer to any **Mortgage, Deed** of trust, **Deed** with vendor's lien reserved or any and all other similar instrument used for the purpose of conveying or encumbering real property as security for the payment or satisfaction of an obligation which shall have been duly and properly recorded in the **Office of the Judge of Probate of Baldwin County, Alabama**. The term includes a lien created by a **Mortgage**, vendor's lien reserved in a **Deed, Deed** of trust, contract for **Deed**, land sales contract, lease intended as security, assignment of leases and rents intended as security, or any similar security device or instrument, pledge of an ownership interest, and any other consensual lien or title retention contract intended as security for an obligation.

Section 1.24. **"Mortgagee"** shall mean and refer to the owner or holder of any **Mortgage**.

Section 1.25. **"Mortgagor"** shall mean and refer to the **Mortgage** debtor or the **Person** who executes a **Mortgage**.

Section 1.26. **"Occupant"** shall mean and refer to any **Owner**, the family members, guests, tenants, agents, employees and invitees of any **Owner** and their respective family members, guests, tenants, agents, employees, invitees and any other **Person** who occupies or uses any **Lot** within **Magnolia Place Phase Two**. All actions or omissions of any **Occupant** are and shall be deemed the actions or omissions of the **Owner** of such **Lot**.

Section 1.27. **"Owner"** shall mean and refer to the holder of record of fee simple title to any **Lot** including the **Declarant**, but not including: (a) any **Mortgagee**, or the heirs, successors or assigns of any **Mortgagee**, unless or until such **Mortgagee** has acquired title pursuant to foreclosure or a proceeding or **Deed** in lieu of foreclosure, or (b) any lessee, purchaser, contract purchaser or vendor who has an interest in any **Lot** solely by virtue of a lease, contract, installment contract or other agreement. In the event there is of record a **Deed** granting one or more parties a life estate in any **Lot**, the **Owner** of said **Lot** shall be deemed to be the holder or holders of a life estate, regardless of who owns a fee interest.

Section 1.28. **"Plat"** shall mean and refer to the **Plat** described in **Paragraph A.** in the **Recitals** on **Page 1** of this **Declaration**.

Section 1.29. **"Person"** shall mean and refer to a natural **Person**, corporation, partnership, trustee, limited liability company or other legal entity.

Section 1.30. **"Rules and Regulations"** shall mean and refer to the **Rules and Regulations** adopted by the **Declarant**, the **Association** or the **Architectural Committee** as provided for in this **Declaration**.

Article II

Mutuality of Benefit and Obligation and General Scheme of Development

Section 2.01. **Mutuality of Benefit and Obligation.** This **Declaration** is made:

A. **Mutual and Reciprocal Benefit.** For the mutual and reciprocal benefit of **Magnolia Place Phase Two** and is intended to create mutual, equitable servitudes upon and in favor of **Magnolia Place Phase Two**;

B. **Reciprocal Rights and Obligations.** To create reciprocal rights and obligations between the respective **Owners** and all future and subsequent **Owners** of any **Lots** and property within **Magnolia Place Phase Two**; and

C. **Privity of Contract.** To create a privity of contract and estate between the **Owners**, their respective heirs, successors and assigns.

Section 2.02. **General Scheme of Development.** Generally, **Magnolia Place Phase Two** is a restricted residential community as more specifically described in this **Declaration**. The **Lots** will be owned separately in fee simple and will be for the private use of the separate **Owners** thereof and the **Common Areas** shown on the **Plat** will be owned and maintained by the **Association**. The **Declarant** shall not be obligated to construct any amenities unless it elects to do so, in its sole discretion. All **Lots** shall be conveyed by the **Declarant** and each **Owner** shall accept said **Lot** with the **Improvements** thereon in its "**As-Is**" condition. The terms, conditions and provisions of this **Declaration** shall not apply to **Magnolia Place Phase One**. The **Magnolia Place Covenants and Conditions** dated **January 6, 2009** and recorded **February 12,**

2009 as Instrument Number 1161997, Pages 1 through 8, and Articles of Incorporation and By-Laws of Magnolia Place Property Owners Association, Inc. dated February 28, 2009 and March 2, 2009, respectively, and recorded March 5, 2009 as Instrument Number 1165669, Pages 1 through 15, do not control nor do they apply to Magnolia Place Phase Two, nor do any Magnolia Place Phase Two Documents apply to Magnolia Place Phase One. Magnolia Place Phase One and Magnolia Place Phase Two are separate, unrelated developments.

Section 2.03. No Assurances.

A. **Conflict with Advertisements or Literature.** Any artist's renderings, schematics, promotional brochures, pictorial presentations or sales literature, website, and drawings are not exact depictions of the Lots and Magnolia Place Phase Two or surrounding areas but are the reasonable approximations of the Declarant. Accordingly, any purchaser shall not rely upon such described materials but to instead rely only upon the express representations and agreements set forth in any agreement executed in connection with said Lot and the other Magnolia Place Phase Two Documents. In the event that there is a conflict or ambiguity between the Magnolia Place Phase Two Documents and the brochures, advertisements, plans, plats or other drawings, the Magnolia Place Phase Two Documents shall govern.

B. **The Common Areas and Improvements.** No assurances are made concerning whether or not the Improvements or amenities may or may not be constructed on any Common Area as shown on any artist's renderings, schematics, promotional brochures, pictorial presentations or sales literature, website, and drawings.

C. **Location of Improvements.** No assurances are made as to the location of any building or other Improvement that may be constructed within any part of Magnolia Place Phase Two.

D. **Not Same Types and Sizes.** No assurances are made that any Common Area, building or other Improvement constructed by the Declarant will be of the same general types and sizes as any other Common Area, building or Improvement within other parts of Magnolia Place Phase Two.

E. **Roads, Sewers, Etc.** The Declarant will not provide or complete roads, sewers, water, gas or electric services, or recreational amenities, except as otherwise specifically stated in this Declaration. No other representations regarding the provision or completion by the Declarant of roads, sewer, water, gas or electric services, or recreational amenities have been made or relied upon by the purchaser.

Article III
Easements and Common Area

Section 3.01. Ownership and Maintenance of the Common Area. The Common Area shall be owned and maintained by the Association.

Section 3.02. Nonexclusive Easements in the Common Areas. Subject to the terms and conditions of this Declaration, every Owner and Occupant shall have and is granted a nonexclusive right, privilege and easement of ingress, egress, use and enjoyment in and to the Common Area in common with the Declarant, and the successors and assigns of the Declarant and all other Owners and Occupants necessary for access to the Lot of said Owner or Occupant. Subject to the terms and conditions of this Declaration, the easement and rights granted pursuant to this Section 3.02, are and shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass with the title to each Lot. The easement and rights granted pursuant to this Section 3.02, are expressly subject to the rights reserved by the Declarant in this Declaration and any of the other terms, conditions and provisions of this Declaration.

Section 3.03. No Dedication of the Common Area. The Common Area is NOT DONATED,

DEDICATED NOR GRANTED TO THE PUBLIC, but shall be conveyed to the **Association** for use as **Common Area**, subject to the terms and conditions of this **Declaration**, any and all applicable restrictions, reservations, encumbrances and limitations of record, and to all additional matters set out in the conveyance of the **Common Area** to the **Association**. The granting of any easement in the **Common Area** as provided for in this **Declaration** does not grant to the public or to the owners of any land outside of **Magnolia Place Phase Two** the right to enter or use the **Common Area** without the express permission of the **Declarant** or the **Association** after the **Common Area** is conveyed to the **Association** by the **Declarant**. Every **Owner**, by reason of such ownership, shall have a right and nonexclusive easement of enjoyment in and to the **Common Area** which shall be appurtenant to and shall pass with every **Lot** upon transfer. All such rights and privileges, however, shall be subject to the right of the **Declarant** and **Association** to adopt and promulgate reasonable **Rules and Regulations** pertaining to the use of the **Common Area** which shall serve to promote the best interest of the **Owners** and residents of **Magnolia Place Phase Two**.

Section 3.04. Easement for Governmental, Health, Sanitation and Emergency Services.

Subject to the terms and conditions of this **Declaration**, there is granted to each branch, bureau, department and agency of any **Governmental Authority** and their respective agents, employees and representatives, a permanent, perpetual and nonexclusive easement over, across through and upon **Magnolia Place Phase Two** and all of the **Common Areas** within **Magnolia Place Phase Two** for the purposes of performing such duties and activities related to law enforcement, fire protection, trash and refuse collection, building inspection services, mail and package delivery, medical and emergency services and any other function or duties to be performed by the **Governmental Authority** as shall be required or appropriate from time to time. In furtherance of the foregoing, the **Association** shall save harmless the appropriate **Governmental Authority** from damages to any **Persons** arising out of the use of the **Common Area** by said **Governmental Authority** for the uses which are stated in this **Section 3.04.**

Section 3.05. Reservation of Rights and Easements.

A. Nonexclusive Easement Reserved to the Declarant and Association in the Common Area. The **Declarant** does establish and reserve for the **Declarant** and the **Association**, and their respective agents, employees, representatives, invitees, successors and assigns or successors-in-title, a permanent and perpetual nonexclusive easement appurtenant in, over, across, under, through and upon all of the **Common Area** for the purpose of: **(a)** constructing, installing, maintaining, repairing and replacing any **Improvements** on the **Common Area**, and **(b)** doing all other things reasonably necessary and proper in connection therewith. **Provided, however**, that nothing in this **Section 3.05.A.** shall obligate the **Declarant** or the **Association** to undertake any of the foregoing. In addition to the other rights or easements established or reserved in this **Declaration** and regardless of whether the **Declarant** continues to own any portion of **Magnolia Place Phase Two**, the **Declarant** establishes and reserves for the **Declarant**, and the successors and assigns of the **Declarant**, a permanent and perpetual, nonexclusive easement to have access and ingress to and egress from and the right and privilege to use and enjoy the **Common Area** and all **Improvements** on the **Common Area** for such purposes as are dedicated or reserved to the **Declarant** as provided for in this **Declaration**.

B. Nonexclusive Easements in the Common Area. Subject to the terms and conditions of this **Declaration**, including, but not limited to, the rights and easements granted to or reserved for the **Declarant**, and the successors and assigns of the **Declarant** as provided for in this **Declaration**, every **Owner** and **Occupant** shall have and is granted a nonexclusive right, privilege and easement of ingress, egress, use and enjoyment in and to the **Common Area** in common with the **Declarant**, and the successors and assigns of the **Declarant** and all other **Owners** and **Occupants** necessary for access to the **Lot** of said **Owner** or **Occupant**. Subject to the terms and conditions of this **Declaration**, the easement and rights granted pursuant to this **Section 3.05.B.** are and shall be permanent and perpetual, are nonexclusive, are appurtenant to and shall pass with the title to each **Lot**. The easement and rights granted pursuant to this **Section 3.05.B.** are expressly subject to the rights reserved by the **Declarant** in this **Declaration** and any of the other terms, conditions and provisions of this **Declaration**.

C. Right of the Declarant and Association to Dedicate or Grant Easements in the Common Area. The **Declarant** does establish and reserve for the **Declarant**, and the successors and assigns of the **Declarant**, the right to dedicate or transfer, or to grant easements in and to, all or any part of the **Common Area** to any public agency, authority, or utility for such purpose and subject to such conditions as the **Declarant** may deem appropriate without the consent or approval of the **Association** or any **Owner**. In addition, the **Association** shall have the right to dedicate or transfer, or to grant easements in and to, all or any part of the **Common Area** to any public agency, authority, or utility for such purposes and subject to such conditions as the **Association** may deem appropriate. **Provided, however**, no such dedication or transfer by the **Association** shall be effective unless at least two-thirds of the total votes entitled to be cast by **Members** of the **Association** who are present or represented by proxy at a meeting duly called for such purpose and approve such dedication or transfer by the **Association** which vote of approval shall be evidenced by an instrument certified by the **Association** and filed for record in the **Office of the Judge of Probate of Baldwin County, Alabama**. **Provided, further**, so long as the **Declarant** retains **Declarant Control** as provided for in this **Declaration**, the **Declarant** shall not be obligated to obtain the approval of two-thirds of the votes entitled to be cast by **Members** of the **Association** in order to dedicate or transfer, or to grant easements in and to, all or any part of the **Common Area** as provided for in this **Declaration**.

D. Changes in the Common Area. The **Declarant** does establish and reserve unto the **Declarant**, and the successors and assigns of the **Declarant**, the permanent right to change, modify and realign the boundaries of any of the **Common Areas**, **Lots**, or other portions of **Magnolia Place Phase Two** owned by the **Declarant**. The **Declarant** further reserves the right, but shall not have any obligation, to convey by **Deed** to the **Association**, at any time and from time to time, additional **Common Area** which may be located within or without **Magnolia Place Phase Two** or any **Improvements** to be utilized as **Common Area**, all as the **Declarant**, in the sole discretion of the **Declarant**, may determine.

E. Drainage Easements. Except with the prior written permission from the **Declarant** during the **Declarant Control** as provided for in this **Declaration**, or from the **Association** after the **Declarant** has released the **Declarant Control** as provided for in this **Declaration**, drainage flow shall not be obstructed nor be diverted from drainage swales, storm sewers and/or utility easements as designated in this **Declaration**, or as may appear on any plat of record in which reference is made to this **Declaration**. The **Declarant** or **Association** may cut drainways for surface water wherever and whenever such action is determined by the **Declarant** or **Association**, in the sole discretion of the **Declarant** or **Association**, to be necessary. **Provided, however**, the right of the **Declarant** or **Association** to cut drainways on the **Lot** of an **Owner** shall terminate when the **Dwelling** or **Improvement** and approved landscaping on said **Lot** have been completed. These easements and rights expressly include the right to cut any trees, bushes or shrubbery, make any gradings of the soil, or to take any other similar action reasonably necessary to provide economical and safe utility installment and to maintain reasonable standards of health and appearance. This **Section 3.05.E.** shall not be construed to impose any obligation upon the **Declarant** or **Association**.

F. Grading. The **Declarant** does establish and reserve for the **Declarant** and **Association**, and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all portions of **Magnolia Place Phase Two** to make such cuts and fills upon any **Lot** or other part of **Magnolia Place Phase Two** and do such grading and moving of earth as, in the sole discretion of the **Declarant** or **Association**, may be necessary to improve or maintain **Magnolia Place Phase Two** and to drain surface waters from **Magnolia Place Phase Two**; and may assign such rights to the agents or assigns of the **Declarant**, **Association** or the appropriate **Governmental Authority**.

G. Easements for Utility. The **Declarant** does establish and reserve for the **Declarant** and **Association**, and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual nonexclusive easement appurtenant over, across, under, through and upon all portions of the **Common Area** and all **Lots** that are reasonably necessary for the purpose of installing,

erecting, replacing, relocating, maintaining and operating master television and/or cable systems, limited access facilities and similar systems and all utilities necessary or convenient for the use of any portion of **Magnolia Place Phase Two** including, without limitation, publicly or privately owned and operated electrical, gas, telephone, water and sewer services, storm drains and sewers, irrigation systems, drainage systems, retention ponds, lakes, basins and facilities, lines, pipes, conduits, equipment, machinery and other apparatus and appurtenances necessary or otherwise reasonably required in order to provide any utility service to any portion of **Magnolia Place Phase Two**. The easements established and reserved in this **Declaration** shall include the right to cut and remove trees, undergrowth and shrubbery, to grade, excavate or fill and to otherwise take all other action reasonably necessary to provide economical and safe installation, maintenance, repair, operation and replacement of all such utility services and the systems, equipment and machinery used to provide the same. Notwithstanding anything provided in this **Section 3.05.G**, to the contrary: (a) the utilization of any of the easements and rights established and reserved pursuant to this **Section 3.05.G**, shall not unreasonably interfere with the use or occupancy of any **Dwelling** situated on any **Lot**, and (b) the **Declarant** shall use good faith efforts to attempt to cause any utility company or other supplier or provider of any utility service that may utilize any of the easements and rights reserved and established pursuant to this **Section 3.05.G**, to take reasonable action to repair any damage to any **Lot**, **Dwelling** or other **Improvement** caused by such utility company or other supplier or provider of such utility service during the exercise of any rights established and reserved in this **Declaration**.

H. **Maintenance Easement.** Subject to the obligation of each **Owner** to maintain as elsewhere provided in this **Declaration**, the **Declarant** does establish and reserve for the **Declarant** and **Association** and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual right and nonexclusive easement to enter upon any **Lot** for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps or other unsightly growth and removing trash so as to maintain reasonable standards of health, fire, safety and appearance within **Magnolia Place Phase Two**. **Provided, however**, that such nonexclusive easement shall not impose any duty or obligation upon the **Declarant** or **Association** to perform any of the actions provided for in this **Section 3.05.H**.

I. **Environmental and Compliance Easement.** The **Declarant** does establish and reserve for the **Declarant** and **Association**, and their respective agents, employees, representatives, invitees, successors and assigns, a permanent and perpetual right and nonexclusive easement on, over, across and upon all **Lots** for the purpose of taking any action necessary to effect compliance with the **Rules and Regulations** of the **Architectural Committee** or any environmental rules, regulations and procedures from time to time promulgated or instituted by any **Governmental Authority** or the **Association**. Except in the case of an emergency situation or a perceived emergency situation, the exercise by the **Declarant** or **Association** of the rights reserved in this **Section 3.05.I**, shall not unreasonably interfere with the use or occupancy of any **Dwelling** or other **Improvement** situated on any **Lot**.

J. **Landscaping on Easement Areas.** The **Declarant**, **Association**, **Architectural Committee**, any **Governmental Authority**, any utility company, and each of their respective agents, employees, representatives, invitees, successors and assigns, shall not be liable to any **Owner**, **Occupant** or any other party for and on account of damage to any landscaping or plantings placed on any easement area or **Common Area** within **Magnolia Place Phase Two** by any **Owner**, **Occupant** or any other party.

K. **Additional Reserved Rights and Easements to the Declarant.** Notwithstanding any other provisions contained in this **Declaration** to the contrary, the **Declarant** does establish and reserve for the **Declarant**, and the respective agents, employees, representatives, invitees, successors and assigns and successors-in-title of the **Declarant**, a permanent and perpetual nonexclusive easement appurtenant in, over, across, under, through and upon the **Common Area** in **Magnolia Place Phase Two** without further obligation and without charge to the **Declarant**, or the successors and assigns of the **Declarant**, for the purposes of access, ingress, egress, drainage, utilities, construction, installation, relocation, development, sale, maintenance, replacement, use and enjoyment and/or otherwise dealing with **Magnolia Place Phase Two**. The reserved right and nonexclusive easement provided for in this **Section 3.05.K**, shall constitute a

burden on the title to the **Common Area in Magnolia Place Phase Two** and shall constitute a nonexclusive easement appurtenant for the benefit of the **Declarant** and specifically includes, but is not limited to:

1. The right of the **Declarant**, in the sole judgment of the **Declarant**, without the approval or consent of the **Association**, or any **Owner**, of access, ingress, egress, drainage, utilities, construction, installation, relocation, development, sale, maintenance, replacement, use and enjoyment for vehicular and pedestrian traffic and for drainage and utilities in, over, under, across, through and upon the **Common Areas in Magnolia Place Phase Two** and the right to tie into any portion of **Magnolia Place Phase Two** with driveways, parking areas and walkways; and the right to tie into and/or otherwise connect and use (without a tap-on or any other fee for so doing), replace, relocate, maintain and repair any device which provides utility or similar services, including, without limitation, electrical, telephone, cable television, telephone poles, wires, cables, conduits, natural gas, water, sewer, wells, pumping stations, tanks, water mains, drainage lines, drainage ways or other public conveniences or utilities and facilities constructed or installed in, on, under and/or over **Magnolia Place Phase Two**.

2. The right of the **Declarant**, in the sole judgment of the **Declarant**, without the approval or consent of the **Association**, or any **Owner** to construct, install, replace, relocate, maintain, repair, use and enjoy signs, model **Dwellings**, sales offices, construction offices and business offices as, in the sole discretion of the **Declarant**, may be required, convenient or incidental to the construction and sale by the **Declarant** of the **Lots** or property in **Magnolia Place Phase Two**.

3. The right of the **Declarant**, in the sole judgment of the **Declarant**, without the approval or consent of the **Association**, or any **Owner**, to use the **Common Area** to provide access, ingress, egress, drainage and utilities as provided for in this **Declaration** to any **Lots** or property in **Magnolia Place Phase Two**.

4. The rights reserved or granted to the **Declarant** by any other instrument recorded in the **Office of the Judge of Probate of Baldwin County, Alabama**.

5. The right of the **Declarant** to adopt and promulgate reasonable **Rules and Regulations** pertaining to the use of **Magnolia Place Phase Two**, which, in the discretion of the **Declarant**, shall serve to promote the best interests of the **Owners** and residents in **Magnolia Place Phase Two**.

6. The **Declarant**, and the successors and assigns of the **Declarant**, shall be entitled to exercise the rights and easements provided for in this **Section 3.05**, without further obligation and without charge or **Assessment** to the **Declarant**, or the successors and assigns of the **Declarant**.

Section 3.06. No Partition. Except as permitted in this **Declaration**, the **Common Area** shall remain undivided and no **Person** shall bring any action to partition any portion of the **Common Area** without the written consent of all **Owners**. This **Section 3.06**, shall not prohibit the **Board of Directors** from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this **Declaration**.

Article IV

Architectural Committee; Architectural Control

Section 4.01. Architectural Committee. The **Architectural Committee** (the "**Architectural Committee**") shall consist of not less than three nor more than five individuals, each of whom shall be elected or appointed from time to time: (a) by the **Declarant** until control of the **Architectural Committee** is specifically delegated by the **Declarant** to the **Association** as provided for in this **Declaration**, and (b) by the **Association** after delegation of such control by the **Declarant**. The members of the **Architectural**

Committee may, but shall not be required to be, **Members** of the **Association** or an **Owner** of a **Lot**. The term of office of each member of the **Architectural Committee** shall be three years (coinciding with the fiscal year of the **Association**), except for members who are appointed by the **Declarant** until control of the **Architectural Committee** is specifically delegated by the **Declarant** to the **Association** as provided for in this **Declaration**. Each **Owner**, by acceptance of a **Deed** to or other conveyance to a **Lot**, shall be deemed to ratify the provisions of this **Article IV**. Delegation of control of the **Architectural Committee** from the **Declarant** to the **Association** shall be evidenced by an instrument signed by the **Declarant** and filed for record in the **Office of the Judge of Probate of Baldwin County, Alabama**.

Except as provided in this **Declaration**, the affirmative vote of a **Majority** of the members of the **Architectural Committee** shall be required in order to approve any action by the **Architectural Committee** and to approve plans and specifications submitted under this **Declaration**.

FOR SO LONG AS THE DECLARANT OWNS ANY LOT OR PROPERTY IN MAGNOLIA PLACE PHASE TWO, OR UNTIL SUCH EARLIER DATE AS THE DECLARANT MAY ELECT, IN THE SOLE DISCRETION OF THE DECLARANT, THE DECLARANT SHALL HAVE THE SOLE AND EXCLUSIVE RIGHT TO APPOINT AND REMOVE ALL OF THE MEMBERS OF THE ARCHITECTURAL COMMITTEE.

At such time as the **Declarant** no longer owns any portion of **Magnolia Place Phase Two** or, upon the written notice from the **Declarant** to the **Association** that the **Declarant** no longer desires to exercise the right to appoint or remove members of the **Architectural Committee** as provided for in this **Declaration**, then the members of the **Architectural Committee** shall be appointed by the **Association**.

Any member of the **Architectural Committee** may be removed, with or without cause, by: (a) the **Declarant**, in the sole discretion of the **Declarant**, during the period of time that the **Declarant** retains control of the **Architectural Committee** as provided for in this **Declaration**, or (b) the **Association**, in the event the **Declarant** has delegated such control of the **Architectural Committee** to the **Association** as provided in this **Declaration**. In the event of death or resignation of a member of the **Architectural Committee**, then the **Declarant**, if the **Declarant** is in control of the **Architectural Committee** as provided for in this **Declaration**, or the **Association** if the **Declarant** has delegated control of the **Architectural Committee** to the **Association** as provided for in this **Declaration**, as the case may be, shall appoint a substitute member of the **Architectural Committee** to fill the vacancy of such deceased or resigning member for the remainder of the term of such former member.

Section 4.02. Procedure and Meetings. The **Architectural Committee** shall elect a chairman and the chairman, or in the absence of the chairman, the vice chairman, shall be the presiding officer at all meetings of the **Architectural Committee**. The **Architectural Committee** shall meet as necessary as well as upon call of the chairman or vice chairman, and all such meetings shall be held at such places as may be designated by the chairman or vice chairman. A **Majority** of the total number of members of the **Architectural Committee** shall constitute a quorum of the **Architectural Committee** for the transaction of business and the affirmative vote of a **Majority** of those present in **Person** or by proxy at a meeting of the **Architectural Committee** on any matter that comes before the **Architectural Committee** and shall be effective as a decision of the **Architectural Committee**. The **Architectural Committee** is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the **Architectural Committee** in performing the functions of the **Architectural Committee** as provided for in this **Declaration**. Each member of the **Architectural Committee** may be paid a stipend or honorarium as may from time to time be determined by the **Declarant**, if the **Declarant** is in control of the **Architectural Committee** as provided for in this **Declaration**, or the **Association**, if the **Declarant** has delegated control of the **Architectural Committee** to the **Association** as provided for in this **Declaration** and shall otherwise be entitled to a reimbursement of expenses incurred on behalf of the **Architectural Committee**, subject to the approval of such expenses by the **Declarant**, if the **Declarant** is in control of the **Architectural Committee** as provided for in this **Declaration**, or the **Association**, if the

Declarant has delegated control of the **Architectural Committee** to the **Association** as provided for in this **Declaration**. The **Architectural Committee** shall have the right from time to time to adopt and establish such **Rules and Regulations** as may be determined to be necessary concerning the procedure, notice of meetings and all other matters concerning the conduct of the business of the **Architectural Committee**.

Section 4.03. Approval of Plans and Specifications.

A. Submittal and Approval by the Architectural Committee. To improve the architectural and aesthetic appearance and the natural setting and beauty of **Magnolia Place Phase Two**, to establish and preserve a harmonious design for **Magnolia Place Phase Two** and to protect and promote the value of **Magnolia Place Phase Two**, the property, the **Lots**, the **Dwellings** and all other **Improvements** thereon, no **Dwelling** or other **Improvements** of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on any **Lot** by any **Owner**, other than the **Declarant**, that affect the exterior appearance of any **Lot**, **Dwelling** or other **Improvement** unless plans and specifications therefor have been submitted to and approved by the **Architectural Committee** as provided for in this **Declaration**. Without limiting the foregoing, the construction and installation of any **Improvements**, **Dwellings**, sidewalks, driveways, parking lots, mailboxes, decks, patios, courtyards, swimming pools, greenhouses, playhouses, awnings, walls, fences, exterior lights, irrigation systems, satellite dishes, radio or television antennas, gazebos, guest quarters, garages or any other outbuildings, shall not be undertaken, nor shall any exterior addition or change or alteration be made (including, without limitation, painting or staining or any exterior surface) to any **Dwelling** or other **Improvement**, unless the plans and specifications for the same have been submitted to and approved by the **Architectural Committee** as provided for in this **Declaration**.

B. Authority of the Architectural Committee. The **Architectural Committee** is authorized and empowered to approve all plans and specifications and the construction of all **Dwellings** and other **Improvements** on any part of **Magnolia Place Phase Two**. Prior to the commencement of any **Dwelling** or other **Improvements** on any **Lot**, the **Owner** of said **Lot** shall submit an application to the **Architectural Committee** requesting the **Architectural Committee** to review plans and specifications and related data for all such **Improvements**, as more particularly provided for in this **Declaration**.

C. Determination by the Architectural Committee. The **Architectural Committee** shall, in the sole discretion of the **Architectural Committee**, determine whether the plans and specifications and other data submitted by any **Owner** for approval are acceptable. One copy of all plans, specifications, and related data so submitted to the **Architectural Committee** shall be retained in the records of the **Architectural Committee** and the other copy shall be returned to the **Owner** submitting the same marked "approved", "approved as noted", or "disapproved". The **Architectural Committee** shall establish a fee to be charged to and paid by each **Owner** who submits plans and specifications to the **Architectural Committee** for approval, which fee shall be sufficient to cover the expense of reviewing plans and related data and to compensate any consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys retained to approve such plans and specifications and to monitor and otherwise enforce the terms of this **Declaration**. Notwithstanding anything provided in this **Declaration** to the contrary, an **Owner** may make interior **Improvements** and alterations within the **Dwelling** or other **Improvement** of said **Owner** that do not affect the exterior appearance without the necessity or requirement that the approval or consent of the **Architectural Committee** be obtained.

D. Disapproval, Conditions or Stipulations by the Architectural Committee. The **Architectural Committee** shall have the right to disapprove any plans and specifications upon any ground that is consistent with the objectives and purposes of this **Declaration**, including purely aesthetic considerations, any failure to comply with any of the provisions of this **Declaration**, failure to provide requested information, objection to exterior design, appearance or materials, objection on the ground of incompatibility of any such proposed improvement with the scheme of development proposed for **Magnolia Place Phase Two**, objection to the locations of any proposed **Improvements** on any such **Lot**, objection to

the landscaping plan for such **Lot**, objection to color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any **Improvement** or any other matter that, in the sole judgment of the **Architectural Committee**, would render the proposed **Improvement** inharmonious with the general plan of development contemplated for **Magnolia Place Phase Two**. The **Architectural Committee** shall have the right to approve any submitted plans and specifications with conditions or stipulations with which the **Owner** of such **Lot** shall be obligated to comply and which must be incorporated into the plans and specifications of the **Dwelling** or other **Improvement**. Approval of plans and specifications by the **Architectural Committee** for **Improvements** to one particular **Lot**, **Dwelling** or other **Improvement** shall not be deemed an approval or otherwise obligate the **Architectural Committee** to approve similar plans and specifications or any of the features or elements for the **Improvements** for any other **Lot** or **Dwelling** within **Magnolia Place Phase Two**.

E. Failure to Approve. If the **Architectural Committee** fails to approve, or approve as noted, in writing any such proposed plans and specifications within sixty days after such plans and specifications have been submitted, then the plans and specifications so submitted will be deemed to have been disapproved.

F. Revisions, Modifications or Changes. Any revisions, modifications or changes in any plans and specifications previously approved by the **Architectural Committee** must be approved in the same manner as provided for in this **Declaration**.

G. Commencement of Construction. If construction of the **Dwelling** or other **Improvement** has not substantially commenced (by clearing and grading, pouring of footings and otherwise commencing framing and other related construction work) within **two (2) years** of approval by the **Architectural Committee** of the plans and specifications for such **Dwelling** or other **Improvements**, then no such construction may be commenced (or continued) on such **Lot**, **Dwelling** or other **Improvement**, and the **Owner** of such **Lot** shall be required to resubmit all plans and specifications for any **Dwelling** or other **Improvement** to the **Architectural Committee** for approval in the same manner described in this **Declaration**.

Section 4.04. Landscaping Approval. To preserve, to the extent practicable, the natural landscaping and plant life currently situated in **Magnolia Place Phase Two** and to enhance the aesthetic appearance of **Magnolia Place Phase Two**, no landscaping, grading excavation or fill work of any nature shall be implemented or installed by any **Owner**, other than the **Declarant**, on any **Lot** unless and until landscaping plans therefor have been submitted and approved by the **Architectural Committee**. The provisions of this **Declaration** regarding the method of submitting such plans to the **Architectural Committee**, the time for approval or disapproval of the same and the method of approving modifications or changes to the plans shall be applicable to such landscaping plans.

Section 4.05. Construction without Approval. If: (a) any **Improvements** are initiated, installed, maintained, altered, replaced or relocated on any **Lot** without the **Architectural Committee** approval of the plans and specifications for the **Improvements**, or (b) the **Architectural Committee** shall determine that any approved plans and specifications for any **Improvements** or the approved landscaping plans for any **Lot** are not being complied with, then, in either event, the **Owner** of such **Lot** shall be deemed to have violated this **Declaration** and the **Association** or the **Architectural Committee** shall have the right to exercise any of the rights and remedies as provided for in this **Declaration**.

Section 4.06. Inspection. The **Association** or **Architectural Committee** or any agent, employee or representative of the **Association** or **Architectural Committee** may at any reasonable time and from time to time enter upon and inspect any **Lot**, **Dwelling** or any other **Improvement** being constructed on any **Lot** in order to determine whether the approved plans and specifications therefor are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the **Association** or **Architectural Committee**.

Section 4.07. Limitation of Liability. Notwithstanding anything provided in this **Declaration** to the contrary, neither the **Declarant, Association, Architectural Committee** nor any agent, employee, representative, member, shareholder, partner, joint venturer, officer or director thereof, shall have any liability of any nature whatsoever for any damage, loss or prejudice suffered, claimed, paid or incurred by any **Owner** on account of: (a) any defects in any plans and specifications submitted, reviewed or approved in accordance with the provisions of this **Article IV**, (b) any defects, structural or otherwise, in any work done according to such plans and specifications, (c) the failure to approve or the disapproval of any plans, drawings, specifications or other data submitted by any **Owner** for approval pursuant to the provisions of this **Article IV**, (d) the construction or performance of any work related to such plans, drawings and specifications, (e) bodily injuries (including death) to any **Owner, Occupant** or the respective family members, guests, employees, agents, invitees or licensees of such **Owner or Occupant**, that may be caused by, or arise as a result of any defect, structural or otherwise, in any **Dwellings** or other **Improvements** or the plans and specifications therefor or any past, present or future soil or subsurface conditions, known or unknown (including, without limitation, geological formations or conditions on or under any **Lot**, and (f) any other loss, claim, damage, liability or expense, including court costs and attorney's fees, suffered, paid or incurred by any **Owner** arising out of or in connection with the use and occupancy of any **Lot, Dwelling** or any other **Improvement** situated thereon.

Section 4.08. Commencement and Completion of Construction. Upon commencement of clearing any **Lot**, construction of any **Dwelling** or other **Improvement** must commence immediately and, construction work thereon shall be prosecuted diligently and continuously and shall be completed within **one (1) year** of the commencement date of said construction, such completion to be evidenced by a certificate of occupancy issued by the appropriate **Governmental Authorities**.

Section 4.09. Rules and Regulations of Architectural Committee; Effect of Approval and Disapproval. The **Architectural Committee** may promulgate **Rules and Regulations** governing the form and content of plans to be submitted for approval or requiring specific **Dwellings** or other **Improvements** on **Lots**, including, without limitation, exterior lighting and planting, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which may be presented for approval. Such **Rules and Regulations** and such statements of policy may be amended or revoked by the **Architectural Committee** at any time, and no inclusion in, omission from or amendment of any such **Rule and Regulation** or statement of policy shall be deemed to bind the **Architectural Committee** to approve or disapprove any feature or matter subject to approval, or to waive the exercise of the discretion of the **Architectural Committee** as to any such matter, but no change of policy shall affect the finality of any approval granted prior to such change. Approval for use on any **Lot** of any plans or specifications shall not be deemed a waiver of the right of the **Architectural Committee**, in the discretion of the **Architectural Committee**, to disapprove such plans or specifications or any of the features or elements included in such plans or specifications if such plans, specifications, features or elements are subsequently submitted for use on any other **Lot** or **Lots**. Approval of any such plans and specifications relating to any **Lot**, however, shall be final as to that **Lot** and such approval may not be revoked or rescinded, provided: (a) the **Dwelling** or other **Improvement** or uses shown or described on or in such plans and specifications do not violate any specific prohibition contained in this **Declaration**, and (b) the plans and specifications, as approved, and any condition attached to any such approval, have been adhered to and complied with in regard to all **Dwellings** or other **Improvements** on and uses of the **Lot** in question.

Section 4.10. Enforcement and Remedies. If any of the provisions of this **Article IV** are breached or are not otherwise being complied with in all respects by any **Owner or Occupant** or the respective family members, guests, invitees, agents, employees or contractors of any **Owner or Occupant**, then the **Declarant** or the **Architectural Committee** or **Association** shall each have the right, but not the obligation, at the option of the **Declarant, Architectural Committee** or **Association** to: (a) enjoin any further construction on any **Lot, Dwelling** or other **Improvement**, and require the removal or correction of any work in place that does not comply with the plans and specifications approved by the **Architectural Committee** for such **Improvement**, and/or (b) through the designated agents, employees, representatives and independent contractors of the

Declarant, Architectural Committee or Association, enter upon such **Lot, Dwelling** or other **Improvement** and take all action necessary to extinguish such violation or breach and to minimize or remediate erosion caused by such violation or breach, including, but not limited to delays in construction or inadequate erosion control procedures. All costs and expenses incurred by the **Declarant, Architectural Committee or Association** in enforcing any of the provisions of this **Article IV**, including, without limitation, attorney's fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other **Persons** involved in the correction of nonconforming work, the completion of uncompleted work or in any judicial proceeding, together with any other costs or expenses incurred by the **Declarant, Architectural Committee or Association** in causing any **Owner, Occupant** or such contractors, agents or invitees of the **Owner or Occupant** to comply with the terms and provisions of this **Article IV**, shall be paid by such **Owner**, shall constitute an individual assessment to such **Owner** pursuant to this **Declaration** and, if the same is not paid when due, shall be subject to a lien and subject to foreclosure as provided for in this **Declaration**. Notwithstanding anything provided in this **Declaration** to the contrary, the right and remedies of the **Declarant, Architectural Committee or Association** set forth in this **Declaration** shall not be deemed exclusive of any other rights and remedies that the **Declarant, Architectural Committee or Association** may exercise at law or in equity or any of the enforcement rights specified in this **Declaration**.

Section 4.11. Certificate of Compliance. The **Architectural Committee** or any authorized representative of the **Architectural Committee** shall, upon request and at such reasonable charges as may from time to time be adopted by the **Board of Directors**, furnish to an **Owner** a certificate in writing setting forth whether all necessary **Architectural Committee** approvals have been obtained and whether any **Dwelling** or other **Improvement** has been constructed in accordance with the provisions of this **Declaration**. Any such approval shall not be construed in any respect as a representation of warranty of the **Architectural Committee**, the **Declarant** or the **Association** that all applicable rules, regulations and requirements of all **Governmental Authorities** with respect to any such **Lot, Dwelling** or other **Improvement** have been fulfilled.

Section 4.12. Variance. The **Architectural Committee** or **Association** may authorize variances from compliance with any of the provisions of this **Article IV** when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require, but only in accordance with duly adopted **Rules and Regulations**. Such variances may only be granted, however, when unique circumstances dictate and no variance shall: (a) be effective unless in writing, (b) be contrary to the restrictions set forth in this **Declaration**, or (c) estop the **Architectural Committee** or **Association** from denying a variance in other circumstances. For purposes of this **Section 4.12**, the inability to obtain approval of any **Governmental Authority**, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

Article V

Site Development

Section 5.01. Siting of Improvements and Site to be Staked Prior to Tree Cutting. Prior to commencing any construction related activities on any **Lot** (including any grading or clearing), the location of any **Dwelling** or other **Improvement** to be constructed on such **Lot** shall be set forth on the site development plan for such **Lot** that must be approved by the **Architectural Committee** pursuant to the provisions of this **Declaration**. Notwithstanding anything provided in this **Declaration** to the contrary, the **Architectural Committee** may require building setback requirements different from those described in this **Declaration**, including building setbacks that are greater than those specified in this **Declaration**. After the plan for the **Dwelling** or other **Improvement** is approved, the site of the **Dwelling** or other **Improvement** must be staked out and such site approved by the **Architectural Committee** before tree cutting is done. Existing vegetation shall be saved whenever practical to do so. All areas on site and outside the areas of disturbance shall be "corded off" with high visibility surveyor's flagging tape and no vegetation shall be removed from the corded areas and no materials may be stored over the roots of this vegetation without prior approval of the **Architectural Committee**. Removal of "underbrush" from the corded areas is expressly prohibited except on **Architectural Committee** approval. No tree may be cut or removed without consent of the **Architectural**

Committee until the building plans, site plans and site staking are approved by the **Architectural Committee**.

Section 5.02. Erosion Control, Wetlands and Flooding. Erosion control measures shall be taken by the **Owner** of a **Lot**, or contractors of **Owner**, to protect adjacent property during construction on such **Lot** and until the soil is stabilized on the **Lot**. This may be accomplished by the use of temporary retention ponds, silt fencing, or other protective measures intended to intercept and filter the excess storm water runoff from the **Lot**. All erosion control measures, including slope stabilization, must be specified on the grading plan and must be approved by the **Architectural Committee** prior to commencement of grading activities.

Any storm water retention ponds created during construction on a **Lot** shall not remain as permanent ponds after completion of construction unless so provided in the grading, site and landscaping plans submitted to and approved by the **Architectural Committee**.

If any portion of **Magnolia Place Phase Two** has been identified as "wetlands" pursuant to federal, state or local law or regulation, such wetlands area shall not be utilized or otherwise developed and improved upon unless said development or **Improvement** complies with all federal, state and local laws and regulations pertaining to "wetlands".

If any portion of **Magnolia Place Phase Two** is located within an area designated as "flood prone" pursuant to federal, state or local law and regulation, all **Improvements** constructed in said flood prone area must be constructed in accordance with all federal, state and local laws and regulations pertaining to flood prone areas.

Section 5.03. Utility Lines and Appurtenances. All gas, water, sewer, telephone, television cable and electrical feeder and service lines shall be installed as underground service unless otherwise approved by the **Architectural Committee**. All transformer boxes, meters or other such fixtures shall be adequately screened with plants or other materials approved by the **Architectural Committee**; provided that no planting or screening devices shall be placed so as to obstruct the normal servicing of either transformers, telephone pedestals, or other utility hardware. To the extent of the interest of the **Owner** of a **Lot**, the **Owner** of a **Lot** will not erect or grant to any **Person**, firm or corporation the right, license or privilege to erect or use or permit the use of overhead wires, poles or overhead facilities of any kind for electrical, television cable or telephone service in **Magnolia Place Phase Two** (except such poles and overhead facilities as may be required at those places where distribution facilities enter and leave the particular area) without the prior written consent of the **Architectural Committee**. Nothing contained in this **Declaration** shall be construed to prohibit overhead road lighting or ornamental yard lighting, where serviced by underground wires or cables. Where underground electric service is to be installed, in order to permit installation of underground electric service to each **Lot** for the mutual benefit of all **Owners**, no **Owner** of any such **Lot** will commence construction of any **Dwelling** or other **Improvement** on any such **Lot** until such **Owner**: (a) notifies the electric utility that such construction is proposed, (b) grants in writing to the electric utility such rights and easements as the electric utility requires in connection with the construction, operation, maintenance and removal of underground service lateral on such **Lot**, and (c) otherwise complies with the **Rules and Regulations for Underground Residential Distribution** on file with and approved by the **Alabama Public Service Commission**.

If required by the electric utility, such electric utility, and the successors and assigns of said electric utility, may retain title to the underground service lateral and outdoor metering trough, the house power box (exclusive of circuit breakers) serving each said house, and said service entrance facilities provided by such utility will not in any way be considered a fixture or fixtures and a part of said real estate, but will remain personal property belonging to such utility, and the successors and assigns of said utility, in accordance with applicable rules and regulations filed with and approved by the **Alabama Public Service Commission**.

Section 5.04. Connection Points for Utility Service Lines. To the extent of the interests of the **Owner** of each **Lot**, each **Owner** agrees to connect utility service lines (including, but not limited to, gas,

water, sewer, telephone, television cable and electricity) at points designated by the **Architectural Committee**.

Section 5.05. Sanitary Sewer Service Lines. The material for sanitary sewer service lines must be approved by the **Architectural Committee**.

Section 5.06. Landscaping. The landscape plan must be approved by the **Architectural Committee** prior to any site disturbance. The landscape plan shall indicate the proposed type, location, size and quantity of all plant materials to be planted on the **Lot**. The **Owner** must faithfully execute the landscape plan as submitted to and approved by the **Architectural Committee**. If the **Owner** should fail to faithfully execute the landscape plan, the **Association** shall have the right to enter into a contract with a third party for the execution of the landscape plan as approved, and the cost of said landscaping plan shall be a binding, personal obligation of the **Owner** when billed by the **Association** as well as a lien upon the **Lot** in question. The lien provided in this **Section 5.06.** shall have the same enforceability and priority as the lien provided for in **Article X** of this **Declaration**.

Section 5.07. Colors; Architectural Styles. All exterior building materials and colors must be approved by the **Architectural Committee**. Excessively bright colors or objectionable noticeable colors are prohibited. All architecture must be compatible with the architecture approved by the **Architectural Committee** and must be compatible with surrounding **Dwellings** or other **Improvements** within **Magnolia Place Phase Two**.

Section 5.08. Exterior Lighting. Exterior lighting plans must be set forth on the architectural or landscape plans for a **Lot**, and must be approved by the **Architectural Committee**. Exterior lighting shall be "low-key" and shall be compatible with lighting used on other **Dwellings** or other **Improvements** in **Magnolia Place Phase Two**.

Article VI

Zoning, Restrictions and Exceptions to Title

This **Declaration** shall not be taken as permitting any action or thing prohibited by the applicable laws, rules or regulations of any **Governmental Authority**, or by specific covenants or restrictions imposed by any **Deed** or lease. In the event of any conflict, the most restrictive provision of such laws, rules, regulations, **Deeds**, leases, covenants, restrictions or this **Declaration** shall be taken to govern and control. However, the **Board of Directors** shall have no obligation to take enforcement action in the event of a violation of any activity which violates local, state or federal laws or regulations. By way of information, and not limitation, **Magnolia Place Phase Two** is subject to the following exceptions to title:

Minimum Building Setback Lines and Drainage and Utility Easements and other matters shown on the recorded plat of Magnolia Place Phase Two.

Terms and Conditions, including but not limited to reservation of minerals, as contained in Common Area Deed from Tahoe Associates, Inc., an Alabama Corporation, to Magnolia Place Phase Two Property Owners' Association, Inc..

Conveyance of water transmission system from Magnolia Village, L.L.C. to The Utilities Board of The City of Foley, dated January 19, 1998 and recorded January 21, 2000, as Instrument Number 529806, Pages 1 through 3.

Transfer of Water Distribution System from Magnolia Village, L.L.C. to The Utilities Board of The City of Foley, dated February 1, 1999 and recorded January 21, 2000, as Instrument Number 529807, Pages 1 through 3.

Transfer of Water Distribution System from Magnolia Village, L.L.C. to The Utilities Board of The City of Foley, dated December 21, 2006 and recorded February 9, 2007, as Instrument Number 1030530, Pages 1 through 3.

Easement from Lois D. Estoup and W.H. Estoup, husband and wife and Donald R. Norris as Lessee to Alabama Power Company dated November 18, 1959 and recorded January 7, 1960 in Deed Book 287, pages 421 through 424.

Reservation of all oil, gas and minerals and all rights and easements in connection therewith as contained in Warranty Deed from Lois D. Estoup to Charles L. and Emily B. Rhodes dated January 19, 1968 and recorded January 19, 1968 in Deed Book 382, pages 274 through 275.

Conveyance of all oil, gas and minerals and all rights and easements in connection therewith as contained in Deed from Lois D. Estoup to Guss Schultz and Hasseltine C. Schultz dated January 4, 1977 and recorded January 5, 1977 Deed Book 507 pages 665 through 666.

Conveyance of all oil, gas and minerals and all rights and easements in connection therewith as contained in Deed from Lois D. Estoup to Richard C. Lacey a (10%) ten percent interest, dated August 6, 1973 and recorded August 8, 1973 in Deed Book 438, pages 967 through 968.

Article VII

Covenants and Maintenance Responsibilities

Section 7.01. Responsibilities of Owners.

A. Dwellings or Other Improvements. Unless specifically identified in this **Declaration** as being the responsibility of the **Association**, the maintenance and repair of all **Lots, Dwellings** and all other **Improvements** situated thereon or therein and all lawns, landscaping and grounds on or within a **Lot** shall be the responsibility of the **Owner** of such **Lot**. Each **Owner** shall be responsible for maintaining the **Lot, Dwelling** or other **Improvement** of such **Owner** in a neat, clean and sanitary condition, both inside and outside of any **Dwelling** or other **Improvement**. Such responsibilities shall include, without limitation, maintaining at all times appropriate paint and stain finishes on all **Dwellings** and other **Improvements** and reroofing or replacing roofing shingles when the same become worn or would be replaced by a prudent **Owner**. No exterior changes, alterations or **Improvements** shall be made to any **Lot, Dwelling** or other **Improvement** without first obtaining the prior written approval of the same from the **Architectural Committee**.

B. Landscaping. Each **Lot** shall be landscaped in accordance with plans and specifications submitted to and approved by the **Architectural Committee** pursuant to this **Declaration**. All areas of any **Lot** that are not improved by the construction of a **Dwelling** or **Improvement** thereon shall at all times be maintained by the **Owner** in a fully and well-kept landscaped condition utilizing ground cover, shrubbery and trees, as appropriate. The maintenance obligations set forth in this **Section 7.01.B.** shall apply to all portions of a **Lot** up to the edge of the pavement of any roadway abutting such **Lot** and shall be applicable at all times, whether prior, during or after construction of any **Improvements** thereon. Grass, hedges, shrubs, vines, plants and other vegetation of any type on any **Lot** shall be cut and trimmed at regular intervals at all times to maintain the same in a neat, safe and attractive condition. Dead and diseased trees, shrubs, vines, plans and other vegetation shall be promptly removed and replaced with healthy, living plants of like kind and quantity. Dead vegetation, stumps, weeds, rubbish, debris, garbage and waste material shall be promptly removed from any **Lot** and properly disposed of outside of **Magnolia Place Phase Two**.

C. No Modifications by Owners. No **Owner** shall: (a) modify, change or otherwise alter the appearance of any portion of the exterior of a **Dwelling** or other **Improvement** or the landscaping,

grounds within a **Lot** unless the modification, change or alteration is first approved, in writing, by the **Architectural Committee** as provided in this **Declaration**, or **(b)** do any work that, in the reasonable opinion of the **Architectural Committee**, would jeopardize the soundness and safety of **Magnolia Place Phase Two**, reduce the value thereof or impair any easement or hereditament thereto, without in every such case obtaining prior written approval of the **Architectural Committee**.

Section 7.02. Responsibilities of the Association.

A. Common Areas. The **Association** shall be responsible for maintaining and keeping in good repair and condition all portions of the **Common Areas**.

B. Remedies. If the **Board of Directors** determines that: **(a)** any **Owner** has failed or refused to discharge properly the obligations of the **Owner** with regard to maintenance, cleaning, repair or replacement of items that the **Owner** is responsible for under this **Declaration**, or **(b)** any maintenance, cleaning, repair or replacement that the **Association** is responsible for under this **Declaration** is caused by the willful or negligent act of any **Owner** or **Occupant**, or the respective family members, guests, employees, invitees or contractors of such **Owner** or **Occupant**, and the costs of such maintenance, cleaning, repair or replacement are not paid in full from insurance proceeds, if any, received by the **Association**, with respect thereto, then, in either event, the **Association**, in addition to the exercise of any of the rights and remedies of the **Association** set forth in this **Declaration**, may give such **Owner** written notice of the intent of the **Association** to provide such necessary maintenance, cleaning, repair or replacement, at the sole cost and expense of such **Owner** and setting forth in reasonable detail what action is deemed necessary. Except in the event of emergency situations, such **Owner** shall have fifteen days within which to complete the same in a good and workmanlike manner or, if the same is not capable of completion within such fifteen day period, to commence such maintenance, cleaning, repair or replacement and to proceed diligently with the completion of the same in a good and workmanlike manner. In the event of emergency situations or the failure by any **Owner** to comply with the provisions of this **Section 7.02**, after such notice, the **Association** may provide (but shall not be obligated to provide) any such maintenance, cleaning, repair or replacement at the sole cost and expense of the **Owner** and said cost shall be a personal obligation of such **Owner**, shall constitute and individual **Assessment** to such **Owner**, and shall be subject to the lien and foreclosure rights granted pursuant to this **Declaration**.

Article VIII

Covenants and Restrictions

The following covenants and restrictions shall apply to **Magnolia Place Phase Two** until amended, modified, repealed or limited pursuant to the provisions of this **Declaration**. The **Declarant** and **Association** are empowered to enforce the following covenants and restrictions and to set forth policy and **Rules and Regulations** as to enforcement of said covenants and restrictions in accordance with this **Declaration** and the **By-Laws**. This **Declaration** shall not apply to **Magnolia Place Phase One**.

Section 8.01. Use Restrictions. Except as otherwise provided to the contrary in this **Declaration**, each **Lot** shall be used exclusively for single-family residential purposes and no trade or business of any kind may be carried on, in or from any **Lot**. The use of any portion of a **Lot**, **Dwelling** or other **Improvement** as an office by any **Owner** shall not be considered a violation of this **Declaration** provided such use does not create regular customer, client or employee traffic, and further provided any such use is in compliance with all applicable rules, regulations and ordinances of any **Governmental Authority** having jurisdiction. The leasing or rental of a **Lot**, **Dwelling** or other **Improvement** exclusively for single-family residential purposes shall not be considered a violation of this **Declaration** so long as the lease: **(a)** is for not less than the entire **Dwelling**, and **(b)** is otherwise in compliance with the **Rules and Regulations** of the **Association**. All leases shall be in writing. The **Board of Directors** may require a minimum lease term. Notice of any lease, together with such additional information as may be required by the **Board of Directors**, shall be given to the **Board of Directors** by the **Owner** within **ten (10) days** of execution of the lease. The **Owner** must make available to the lessee

copies of this **Declaration**, the **By-Laws** and **Rules and Regulations**. **Provided, however**, that the **Declarant** shall have the perpetual right to designate from time to time any **Dwellings** owned by the **Declarant**, the successors and assigns of the **Declarant**, that may be leased for such periods of time as the **Declarant** may determine, including daily or weekly rentals.

The terms "business" and "trade" as used in this **Declaration**, shall be construed to have their ordinary, generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on any ongoing basis which involves the provision of goods or services to **Persons** other than the family of the provider and for which the provider receives a fee, compensation or other form of consideration, regardless of whether: **(a)** such activity is engaged in full or part-time; **(b)** such activity is intended to or does generate a profit; or **(c)** a license is required.

Section 8.02. Sales and Construction Activities. Notwithstanding any provisions or restrictions contained in this **Declaration** to the contrary, the **Declarant**, the agents, employees, successors and assigns of the **Declarant**, shall have the right and option to maintain such facilities and carry on such activities as may be reasonably required, convenient, or incidental to the completion, **Improvement**, and sale of **Lots**, **Dwellings** or other **Improvements** or the development of **Lots**, **Dwellings**, other **Improvements** or **Common Areas**, including without limitation, the installation and operation of information centers and offices, sales offices, management offices, business offices, construction trailers and offices, leasing operations, and marketing of **Magnolia Place Phase Two** and related uses and model **Dwellings** and model **Improvements** and related activities and the installation of signs, all as may be approved by the **Declarant** from time to time.

Section 8.03. Architectural Committee Approval. No **Dwelling** or other **Improvement** of any nature whatsoever shall be placed or constructed on any **Lot** unless such **Dwelling** or **Improvement** have been approved by the **Architectural Committee** in a manner set forth in this **Declaration**.

Section 8.04. Underground Utilities. All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sewer, cable televisions, security and any other utility service for any portion of **Magnolia Place Phase Two** shall be installed and maintained below ground.

Section 8.05. Building Height. No **Dwelling** or **Improvement** shall be located on a **Lot** which has a height exceeding two (2) habitable stories and thirty-five (35) feet in height, except that an attic or a basement floor under the ground floor shall not be considered a story for this purpose. The height of any **Dwelling** or **Improvement** shall be subject to prior review and approval in writing by the **Architectural Committee**. The ground floor elevation of the bottom floor of any **Dwelling** or **Improvement** may not exceed five feet above the elevation required by federal, state or local laws or regulations pertaining to flood prone areas. No foundation or footing may be constructed of exposed wooden pilings, poles or concrete block.

Section 8.06. Minimum Dwelling Area. The ground floor livable area (heated and cooled area) of the **Dwelling**, exclusive of open porches and garages, shall contain not less than one thousand four hundred (1,400) square feet in the case of a one story **Dwelling**; or not less than one thousand eight hundred (1,800) square feet in the case of anything greater; unless otherwise approved in writing by the **Architectural Committee**. For the purpose of this **Section 8.06**, a basement floor or other area beneath the ground surface and/or an attic shall not be included in computing the designated minimum square footage.

Section 8.07. Exterior Materials and Finishes.

A. General. Exterior building material finishes for any **Dwelling** or other **Improvement** must be approved by the **Architectural Committee**. All wood surfaces utilized on the exterior of any such **Dwelling** or other **Improvement** shall be painted or stained. Prohibited exterior finish materials shall include particle board, plywood, vinyl or any other type of pressed, laminated or fabricated siding, vertical siding, simulated brick or stone and any other materials as the **Architectural Committee** may from time to time determine.

B. **Brick and Stone.** All brick, stonework and mortar, as to type, size, color and application, must be approved by the **Architectural Committee**. All exterior colors, including, without limitation, the color of all roof shingles, stucco, wood, trim, cornices, eaves, railings, doors and shutters shall be subject to **Architectural Committee** approval.

C. **Approval of Materials.** Steps must be of materials approved by the **Architectural Committee**.

D. **No Concrete.** No concrete, concrete block or cinder block shall be used as an exposed building surface; any concrete, concrete block or cinder block utilized in the construction of a **Improvement** or for retaining walls and foundations shall be finished in the same materials utilized for the remainder of the **Improvement** (e.g., wood, stucco, etc.)

E. **Metal Flashing, Etc.** Metal flashing, valleys, vents and gutters installed on a **Improvement** shall be painted to blend with the color of the exterior materials to which it is adhered or installed.

Section 8.08. Roofing.

A. **Roofing Requirements.** The **Architectural Committee** shall have the right to establish specific requirements for the pitch of any roof and the type of roofing materials that may be utilized for any **Dwelling** or other **Improvement**.

B. **Projections.** No plumbing or heating vents, stacks and other projections of any nature shall be placed on the front of the **Dwelling** or other **Improvement**. All such vents, stacks and any other projections from the roof of any **Dwelling** or other **Improvement** shall be located on the rear roof of such **Dwelling** or other **Improvement** and shall: (a) be painted the same color as the roofing material used for such **Dwelling** or other **Improvement**, and (b) to the extent practicable, not be visible from any street.

Section 8.09. Exterior Lighting. All exterior lighting for **Dwellings** or other **Improvements**, including, without limitation, free standing lighting and utility (e.g., flood) lights attached to a **Dwelling** or other **Improvement**, must be approved by the **Architectural Committee**.

Section 8.10. Utility Meters and HVAC Equipment. The location, landscaping and screening of all electrical, gas, telephone and cable television meters, all exterior heating, ventilating and air conditioning compressor units and equipment shall be as required by the **Architectural Committee**. No window-mounted heating or air conditioning units or window fans shall be permitted.

Section 8.11. Building Setbacks. Subject to the provisions of this **Declaration**, minimum building setback lines for all **Improvements** shall be established either: (a) by the **Architectural Committee**, (b) on the recorded subdivision plat for the subdivision in which such **Lot** is included (that may vary for each phase of **Magnolia Place Phase Two**), or (c) in the **Deed** from the **Declarant** to the **Owner** of such **Lot**, all in accordance with applicable rules, regulations and ordinances of any **Governmental Authority** having jurisdiction. No **Improvement** shall be built within the setback areas established in accordance with any of the procedures specified in this **Declaration**.

Section 8.12. Subdivision of Lot and Interval Ownership or Time Sharing. Except as provided in this **Declaration**, no **Lot** shall be split, divided or subdivided or the boundary lines of a **Lot** changed except with the prior written approval of the **Architectural Committee**. The **Architectural Committee** may permit a division in ownership of any **Lot** intended for a single-family detached residence as shown on the **Plat**, but solely for the purpose of increasing the size of the adjacent **Lots**. In the event of a division of any **Lot**, the **Owners** among whom the ownership is divided shall be treated as co-owners of the divided **Lot** for purposes

of voting and shall be jointly and severally liable for all **Assessments** pursuant to this **Declaration** against the **Lot**. The **Declarant** expressly reserves the right to subdivide or replat any **Lot** or **Lots** owned by the **Declarant**. Any such division, boundary line change or replatting shall not be in violation of the applicable subdivision regulations or zoning ordinances.

No **Lot** shall be made subject to any kind of timesharing, fraction-sharing or similar program whereby the right to exclusive use of the **Lot** rotates among participants in the program on a fixed or floating time schedule over a period of years, except that the **Declarant**, and the successors and assigns of the **Declarant**, may operate such a program with respect to **Lots** which the **Declarant** owns.

Section 8.13. Adjoining Lot Ownership. For the purposes of this **Declaration**, any **Owner** having two or more adjoining **Lots** may treat, use and build on them as though they were one **Lot** after making written application and receiving written approval by the **Architectural Committee**. Said approval shall be recorded and operate as an amendment to this **Declaration**. Except for the **Declarant**, the use of adjoining **Lots** as provided for in this **Section 8.13**, shall not relieve the **Owner** of said **Lots** from paying separate **Assessments** on each **Lot** as provided for in this **Declaration**.

Section 8.14. Use of Common Area. The **Association** shall have full control over the **Common Area** and may establish such **Rules and Regulations** and conditions for the use of the **Common Area** as the **Association** may deem adequate or necessary. The **Association** shall have full power and authority to suspend or revoke the privilege and license of any such **Owner**, **Occupant** and any member of the household of an **Owner**, **Occupant** or any of the guests, tenants or invitees of an **Owner** or **Occupant**, from using the **Common Area**, should any such **Person**, while in the **Common Area**, act in such a manner as to warrant such action in the sole discretion of a **Majority** of the **Board of Directors**. **Provided, however**, nothing contained in this **Declaration** shall be construed to allow the **Association** to prohibit any **Owner** from ingress and egress to and from the **Lot** owned by said **Owner**.

Section 8.15. Driveways. Each purchaser of a **Lot** from the **Declarant** shall construct and maintain, at the sole cost and expense of the purchaser, a concrete, brick or brick paver driveway. Each driveway must be constructed and maintained as required by the **Architectural Committee**. Each driveway must be completed on or prior to the completion of the **Dwelling**. All driveways must connect with the adjoining road and the parking area on the **Lot**. The location, design and construction of all driveways must be approved in writing by the **Architectural Committee** prior to construction.

Section 8.16. Preservation of Trees. No tree having a diameter of six inches or more (measured from a point two feet above ground level) shall be removed from any **Lot** without the express written authorization of the **Architectural Committee**. The **Architectural Committee** may adopt and promulgate **Rules and Regulations** regarding the preservation of trees and other natural resources and wildlife upon **Magnolia Place Phase Two**. If the **Association** shall deem appropriate, the **Architectural Committee** may mark certain trees, regardless of size, as not removable without written authorization. In carrying out the provisions of this **Section 8.16**, the **Declarant**, the **Association** and the **Architectural Committee** and the respective agents of each may come upon any **Lot** during reasonable hours for the purpose of inspecting or marking trees or in relation to the enforcement and administration of any **Rules and Regulations** adopted and promulgated pursuant to the provisions of this **Declaration**. Neither the **Association**, nor the **Architectural Committee**, nor the **Declarant**, nor their respective agents shall be deemed to have committed a trespass or wrongful act by reason of any such entry or inspection.

Section 8.17. Grass. No type or variety of lawn grass other than of the grasses approved by the **Architectural Committee** shall be planted or installed on any **Lot**, and such lawn grass shall be planted and installed only in those areas where specified on the landscape plan approved by the **Architectural Committee**. The planting and installing of lawn grass on any **Lot** shall be accomplished by the installation of full sod covering the entire area required to be grassed. Partial sodding, sprigging, plugging or seeding shall not be permitted.

Section 8.18. Artificial Vegetation. No plastic, vinyl or other type of artificial vegetation shall be permitted on the exterior of any **Dwelling** or any **Improvement** on any **Lot**.

Section 8.19. Pets and Animals. No animals, livestock, birds or poultry of any kind shall be kept, raised or bred by any **Owner** upon any **Lot**, **Dwelling** or other portion of **Magnolia Place Phase Two**. **Provided, however**, that no more than two domesticated animals, except in the case of any new-born litter of any such animal, may be kept in a **Dwelling** so long as they are not kept for breeding or commercial purposes. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. No **Improvement** or area for the care, housing or confinement of any pet shall be constructed or maintained outside of the interior of the **Dwelling**. Dogs shall not be allowed out of doors unattended within **Magnolia Place Phase Two**; all dogs shall be kept and maintained within an area approved by the **Architectural Committee**, or otherwise under leash. Pets shall not be permitted to leave excrement on the **Lot** of any other **Owner** or within any street or any portion of the **Common Areas** and the **Owner** of such pet shall immediately remove the same. Each **Owner** shall be liable to the **Association** for the costs of repairing any damage to the **Common Areas** caused by the pet of such **Owner** or **Occupant**. The **Board of Directors** shall have the right from time to time to promulgate **Rules and Regulations** governing keeping the pets within **Magnolia Place Phase Two**, including the right to assess fines for violations of such **Rules and Regulations**.

Section 8.20. Signage. Except as provided for in this **Declaration**, no signs or advertising posters of any kind (including, but limited to, "For Sale" or "For Rent" signs) shall be maintained or permitted within any windows or on the exterior of any **Dwelling** or other **Improvement** or elsewhere on any portion of **Magnolia Place Phase Two** without the express written permission of the **Architectural Committee** and except as permitted by applicable rules, regulations and ordinances of any **Governmental Authority** having jurisdiction thereof and except signs placed on **Lots**, **Dwellings** or other **Improvements** or elsewhere in **Magnolia Place Phase Two** by the **Declarant**. The **Architectural Committee** may promulgate **Rules and Regulations** for the use and design of any sign to be posted within **Magnolia Place Phase Two**, including, but not limited to, name and address signs and the signs referred to in this **Declaration**. **Provided, however:** (a) the restrictions set forth in this **Section 8.20**, shall not apply to the **Declarant** or to any signs erected by the **Declarant** so long as the **Declarant** retains **Declarant Control** as provided for in this **Declaration**, and (b) the **Declarant** and **Association** shall have the right, but not the obligation, to erect and maintain reasonable and appropriate signs on any portions of the **Common Areas** and within those easement areas established in this **Declaration**.

Section 8.21. Fences. No chain link, vinyl coated or wire fences shall be permitted within **Magnolia Place Phase Two** except with regard to maintenance areas within the **Common Areas** and those fences erected by the **Declarant**. Except for the so-called invisible pet fences which are not visible above the ground, electric fences shall not be permitted. The type of materials utilized for (including the color thereof) the location, construction design, and height of all fences must be approved by the **Architectural Committee**. No dog runs, animal pens, or fences of any kind shall be permitted on any **Lot** without the prior written approval of the **Architectural Committee**. Anything else contained in this **Declaration** to the contrary notwithstanding, no fence may be constructed that may interfere with the natural flow of water and cause water to back up onto adjoining property.

Section 8.22. Mail or Newspaper Boxes. The design of all mailboxes and newspaper boxes must be approved by the **Architectural Committee** and free-standing mail boxes and newspaper boxes equipped with lighting may be required in some or all sections of **Magnolia Place Phase Two**.

Section 8.23. Outdoor Furniture, Recreational Facilities and Clotheslines.

A. Furniture. No furniture shall be placed, kept, installed, maintained or located in or on the front or side yards or areas of a **Lot** without the prior approval from the **Architectural Committee**. Any furniture placed, kept, installed, maintained or located at the rear of or behind a **Dwelling** shall, to the greatest

extent practicable, be located so that the same shall not be visible from any street.

B. Materials. No lumber, metals or bulk materials shall be kept or stored or accumulated on a **Lot**, except building materials during the construction of **Improvements** on a **Lot**.

C. Recreational Equipment. Children's toys, swing sets, jungle gyms, trampolines and other outdoor and recreational equipment and appurtenances shall be allowed only at the rear or behind a **Dwelling** and shall, to the extent practicable, be located so that the same are not visible from any street.

D. Playhouses. Free-standing playhouses and treehouses shall not be permitted.

E. Basketball Backboards. Basketball backboards shall be located so as not to be visible from any street and shall otherwise be located on such **Lot** in a location approved by the **Architectural Committee**.

F. Clothesline. Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any **Lot**. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing fence or wall.

G. Cooking Equipment. Barbecue grills or other types of outdoor cooking equipment and apparatus shall be located only at the rear of any **Dwelling** and, to the extent practicable, shall not be visible from any street.

H. Homecrafts. Bird feeders, wood carvings, plaques and other types of homecrafts shall not be permitted in the front or side yards of any **Lot** nor shall any of the foregoing items be attached to the front or side of any **Dwelling**. All bird feeders, wood carvings, plaques and other types of homecrafts shall be located only at the rear of the **Dwelling** and shall not be visible from any street.

Section 8.24. Temporary Structures. No temporary house, trailer, shack, tent, barn, shed, stable, poultry house or yard, rabbit hut, treehouse or other outbuilding or structure of any kind shall be permitted, constructed, installed or allowed to remain on any **Lot**. **Provided, however,** that the foregoing shall not be deemed to prohibit: (a) temporary structures for social functions as may be permitted by the **Rules and Regulations** of the **Association**, (b) any **Improvements** that are approved in writing by the **Architectural Committee**, (c) construction trailers and sales offices erected or placed on any part of **Magnolia Place Phase Two** by the **Declarant** as provided for in this **Declaration**.

Section 8.25. Garages.

A. Garage Doors. Garage doors shall be constructed of such materials as are approved by the **Architectural Committee**. Garage doors shall be kept closed at all times except when in use.

B. Garage Use. All automobiles or other passenger vehicles owned or used by the **Owner** or **Occupant** of any **Lot** and the respective family members of the **Owner** or **Occupant** shall be parked in garages to the extent garage space is available. Garages shall not be used for storage or for any other purposes or uses that would result in the garage being unavailable for the parking of vehicles in the garage. The parking of vehicles in driveways is permissible. No garage shall be converted to any other use other than for the parking of vehicles in said garage without the approval of the **Architectural Committee**.

Section 8.26. Chimneys. The exterior of all chimneys shall be constructed of stucco or such other materials as the **Architectural Committee** may approve from time to time. If a fireplace utilized a metal spark arrestor or other metal venting apparatus at the top of the chimney, then a painted cowl or surround shall be installed atop the chimney. All metal or other materials placed on top of or around a chimney shall be

painted to blend with the color of the roofing material used for such **Improvement**.

Section 8.27. Energy Conservation Equipment. No solar or other energy collector panel, equipment or device shall be constructed, installed or maintained on any **Lot, Dwelling** or other **Improvement** unless previously approved by the **Architectural Committee**.

Section 8.28. Outside Installations. Except as provided in this **Declaration**, no exterior antennas, aerials, satellite dishes, towers or other apparatus, or support for said apparatus, for the reception or transmission of television, radio or other signals of any kind shall be erected, installed, placed, allowed or maintained upon any portion of **Magnolia Place Phase Two**, except that:

An antenna designed to receive direct broadcast satellite services, including direct-to-home satellite services, that is: **(a)** one meter or less in diameter, **(b)** designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services and local multipoint distribution services, that is one meter or less in diameter or diagonal measurement, or **(c)** designed to receive television broadcast signals shall be permitted (collectively, "**Permitted Antennas**").

Permitted Antennas are subject to such reasonable **Rules and Regulations** as to location and screening as may be set forth by the **Board of Directors**, consistent with applicable law, in order to minimize obtrusiveness as viewed from streets and adjacent property. The **Declarant** and/or the **Association** shall have the right, without obligation, to erect an aerial, satellite dish or other apparatus for a master antenna, cable or other communication system for the benefit of all or a portion of **Magnolia Place Phase Two**, should any master system or systems be utilized by the **Association** and require such exterior apparatus.

Section 8.29. Storm Precautions. No hurricane or storm shutters shall be permanently installed on any **Dwelling** or other **Improvement** on a **Lot** unless first approved by the **Architectural Committee**. Hurricane or storm shutters may be installed temporarily, and other storm precautions may be taken to protect **Dwellings** or other **Improvements** on a **Lot**, while the threat of a hurricane or similar storm is imminent; provided, all such shutters and other exterior alterations or additions made as a storm precaution shall be promptly removed once the storm or imminent threat of the storm has passed.

Section 8.30. Window Coverings, Etc. Reflective window coverings are prohibited. No awnings, canopies, shutters, patio cover, building or storage unit of any kind shall be erected, placed or permanently installed on any **Lot** unless first approved by the **Architectural Committee**.

Section 8.31. Tanks. No exposed above-ground tanks or underground storage tanks for the storage of fuel, water or any other substances shall be located on any **Lot** or **Improvement** or within any of the **Common Areas**. **Provided, however**, up to **two (2)** bottled propane gas tanks no larger than five gallons in size each may be kept on a **Lot** for the purpose of cooking with a gas grill and so long as said gas tank is placed in a screened area and so that they are not visible from any **Common Area**, road or adjoining **Lots**. The storage of gasoline, heating or other fuels is prohibited, except that a reasonable amount of fuel may be stored on each **Lot** for emergency purposes and operation of lawn mowers and similar tools or equipment and the **Association** shall be permitted to store fuel for operation of maintenance vehicles, generators and similar equipment.

Section 8.32. Wells, Drainage and Irrigation.

A. Water Systems. Except as may be constructed by the **Association** or the **Declarant**, no private water system or water well may be drilled or maintained on any **Lot**. No community wells or community water systems shall be allowed except the water system provided by any **Governmental Authority**, the **Declarant** or the **Association**.

B. Drainage. The obstruction or rechanneling of drainage flows after location and installation of drainage swales, storm sewers or storm drains is prohibited, except that the **Declarant** and the **Association** shall have such right; provided, the exercise of such right shall not materially diminish the value of or unreasonably interfere with the use of any **Lot** without the consent of the **Owner**.

C. Irrigation. Except as provided in this **Declaration**, no sprinkler or irrigation system of any type that draws upon water from creeks, streams, rivers, lakes, ponds, wetlands, canals or other ground or surface waters within **Magnolia Place Phase Two** shall be installed, constructed or operated within **Magnolia Place Phase Two** by any **Person**, other than the **Association** or the **Declarant**, or utilized by any group of **Lots**, unless prior written approval has been received from the **Architectural Committee**. All sprinkler and irrigation systems must be installed underground and shall be subject to approval of the **Architectural Committee**.

D. Proviso. So long as the **Declarant** retains **Declarant Control** as provided for in this **Declaration**, this **Section 8.32**, shall not apply to the **Declarant**.

Section 8.33. Swimming Pools. Swimming pools, outdoor hot tubs and whirlpools may be constructed, installed and maintained on a **Lot** subject to the prior written approval of the plans for the same by the **Architectural Committee** as provided for in this **Declaration** and the restrictions contained in this **Declaration**. The **Architectural Committee** shall have the right to adopt **Rules and Regulations** governing the construction of outdoor hot tubs, swimming pools and other outdoor water features or amenities within **Magnolia Place Phase Two**. All outdoor hot tub and swimming pool equipment and housing must be placed in walled-in or screened areas or landscaped area so that they are not visible from any **Common Area**, road or adjoining **Lots**. Any in-ground pool to be constructed on any **Lot** shall be subjected to the requirements of the **Architectural Committee**.

Section 8.34. Recreational Vehicles, Machinery and Equipment.

A. General. No machinery or equipment shall be placed or operated upon any **Lot** except such machinery or equipment as is usual in maintenance of a private single-family residence.

B. Recreational Vehicles. Mobile homes, motor homes, trailers of any kind, campers, vans, motorcycles, bicycles, motorized carts and all terrain vehicles, lawnmowers, tractors, tools, construction machinery and equipment of any nature, golf carts, boats and any other type of watercraft, including boat trailers, and any other similar types of vehicles, machinery or equipment shall not be permitted, stored or allowed to remain on any **Lot** unless the same is placed, stored and maintained within a wholly enclosed structure, with roofing and doors, on such **Lot**. Any such enclosed structure must be approved by the **Architectural Committee**. The **Common Areas** shall not, unless expressly permitted by the **Association**, be utilized for the parking or storage of any of the foregoing vehicles, recreational vehicles, machinery or equipment.

C. Offstreet Parking. Each **Lot** shall provide for adequate offstreet parking (i.e., parking areas located solely within the property lines of such **Lot**). Vehicles shall be parked only in driveways constructed in accordance with the provisions of this **Declaration**, provided any such vehicle when parked is not visible from any street, or in garages constructed in accordance with the provisions of this **Declaration**. Vehicles shall not be parked on any landscaped or natural areas of a **Lot**.

D. Inoperable Vehicles. Any vehicle that is inoperable shall be immediately removed from **Magnolia Place Phase Two**. No **Owner** or **Occupant** shall repair or restore any vehicle, machinery or equipment of any kind upon or within any **Lot** or within any portion of the **Common Areas**, except: (a) within enclosed garages or workshops or (b) for emergency repairs and then only to the extent necessary to enable the immediate movement thereof to a proper repair facility located outside **Magnolia Place Phase Two**.

E. **Rules and Regulations.** Subject to the prior written approval of the **Association**, that may be withheld in the sole discretion of the **Association**, the **Board of Directors** shall have the right at any time and from time to time to adopt **Rules and Regulations** with respect to the keeping, storage, parking, operation, use or maintenance of mobile homes, tractors, equipment, machinery, trailers (with or without wheels), motorhomes, trucks (other than pick-up trucks), commercial vehicles of any type, campers, motorized campers or trailers, boats or other watercraft, boat trailers, motorcycles, motorized bicycles, all-terrain vehicles, motorized go-carts and other forms of transportation.

Section 8.35. Construction of Improvements.

A. **Clean Conditions.** During the construction of any **Improvement**: (a) all **Lots** and **Improvements** shall be maintained in a clean condition, free of debris and waste material, (b) all unused construction materials shall be stored, to the extent practicable, out of view from any street, and (c) all construction trash, debris and rubbish on each **Lot** shall be placed in a dumpster or other container designed for such purposes and shall be properly disposed of outside of **Magnolia Place Phase Two** at least weekly. In no event, however, shall any used construction materials be buried on or beneath any **Lot** or **Improvement** or any other portion of **Magnolia Place Phase Two**.

B. **Equipment and Vehicles.** During the construction of any **Improvement**, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall: (a) utilize off-street parking only, (b) enter the **Lot** or **Improvement** on which such **Improvement** are being constructed from the driveway for such **Lot** or **Improvement**, and (c) not damage trees or other vegetation on such **Lot** that, pursuant to the provisions of this **Declaration** are to be preserved.

C. **Signage.** During the construction of an **Improvement**, up to two signs, in size and color to be approved by the **Architectural Committee**, may be posted on a **Lot** at a height not to exceed four feet from the ground level advertising the **Lot** or the **Improvement** thereon for sale and containing information identifying the builder of such **Improvement**. No other signage, banners, flags or advertising posters shall be allowed without obtaining approval of the **Architectural Committee**. The location of such signage shall be established by the **Architectural Committee** but in no event shall any signage authorized by this **Declaration** or that may be approved by the **Architectural Committee** be attached, nailed or otherwise adhered to any tree or other plant life on a **Lot** or **Improvement**.

D. **Clean and Uncluttered Condition.** No construction trucks, equipment or machinery, including any trailers used for the transportation of construction equipment or machinery, shall be parked overnight on any streets or roads within **Magnolia Place Phase Two**. Upon completion of construction of any **Improvement**, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the **Lot** or **Improvement** and such **Lot** or **Improvement** shall be kept and maintained in a clean and uncluttered condition.

E. **Time for Construction Activities.** Construction activities shall be allowed on any **Lot** or **Improvement** only during the hours of 7:00 a.m. through 6:00 p.m. (local time) on **Monday** through **Friday** and 8:00 a.m. through 1:00 p.m. (local time) on **Saturdays**, unless prior approval for deviation from those times is obtained from the **Architectural Committee**. No construction activities on **Lots** or **Improvements** shall be allowed on **Sundays**.

F. **Permits and Licenses.** All **Improvements** shall be constructed in compliance with the requirements of the **Architectural Committee**; all applicable federal, state, county and local laws, ordinances, rules, regulations; and zoning and building code requirements. Each **Owner** shall be solely responsible for obtaining from the appropriate **Governmental Authorities** all necessary permits and licenses and otherwise paying all required fees for the construction of any **Improvements** on the **Lot** of such **Owner**. Each **Owner** shall also be responsible for strict compliance with the requirements of the **Architectural**

Committee and all applicable watershed protection, soil erosion, and other governmental requirements.

Section 8.36. Trash, Rubbish and Nuisances.

A. **General.** No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of **Magnolia Place Phase Two** nor shall any nuisance or odors be permitted to exist or operate upon or arise from any **Lot** that would render any portion thereof unsanitary, unsightly, offensive or detrimental to **Persons** using, occupying or owning any other **Lots**. Noxious or offensive activities shall not be carried on in or from any **Lot** or in any part of the **Common Areas**, and each **Owner** and **Occupant** shall refrain from any act or use of a **Lot** that could cause disorderly, unsightly or unkempt conditions; result in the cancellation of or increase of insurance coverage or premiums for any portion of **Magnolia Place Phase Two** or be in violation of any law, statute, ordinance, rule, regulation or requirement of any **Governmental Authority**. Without limiting the generality of the foregoing, no horns, whistles, bells, speakers or other sound devices, other than reasonable security and fire alarm devices used exclusively for such purposes, shall be located, used or placed upon any **Lot**. **Provided, however**, that the foregoing shall not apply to the reasonable use of any of the foregoing devices within any recreational areas of the **Common Areas**. Any **Owner** or **Occupant** or any of the respective family members, guests, invitees, agents, employees or contractors of such **Owner** or **Occupant** who dumps, places or allows trash or debris to accumulate on the **Lot** of such **Owner** or **Occupant** or any other portion of **Magnolia Place Phase Two** shall be liable to the **Association** for all costs incurred by the **Association** to remove the same. The **Board of Directors** shall have the right from time to time to promulgate **Rules and Regulations** governing keeping the disposal of trash, garbage, rubbish or debris within **Magnolia Place Phase Two**, including the right to assess fines for violations of such **Rules and Regulations**.

B. **Containers.** Trash, garbage and any other refuse or waste shall not be kept on any **Lot** except in sanitary containers or garbage compactor units. Trash cans and containers shall at all times be kept at the rear of or inside a **Dwelling** and shall be screened from view from streets and adjacent **Lots** and **Dwellings** by appropriate landscaping or fencing approved by the **Architectural Committee**. **Provided, however**, that trash cans and containers may be moved to the side yard of any **Lot** on trash collection days for such **Lot**.

C. **Burning.** Except as otherwise provided in this **Declaration**, no outdoor burning of trash, garbage, leaves, wood, shrubbery or other materials shall be permitted on any **Lot** or other portion of **Magnolia Place Phase Two**.

D. **Security.** Security and fire alarm devices used exclusively for such purposes shall be allowed only if the **Owner** or **Occupant** can demonstrate that procedures are in place to shut off such devices within a short amount of time (i.e. thirty minutes or less) whether or not the **Owner** or **Occupant** is at the **Lot**.

E. **Lawn Equipment.** Except as may be approved by the **Board of Directors**, no **Owner** or **Occupant** shall or shall allow the respective agents, employees of the **Owner** or **Occupant** to operate lawnmowers, leaf blowers or other such equipment on a **Lot** on **Sundays**.

Section 8.37. No Private Sewers or Septic Systems. Except as may be constructed by the **Declarant** or **Association**, no private sewer system, septic tank, field lines or other system of solid waste disposal shall be constructed, built or used on any **Lot**.

Section 8.38. Firearms and Fireworks. The discharge of firearms, fireworks or firecrackers within **Magnolia Place Phase Two** is prohibited except with the prior approval of the **Board of Directors**. The term "**firearms**" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size, notwithstanding anything to the contrary contained in this **Declaration** or in the **By-Laws**. The **Association** shall not be obligated to take action to enforce this **Section 8.38.**

Section 8.39. Hazardous Substances. No activity will be permitted on any **Lot** or the **Common Area** that, in the sole opinion of the **Board of Directors** of the **Association**, will create or emit offensive, hazardous or excessive quantities of dust, dirt, ash, smoke, noise, fumes, odors or vibrations, or create risk of fire, explosion or other hazards or is not in harmony and consistent with **Magnolia Place Phase Two**. Activities prohibited hereunder, include, but are not limited activities which result in the disposal of **Hazardous Substances** in any form upon **Magnolia Place Phase Two**. For the purposes of this **Declaration** the term "**Hazardous Substance**" shall mean any product, substance, chemical, material or waste whose presence, nature, quantity or intensity of existence, use, manufacture, disposal transportation spill, release or effect, either by itself or in connection with other materials, expected to be found upon any **Lot**, is either: (a) potentially injurious to the public health, safety or welfare, the environment or **Magnolia Place Phase Two**; (b) regulated or monitored by any **Governmental Authority**; or (c) a basis for liability of the **Declarant** or any owner to any **Governmental Authority** or third party under any applicable state or common law property.

Section 8.40. Insurance Rates. Nothing shall be done or kept on any **Lot** or in any **Dwelling** or other **Improvement** or the **Common Area** which will increase the rate of insurance on any property insured by the **Association** without the approval of the **Board of Directors** nor shall anything be done or kept on any **Lot** which would result in the cancellation of insurance on any property insured by the **Association** or which would be in violation of any law.

Section 8.41. Mineral Operations Prohibited. No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind whatsoever shall be permitted upon any **Lot**, nor shall oil wells, derricks, tanks, tunnels, mineral excavations or shafts be erected or permitted to remain on any **Lot**. **Provided, however**, it is understood that this prohibition does not affect the rights of mineral owners or owners of any interest in minerals that may have been previously reserved or conveyed to others.

Section 8.42. No Discrimination. No action shall at any time be taken by the **Association** or the **Board of Directors** which in any manner would discriminate against any **Owner** or **Owners** in favor of the other **Owners**.

Section 8.43. Wetland Area. No **Owner** of any **Lot** shall build or construct any **Dwelling** or **Improvement** on or in any **Wetland Area** unless approved by the **Architectural Committee**. Erosion control measures shall be taken by the **Owner** of a **Lot** to prevent erosion or siltation into a **Wetland Area**. The use of mechanized equipment, herbicides, or pesticides is prohibited within any **Wetland Area**.

Section 8.44. Occupants Bound. All provisions of this **Declaration** and **By-Laws** and of any **Rules and Regulations** or use restrictions promulgated pursuant to this **Declaration** that govern the conduct of **Owners** and that provide for sanctions against **Owners** shall also apply to all **Occupants**, guests and invitees of any **Lot**. Every **Owner** shall cause all **Occupants** of the **Lot** of said **Owner** to comply with this **Declaration** and the **By-Laws** and the **Rules and Regulations** adopted pursuant to this **Declaration**, and shall be responsible for all violations and losses caused by those **Occupants**, guests and invitees, notwithstanding the fact that those **Occupants**, guests and invitees are fully liable and may be sanctioned for any violation of this **Declaration** and the **By-Laws** and **Rules and Regulations** adopted pursuant to this **Declaration**.

Section 8.45. Additional Rules and Regulations and Amendment of Rules. In addition to the restrictions set forth in this **Declaration**, the: (a) the **Architectural Committee** shall have the right, in the sole discretion of the **Architectural Committee**, from time to time and at any time to adopt, modify and amend the **Rules and Regulations** to impose other, further or different requirements or restrictions, which requirements or restrictions shall be binding on all **Owners**, **Lots**, **Dwellings** and other **Improvements**, including the adoption of additional or more specific requirements and restrictions governing the **Improvement** and use of any **Lot**, **Dwelling** or other **Improvement**, and (b) the **Association** shall have the right from time to time and at any time to adopt, modify and amend such **Rules and Regulations** as the **Association**, in the sole

discretion of the **Association**, determines to be in the best interests of all **Owners**, which **Rules and Regulations** shall be binding on all **Owners, Lots, Dwellings** and other **Improvements**.

Section 8.46. Enforcement and Remedies. If any of the provisions of this **Article VIII** are breached or are not otherwise being complied with in all aspects by any **Owner** or **Occupant** or the respective family members, guests, invitees, agents, employees or contractors of any **Owner** or **Occupant**, then the **Association** or **Architectural Committee** shall have the right, but not the obligation, at the option of the **Association** or **Architectural Committee**, to: (a) enjoin such violation or noncompliance or (b) through the designated agents, employees, representatives and independent contractors of the **Association** or **Architectural Committee**, enter upon such **Lot** or **Dwelling** and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the **Association** or **Architectural Committee** in enforcing any of the provisions of this **Article VIII**, including, without limitation, attorney's fees, court costs, costs and expenses of witnesses, engineers, architects, designers, land planners and any other **Persons** involved in the correction of any noncompliance or the removal of such violation or in any judicial proceeding, together with any other costs or expenses incurred by the **Architectural Committee** or **Association** in connection therewith, shall be paid by such **Owner** who has violated or breached any of the provisions of this **Article VIII**, shall constitute an individual **Assessment** to such **Owner** pursuant to this **Declaration** and, if the same is not paid when due, shall be subject to a lien as provided for in this **Declaration** and be subject to foreclosure as provided for in this **Declaration**. Notwithstanding anything provided in this **Declaration** to the contrary, the rights and remedies of the **Association** and **Architectural Committee** set forth in this **Declaration** shall not be deemed exclusive of any rights and remedies that the **Association** and **Architectural Committee** may exercise at law or in equity or any of the enforcement rights specified in this **Declaration**.

Section 8.47. Proviso. Anything else in this **Declaration** to the contrary, neither the **Declarant** nor **Association** shall have be obligated to take any enforcement action in the event any activity violates local, state or federal laws or regulations.

Article IX **The Association**

Section 9.01. General. The operation and administration of **Magnolia Place Phase Two** shall be by the **Association**. The **Association** shall be an **Alabama Nonprofit Corporation** incorporated by **Articles of Incorporation** recorded in the **Office of the Judge of Probate of Baldwin County, Alabama**. The **Association** shall be an entity which shall have the capability of bringing suit and being sued with respect to the exercise or nonexercise of the powers of the **Association**. The **Association** shall have exclusive authority and power to maintain a class action and to settle a cause of action on behalf of **Lot Owners** in **Magnolia Place Phase Two** with reference to the **Common Area** and with reference to any and all other matters in which all of the **Lot Owners** have a common interest. The **Association** shall have all the powers and duties granted to or imposed on the **Association** under the **Articles of Incorporation** and **By-Laws** of the **Association** and under this **Declaration** as they may be amended from time to time. The **Association** is specifically authorized to enter into agreements by which the powers and duties of the **Association**, or some of them, may be exercised or performed by some other **Person** or **Persons**. The **Association** shall have the right to grant permits, licenses and easements over the **Common Areas** for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of **Magnolia Place Phase Two**. The **Board of Directors** shall have the authority and duty to levy and enforce the collection of general and specific **Assessments** for **Common Expenses** and is further authorized to provide adequate remedies for failure to pay such **Assessments**.

Section 9.02. Membership. The **Owner** of each **Lot** shall be a member of the **Association**. Membership in the **Association** shall be appurtenant to and may not be separated from ownership of any **Lot**. **Provided, however**, that: (a) the **Declarant** shall be deemed a member of the **Association** for so long as the

Declarant retains **Declarant Control** as provided for in this **Declaration**, or (b) if any **Lot** is owned by more than one **Person**, then the **Owner** of such **Lot** shall, by written notice to the **Board of Directors**, designate only one representative to serve as a member of the **Association** until such time, if at all, as the **Mortgagee** thereof becomes an **Owner** by virtue of foreclosure of the **Mortgage** and title to such encumbered **Lot** is vested in the **Mortgagee** pursuant to a duly recorded **Deed**. The transfer or conveyance of fee title to any **Lot** (other than by a **Mortgage** as security for the payment of an obligation), shall automatically include the transfer of all membership rights of such **Owner** in the **Association** with respect to the **Lot** transferred and conveyed, notwithstanding any failure of the transferor to transfer to the transferee any certificates, assignments or other evidence of such membership. Membership or the rights and benefits in the **Association** may not be transferred, except for the **Declarant** as provided for in this **Declaration**, assigned, conveyed or otherwise alienated in any manner separately and apart from the ownership of a **Lot**. Each member of the **Association** shall at all times comply with the provisions of this **Declaration**, the **Articles of Incorporation**, **By-Laws** and all **Rules and Regulations** that may from time to time be adopted by the **Board of Directors** or the members of the **Association**.

Section 9.03. Board of Directors. The **Board of Directors** shall have the rights and duties set forth in the **Articles of Incorporation** and the **By-Laws**. The **Declarant** retains and shall have the right to appoint or remove, with or without cause, any member or members of the **Board of Directors** and any officer or officers of the **Association** until such time as the **Declarant** no longer owns any portion of **Magnolia Place Phase Two**, or until such earlier date as the **Declarant** elects, in the sole discretion of the **Declarant**, to relinquish such right. Each **Owner**, by acceptance of a **Deed** to or other conveyance of a **Lot**, vests in the **Declarant** such authority to appoint and remove members of the **Board of Directors** and officers of the **Association** as provided by this **Section 9.03**.

Section 9.04. Voting Rights. Except for the **Declarant**, no **Member** shall have any right to vote in the **Association** until the **Declarant** has released **Declarant Control** as provided for in this **Declaration**.

During the period of **Declarant Control** as provided for in this **Declaration** the **Declarant** shall be the only **Person** entitled to vote and the **Members** of the **Board of Directors** and **Architectural Committee** shall be appointed by the **Declarant**. During the period of **Declarant Control** as provided for in this **Declaration**, **Members** of the **Association** other than the **Declarant**, shall have no vote in the matters of the **Association**. After the release of **Declarant Control** as provided in this **Declaration**, each **Lot Owner** shall be entitled to one (1) vote, which vote is not divisible. The vote shall be cast by the **Lot Owner** in the manner provided for in this **Declaration** and in the **By-Laws**.

The **Declarant** may make such use of **Magnolia Place Phase Two**, the unsold **Lots**, and of the **Common Areas** and facilities in **Magnolia Place Phase Two** as may facilitate such completion and sale, including, but not limited to, showing **Magnolia Place Phase Two**, the **Lots**, **Common Areas** and the display of signs.

Only voting **Members** shall be entitled to cast votes at **Association** meetings on matters pertaining to the **Association**, including the election of members of the **Board of Directors**, amending the **Declaration**, the **Articles of Incorporation** and the **By-Laws** of the **Association**, and all other matters which may be brought before the **Association** membership except as otherwise provided in this **Declaration**. The right of an **Owner** to vote may be suspended by the **Association** as provided in this **Declaration**.

No **Owner**, whether one or more **Persons**, shall have more than one (1) membership and one (1) vote per **Lot**. Each **Owner**, by acceptance of a **Deed** or other conveyance to a **Lot**, consents and agrees to the dilution of the voting interest of the **Owner** in the **Association** by virtue of the resubdivision of any **Lot** by the **Declarant** pursuant to this **Declaration**. In no event, whether as a result of there being multiple ownership interests in any **Lot** or otherwise, shall more than one vote be allowed for any **Lot**. Fractional voting shall not be permitted. The **Declarant** shall be deemed to be the **Owner** of and shall be

entitled to all voting rights attributable to any **Lots** owned by the **Declarant**.

Section 9.05. Management by the Declarant or the Affiliates of the Declarant. In addition to the rights and authority granted to the **Association** in this **Declaration**, the **Declarant** or any affiliate of the **Declarant** may, but shall not be obligated to, be employed as the manager of the **Association** and **Magnolia Place Phase Two** for so long as the **Declarant** owns any portion of **Magnolia Place Phase Two**, or until such earlier date as the **Declarant** elects, in the sole discretion of the **Declarant**, to relinquish such right, at such compensation and on such terms as would be usual, customary and obtainable in an arms-length transaction with any third party providing comparable services for any real estate development in the southeastern **United States** of the size, quality and nature of **Magnolia Place Phase Two**. Each **Owner**, by acceptance of a **Deed** to or other conveyance of a **Lot**, shall be deemed to ratify the provisions of this **Section 9.05**, and shall specifically be deemed to have approved any management agreement entered into by the **Association** and **Declarant** or any affiliate of the **Declarant**.

Section 9.06. Agreements. Subject to the conditions, restrictions and other provisions of this **Declaration**, all agreements, actions and determinations lawfully authorized by the **Board of Directors** with respect to **Magnolia Place Phase Two** shall be binding upon all **Owners**, the heirs, executors, personal representatives, administrators, successors and assigns of the **Owners** and all others having any interest in **Magnolia Place Phase Two**. In performing the responsibilities of the **Association** under this **Declaration**, the **Association**, through the **Board of Directors**, shall have the right and authority to delegate to **Persons** of the choice of the **Association** such duties of the **Association** under this **Declaration** as may be determined by the **Board of Directors**. In furtherance of the foregoing and not in limitation thereof, the **Association** may obtain and pay for the services of any **Person** or entity to manage the affairs of the **Association** or any part thereof, to the extent the **Association** deems advisable, as well as such other personnel as the **Association** shall deem necessary or desirable for the proper operation of any portion of **Magnolia Place Phase Two**, whether such personnel are furnished or employed directly by the **Association** or by independent contract with the **Association**. During the term of any such management agreement entered into by the **Association** with a third party, such manager may, if authorized by the **Board of Directors**, exercise all of the powers and shall be responsible for the performance of all of the duties of the **Association** under this **Declaration**, excepting any such powers or duties specifically and exclusively reserved to the **Board of Directors** or the officers of the **Association** by this **Declaration**, the **Articles of Incorporation** or the **By-Laws**. Such manager may be an individual, corporation or other legal entity and may be bonded in such manner as the **Board of Directors** may require, with the costs of such bond to be a **Common Expense**. In addition to the foregoing, the **Association** may pay for and the **Board of Directors** may hire and contract for such legal and accounting services as are necessary or desirable in connection with the operation of **Magnolia Place Phase Two** or the enforcement of this **Declaration**, the **Articles of Incorporation**, **By-Laws** or any **Rules and Regulations** of the **Association**.

Section 9.07. Rules and Regulations. The **Declarant** or the **Association** may make and enforce reasonable **Rules and Regulations** governing the use of **Magnolia Place Phase Two**, which **Rules and Regulations** shall be consistent with the rights and duties established by this **Declaration**. Copies of such **Rules and Regulations** shall be furnished by the **Association** to all **Owners**. Sanctions may include reasonable monetary fines and suspension of the right to vote and the right to use the **Common Area**. The **Declarant** or the **Board of Directors** shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the **By-Laws** of the **Association**. In addition, the **Declarant** or the **Association**, through the **Board of Directors**, may, by contract or other agreement, enforce local ordinances on **Magnolia Place Phase Two** for the benefit of the **Association** and **Members**.

Section 9.08. Implied Rights. The **Association** may exercise any other right or privilege given to the **Association** expressly by this **Declaration** or the **By-Laws**, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to the **Association** in this **Declaration** or reasonably necessary to effectuate any such right or privilege.

Section 9.09. Self-Help. In addition to any other remedies provided for in this **Declaration**, the **Association** or the duly authorized agent of the **Association** shall have power to enter upon a **Lot** or any portion of the **Common Area** to abate or remove, using such force as may be reasonably necessary, any thing or condition which violates this **Declaration**, the **By-Laws**, the **Rules and Regulations**, or the use restrictions. Unless an emergency situation exists, the **Board of Directors** shall give the violating **Lot Owner** **ten (10) days** written notice of the intent of the **Board of Directors** to exercise self-help. All cost of self-help, including reasonable attorney's fees actually incurred, shall be assessed against the violating **Lot Owner** and shall be collected as provided for in this **Declaration** for the collection of **Assessments**.

Section 9.10. Right of Entry. The **Association** shall have the right, in addition to and not in limitation of the rights the **Association** may have, to enter into **Lots** for emergency, security or safety purposes, which right may be exercised by the **Board of Directors**, or the officers, agents, employees, managers of the **Board of Directors** and all police officers, fire fighters, ambulance personnel and similar emergency personnel in the performance of their respective duties. Except in an emergency situation, entry shall be during reasonable hours and after reasonable notice to the **Owner** or **Occupant** of the **Lot**.

Section 9.11. Assignment. The share of a **Member** in the funds and assets of the **Association** cannot be assigned, hypothecated or transferred in any manner except as an appurtenance to the **Lot** of said **Member**.

Section 9.12. Board of Directors. The affairs of the **Association** shall be conducted by a **Board of Directors** which shall consist of such number not less than **three (3)**, nor more than the number as shall, from time to time, be determined and fixed by the **Declarant** so long as the **Declarant** retains **Declarant Control**, and after release of **Declarant Control** by a **Majority** of the voting rights present at any annual or special meeting of the **Members**.

Section 9.13. By-Laws. The **Association** and the **Members** shall be governed by the **By-Laws** which shall be adopted by the **Members**.

Section 9.14. Availability of Records. The **Association** shall make available to **Lot Owners**, prospective purchasers, **Eligible Holders of First Mortgages** of any **Lot**, current copies of this **Declaration**, **By-Laws**, **Rules and Regulations** and other books, records, financial statements and the most recent annual audited or unaudited financial statement of the **Association**, if such audited or unaudited financial statement is prepared. "**Available**" shall mean available for inspection upon request, during normal business hours or under reasonable circumstances.

Section 9.15. Reserve Fund. The **Association** shall establish and maintain an adequate reserve fund for the periodic maintenance, repair and replacement of **Improvements** to the **Common Area**. The fund shall be maintained out of regular **Assessments** for **Common Expenses**.

Section 9.16. Indemnification. The **Association** shall indemnify every officer and **Director** against any and all expenses, including attorney's fees, imposed upon or reasonably incurred by any officer or **Director** in connection with any action, suit or other proceeding (including settlement of any suit or proceedings, if approved by the then **Board of Directors**) to which said officer or **Director** may be a party by reason of being or having been an officer or **Director**. The officers and **Directors** shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and **Directors** shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the **Association** (except to the extent that such officers or **Directors** may also be **Members** of the **Association**), and the **Association** shall indemnify and forever hold each such officer and **Director** free and harmless against any and all liability to others on account of any such contract or commitment, and any right to indemnification provided for in this **Declaration** shall not be exclusive of any other rights to which any officer or director or former officer or

Director may be entitled. The **Association** shall maintain adequate general liability and officers and **Directors** liability insurance to fund this obligation, if such coverage is reasonably obtainable.

Section 9.17. Proviso. **Provided, however,** that until the **Declarant** has released **Declarant Control** as provided for in this **Declaration**, the **By-Laws** and **Rules and Regulations** adopted by the **Declarant** shall govern and there shall be no meeting of the **Members** of the **Association** nor of the **Board of Directors**, unless a meeting is called by the **Declarant**, and neither the **Lot Owners** nor the **Association**, nor the use of **Magnolia Place Phase Two** by **Occupants** shall interfere with the completion of the contemplated improvements and the sale of the **Lots**, and the control of the **Board of Directors** and **Architectural Committee** shall remain with the **Declarant**. The **Declarant** may make such use of the unsold **Lots** and of the **Common Areas** and facilities as may facilitate such completion and sale, including, but not limited to, showing of **Magnolia Place Phase Two** and the display of signs.

Article X

Covenants for Maintenance Assessments

Section 10.01. Purpose of Assessments. The **Assessments** levied by the **Association** shall be used exclusively for the general purposes of promoting the recreation, health, safety, welfare, common benefit and enjoyment by the **Owners** and **Occupants** of **Magnolia Place Phase Two** and for the **Improvement** and maintenance of the **Common Area** all as may be specifically authorized from time to time by the **Board of Directors**.

Section 10.02. Creation of the Lien and Personal Obligation for Assessments. Except as provided in this **Declaration**, the **Declarant**, for each **Lot** owned within **Magnolia Place Phase Two**, covenants, and each **Owner** of any **Lot** by acceptance of a **Deed** for said **Lot**, whether or not it shall be so expressed in such **Deed**, is deemed to covenant and agree to pay to the **Association**: **(a) Assessments**, fees or charges, and **(b) Assessments** for capital **Improvements** to the **Common Area**, such **Assessments** to be established and collected as provided in this **Declaration**. The **Assessments**, together with interest, costs and reasonable attorney's fees, shall be a charge on the **Lot** and shall be a continuing lien upon said **Lot** against which each such **Assessment** is made. Each such **Assessment**, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the **Owner** of such **Lot** at the time when the **Assessment** fell due, and the grantee of said **Person** shall be jointly and severally liable for such portions as may be due and payable at the time of conveyance. The personal obligation for delinquent **Assessments** shall pass to successors in title. **Provided, however,** the **Declarant** shall not be obligated to pay any **Assessments** provided for in this **Declaration** on any **Lot** or property owned by the **Declarant** and the **Association** shall not have a lien on any **Lot** or property owned by the **Declarant**.

Section 10.03. Lien for Assessments. All sums assessed against any **Lot** pursuant to this **Declaration**, together with late charges, interest, costs and reasonable attorney's fees actually incurred, as provided in this **Declaration**, shall be secured by a lien on such **Lot** in favor of the **Association** and shall be for the benefit of all **Lot Owners**. Such lien shall be superior to all other liens and encumbrances on such **Lot** except for: **(a)** liens of ad valorem taxes; and **(b)** liens for all sums unpaid on a first **Mortgage** and on any **Mortgage** to **Declarant** duly recorded in the records of the **Office of the Judge of Probate of Baldwin County, Alabama** and all amounts advanced pursuant to such **Mortgages** and secured in accordance with the terms of such instruments.

All other **Persons** acquiring liens or encumbrances on any property subject to this **Declaration** after this **Declaration** shall have been recorded in the records of the **Office of the Judge of Probate of Baldwin County, Alabama**, shall be deemed to consent that such liens or encumbrances shall be inferior to future liens for **Assessments**, as provided in this **Declaration**, whether or not prior consent is specifically set forth in the instruments creating such liens or encumbrances. **Provided, however,** the **Association** shall not have a lien on any **Lot** or property owned by the **Declarant**.

Section 10.04. Special Assessments for Capital Improvements. Except as provided in this **Declaration**, in addition to any other **Assessment** authorized in this **Declaration**, the **Association** may levy, a special **Assessment** for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital **Improvement** upon the **Common Area**, provided that any such **Assessment** shall have the assent of a **Majority** of the votes of **Members** who are voting in **Person** or by proxy at a meeting duly called for this purpose. **Provided, however**, no **Member** shall have any right to vote in the **Association** during the period of **Declarant Control**. **Provided, further**, the **Declarant** shall not be obligated to pay the special **Assessments** provided for in this **Declaration** on **Lots** or property owned by the **Declarant**.

Section 10.05. Budget and Contributions. It shall be the duty of the **Board of Directors** to prepare a budget covering the estimated cost of operating the **Association**, which shall include a capital contribution or reserve in accordance with the capital budget separately prepared. The **Board of Directors** shall cause the budget and the **Assessments** to be levied against each **Lot** to be delivered to each **Member** at least **thirty (30) days** prior to the **Assessment** becoming effective. The budget and the **Assessments** shall not become effective unless approved by a vote of at least a **Majority** of the votes entitled to be cast by the **Association** membership. Notwithstanding the foregoing, however, in the event the membership disapproves the proposed budget or the **Board of Directors** fails for any reason so to determine the budget for the succeeding year, then and until such time as a budget shall have been determined as provided in this **Declaration**, the budget in effect for the then current year shall continue for the succeeding year.

The **Board of Directors** shall annually prepare a capital budget which shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repair and replacement. The **Board of Directors** shall set the required capital contribution, if any, in an amount sufficient to permit meeting the projected capital needs of the **Association**, as shown on the capital budget, with respect to both amount and timing by annual **Assessments** over the period of the budget. The capital contribution required shall be fixed by the **Board of Directors** and included within the budget and the **Assessment** as provided for in this **Declaration**. A copy of the capital budget shall be distributed to each **Member** in the same manner as the operating budget.

Section 10.06. Uniform Rate of Assessment. Except as provided in this **Declaration**, the **Assessments** described in this **Declaration** shall be fixed at a uniform rate for all **Lots**. **Provided, however**, anything else contained in this **Declaration** to the contrary notwithstanding, the **Declarant** shall not be obligated to pay any **Assessments** provided for in this **Declaration** on any **Lot** or property owned by the **Declarant** and the **Association** shall not have a lien on any **Lot** or property owned by the **Declarant**.

Section 10.07. Date of Commencement of Assessments: Due Dates.

A. **Commencement of Annual Assessments.** Except as provided for in this **Declaration**, the annual **Assessments** provided for in this **Declaration** shall commence as to all **Lots** on the first day of the month following the date of the recording of this **Declaration**. The first annual **Assessment** shall be adjusted according to the number of months remaining in the calendar year. The **Board of Directors** shall fix the amount of the annual **Assessment** against each **Lot** at least **thirty days** in advance of each annual **Assessment** period.

B. **Commencement of Special Assessments.** Special **Assessments** shall commence as to the **Lot** assessed on the first day of the month following the date the **Assessment** is imposed by the **Board of Directors**.

C. **Notice.** Written notice of the annual **Assessment** shall be sent to every **Owner** subject to said **Assessment**. The due date of any **Assessment** shall be fixed by the **Board of Directors** in the resolution authorizing such **Assessment**, and any such **Assessment** shall be payable in advance in monthly, quarterly, semiannually, or annual installments as determined by the **Board of Directors**. The

Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the **Association**, setting forth whether the **Assessments** on a specified **Lot** have been paid. A properly executed certificate of the **Association** as to the status of **Assessments** on a **Lot** is binding upon the **Association** as of the date of the issuance of said certificate. **Provided, however**, the **Declarant** shall not be obligated to pay the **Assessments** provided for in this **Declaration** on any **Lot** or property owned by the **Declarant**.

Section 10.08. Effect of Nonpayment of Assessments: Remedies of the Association. Any **Assessment** not paid within thirty (30) days after the due date shall bear interest thereon at a rate to be set by the **Board of Directors** of the **Association**, but in no event greater than the maximum percentage rate as may then be permitted under the Laws of the **State of Alabama**. The **Association** may bring an action at law or in equity against the **Owner** personally obligated to pay said **Assessment**, foreclose a lien against the **Lot** or other property or seek injunctive relief, and interest, costs and reasonable attorney's fees of any such action shall be added to the amount of such **Assessment**. Each such **Owner**, by acceptance of a **Deed** to a **Lot**, expressly vests in the **Association** the right and power to bring all actions against such **Owner** personally for the collection of each charge as a debt and to foreclose the aforesaid lien by all methods available for the enforcement of such liens, including foreclosures by an action brought in the name of the **Association** in a like manner as a **Mortgage** lien on real property, and such **Owner** expressly grants to the **Association** a power of sale in connection with said lien. The **Association**, acting on behalf of the **Lot Owners**, shall have the power to bid for an interest foreclosed at foreclosure sale and to acquire and hold, lease, **Mortgage** and convey the same. Except as provided in this **Declaration**, no **Owner** may waive or otherwise escape liability for the **Assessments** provided for in this **Declaration** by non-use of the **Common Area** or abandonment of the **Lot** of said **Owner**.

Section 10.09. Subordination of the Lien to First Mortgages. The lien of the **Assessments** provided for in this **Declaration** shall be subordinate to the lien of any first **Mortgage**. The sale or transfer of any **Lot** shall not affect the **Assessment** lien. However, the sale or transfer of any **Lot** pursuant to said first **Mortgage** foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such **Assessments** as to payments which became due after the proper perfection and recording of the **Mortgage** in the **Probate Records of Baldwin County, Alabama**, and prior to such sale or transfer. No other sale or transfer shall relieve such **Lot** from liability for any **Assessments** becoming due or from the lien of said **Assessments**.

Section 10.10. Capitalization of the Association. Upon acquisition of record title to a **Lot** from the **Declarant**, each **Owner** shall contribute to the capital of the **Association** an amount equal to one-sixth of the amount of the annual **Assessment** for that **Lot** as determined by the **Board of Directors**. This amount shall be deposited by the buyer into the purchase and sales escrow and disbursed therefrom to the **Association**.

Section 10.11. Effect on the Declarant. Notwithstanding any provision that may be contained to the contrary in this **Declaration**, for so long as the **Declarant**, or the successors and assigns of **Declarant**, is the **Owner** of any **Lot**, the **Declarant** shall have the option, at the sole discretion of the **Declarant**, to: (a) pay **Assessments** on the **Lots** owned by the **Declarant**, or (b) not pay **Assessments** on any **Lots** and in lieu thereof fund any resulting deficit in the operating expense of the **Association** not produced by **Assessments** receivable from **Owners** other than the **Declarant**. The deficit to be paid under option (b), above, shall be the difference between: (a) actual operating expenses of the **Association** (exclusive of capital **Improvement** costs, reserves and management fees), and (b) the sum of all monies receivable by the **Association** (including, without limitation, **Assessments**, interest, late charges, fines and incidental income and any surplus carried forward from the preceding year(s)). The **Declarant** may from time to time change the option stated above under which the **Declarant** is making payments to the **Association** by written notice to such effect to the **Association**. When all **Lots** within **Magnolia Place Phase Two** are sold and conveyed to purchasers, neither the **Declarant**, nor the affiliates of the **Declarant**, shall have further liability of any kind to the **Association** for the payment of **Assessments**, deficits or contributions. In no event shall the **Declarant** ever be obligated to pay a **Special Assessment**.

Section 10.12. Exempt Property. Notwithstanding anything to the contrary contained in this

Declaration, the following property shall be exempt from the payment of **Assessments**:

- A. **Common Area**. All **Common Area**;
- B. **Dedicated Property**. All property dedicated to or accepted by any **Governmental Authority** or public utility; and
- C. **Lots Owned by the Declarant**. All **Lots** or property owned by the **Declarant**.

Article XI
Insurance and Casualty Loss

Section 11.01. The Association. The **Association** is authorized to purchase and maintain insurance on the **Common Area** in such forms and such amounts, with such deductibles, and with such companies as the **Board of Directors** shall deem appropriate.

A. **Hazard Insurance**. All hazard insurance policies obtained by the **Association** shall designate the **Association** as the named insured as insurance trustee for the benefit of all **Owners** and their **Mortgagees** and the **Declarant**, as their respective interests may appear. In the event of loss or damage, all insurance proceeds paid pursuant to a policy purchased by the **Association** shall be paid to the **Association** as insurance trustee under the provisions of this **Declaration**.

B. **Public Liability Insurance**. The **Association** may obtain comprehensive public liability insurance with limits and provisions as the **Association** deems desirable.

C. **Workers' Compensation Insurance**. The **Association** shall obtain workers' compensation insurance to meet the requirements of **Alabama** law.

D. **Premiums**. All premiums upon insurance policies purchased by the **Association** shall be assessed to the **Owners** as an **Assessment** of the **Association**.

E. **Adjustment**. Each **Owner** shall be deemed to have delegated to the **Association** the right of said **Owner** to adjust with insurance companies all losses under policies purchased by the **Association**, subject to the rights of **Mortgagees**.

Section 11.02. The Owner.

A. **Public Liability Insurance**. Each **Owner** shall obtain, maintain and pay for comprehensive public liability insurance on the interest of said **Owner** in **Magnolia Place Phase Two** with limits of not less than **One Million Dollars (\$1,000,000.00)** per occurrence, combined single limits, covering the activities of such **Owner** on or about **Magnolia Place Phase Two**. The **Association** may, from time to time, increase minimum limits required of all **Owners**. The deductibles allowed on said insurance shall be in an amount approved by the **Association**. Each comprehensive public liability insurance policy shall name the **Association**, the **Declarant** and any management company as additional insureds under said policy.

B. **Hazard Insurance**. Each **Lot Owner** shall be and is deemed responsible for maintaining sufficient hazard insurance upon the **Dwellings** or other **Improvements** on the **Lot** of said **Owner** so as to provide full replacement value of said **Dwellings** or other **Improvements** in the event of a casualty, including, without limitation: (1) loss or damage by fire and other hazards covered by a standard extended coverage endorsement; (2) such other risks as from time to time shall be customarily covered with respect to **Dwellings** or other **Improvements** similar in construction, location, and use as the **Dwellings** or other **Improvements** on the land, including, but not limited to, vandalism, malicious mischief and windstorm; and (3) flood insurance, if flood insurance is required and can reasonably be obtained. Each **Lot Owner** shall

provide the **Association** with evidence that such insurance is in full force and effect. In the event an **Owner** of any **Lot** in **Magnolia Place Phase Two** shall fail to maintain sufficient insurance as provided for in this **Declaration**, the **Association**, after approval by two-thirds of the **Board of Directors**, shall have the right to purchase said insurance, the cost of which shall become the personal obligation of the **Lot Owner** and a lien on the **Lot**. The lien provided for in this **Section 11.02.B**, shall have the same enforceability and priority as the lien provided for in **Article X** of this **Declaration**.

C. **Miscellaneous**. All insurance policies provided for in this **Section 11.02**, shall include, however, provisions waiving (a) any right of the insured to subrogation claims against the **Association** and against individual **Owners**, as well as their agents, employees and guests; and (b) any right of the insurer to contribution or proration because of a master hazard policy.

Section 11.03. Reconstruction or Repair After Casualty.

A. **Lot**. In the event of the damage or destruction of all or part of the **Dwellings** or other **Improvements** on a **Lot**, the **Lot Owner** shall be responsible for the prompt reconstruction and repair of the **Dwellings** or other **Improvements** after such casualty; provided that should the **Lot Owner** fail to repair or replace the **Dwellings** or other **Improvements** within a reasonable period, the **Association** may do so for the account of said **Lot Owner** and the cost of said repair or replacement shall be a binding, personal obligation of said **Lot Owner** when billed by the **Association** as well as a lien upon the **Lot** in question and, thereafter, be subrogated to any insurance proceeds. The lien provided in this **Section 11.03.A**, shall have the same enforceability and priority as the lien provided for in **Article X** of this **Declaration**.

B. **Common Area**. In the event of the damage or destruction of all or part of the **Improvements** on the **Common Area**, the **Association** shall be responsible for the prompt reconstruction and repair of the **Improvements** after such casualty. Reconstruction or repair shall be mandatory unless **seventy-five percent (75%)** or more of the votes of the **Association**, and the **Declarant** so long as the **Declarant** owns a **Lot** or property in **Magnolia Place Phase Two**, elect not to repair or reconstruct. Any reconstruction or repair must follow substantially the original plans and specifications of the **Improvements** unless **seventy-five percent (75%)** or more of the votes of the **Association**, and the **Declarant** so long as the **Declarant** retains **Declarant Control** as provided for in this **Declaration**, vote to adopt different plans and specifications.

Section 11.04. Condemnation. If any part of the **Common Area** shall be taken (or conveyed in lieu of and under threat of condemnation by the **Board of Directors** acting on the written direction of the **Members** of the **Association** entitled to vote representing at least sixty-seven percent of the **Lot Owners** and the **Declarant**, so long as the **Declarant** retains **Declarant Control** as provided for in this **Declaration**) by an authority having the power of condemnation or eminent domain, each **Owner** shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the **Association** to be disbursed as provided for in this **Declaration**.

If the taking or conveyance involves a portion of the **Common Area** on which **Improvements** have been constructed, the **Association** shall restore or replace such **Improvements** on the remaining land included in the **Common Area** to the extent available, unless within sixty days after such taking the **Declarant**, so long as the **Declarant** retains **Declarant Control** as provided for in this **Declaration** and **Members** of the **Association** entitled to vote representing at least seventy-five percent of the **Lots** shall otherwise agree. Any such construction shall be in accordance with plans approved by the **Board of Directors**.

If the taking or conveyance does not involve any **Improvements** on the **Common Area** or if a decision is made not to repair or restore or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the **Association** and used for

such purposes as the **Board of Directors** shall determine.

Article XII **Amendment**

This **Declaration** may be amended in the following manner:

Section 12.01. Amendment by the Declarant. During the period of **Declarant Control**, this **Declaration** may be amended unilaterally at any time and from time to time by the **Declarant** without any vote or approval from any **Owner** or **Mortgagee** by the filing in the records of the **Office of the Judge of Probate of Baldwin County, Alabama** of a **Subsequent Amendment** to this **Declaration**. **Provided, however**, any such amendment shall not adversely affect the title to any **Lot** unless any such **Lot Owner** shall consent in writing.

Section 12.02. Amendment by the Association. Upon the release of **Declarant Control** by the **Declarant** as provided for in this **Declaration**, the **Members** of the **Association** may amend this **Declaration** as follows:

A. **Notice.** Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting of the **Association** at which a proposed amendment is to be considered.

B. **Resolutions.** An amendment may be proposed by either a **Majority** of the **Board of Directors** or by **Members** holding one-third of the votes of the **Association**. A resolution adopting a proposed amendment must be adopted by an affirmative vote of not less than a **Majority** of the **Board of Directors** and the consent of the **Owners** of the **Lots** to which sixty-seven percent of the votes in the **Association** are allocated and the approval of fifty-one percent of the holders of first **Mortgages** on **Lots**.

C. **Subsequent Amendment.** Said amendment shall be evidenced by a **Subsequent Amendment** amending this **Declaration**.

D. **No Power to Amend During Declarant Control.** Anything else contained in this **Declaration** to the contrary, the **Members** of the **Association** shall not have the power to amend this **Declaration** so long as the **Declarant** retains **Declarant Control** as provided for in this **Declaration**.

Section 12.03. Recording. A copy of each **Subsequent Amendment** shall be certified by the either the **Declarant** or the **President** and **Secretary** of the **Association** as having been duly adopted and shall be effective when recorded in the **Office of the Judge of Probate of Baldwin County, Alabama**.

Section 12.04. Agreement. In the alternative, an amendment may be made by an agreement in the form of a **Subsequent Amendment** signed and acknowledged by all record **Owners**, including all first **Mortgagees** of **Lots** in **Magnolia Place Phase Two** and the **Declarant** during **Declarant Control**, in the manner required for the execution of a **Deed**, and such amendment shall be effective when recorded in the **Office of the Judge of Probate of Baldwin County, Alabama**.

Section 12.05. Proviso. So long as the **Declarant** retains **Declarant Control**, no **Person** shall record any declaration of covenants, conditions and restrictions or similar instrument affecting any portion of **Magnolia Place Phase Two** without the written consent of the **Declarant**, and any attempted recordation of said declaration without complying with this **Declaration** shall result in such declaration of covenants, conditions and restrictions or similar instrument being void and of no force and effect unless subsequently approved by written consent signed by the **Declarant**.

Article XIII
Mortgagee Provisions

The following provisions are for the benefit of holders of first **Mortgages** on **Lots** in **Magnolia Place Phase Two**. The provisions of this **Article XIII** apply to both this **Declaration** and to the **By-Laws**, notwithstanding any other provisions contained in this **Declaration**.

Section 13.01. 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, or guarantor and the street address of the **Lot** to which said **Mortgage** relates, thereby becoming an "**Eligible Holder**"), will be entitled to timely written notice of:

A. **Material Portion.** Any condemnation loss or any casualty loss which affects a material portion of **Magnolia Place Phase Two** or which affects any **Lot** on which there is a first **Mortgage** held, insured, or guaranteed by such **Eligible Holder**;

B. **Delinquency.** Any delinquency in the payment of **Assessments** or charges owed by a **Lot** subject to the first **Mortgage** of such **Eligible Holder**, where such delinquency has continued for a period of **sixty (60) days** or any violation of this **Declaration** relating to such **Lot** or the **Owner** or **Occupant** which is not cured within **sixty (60) days**;

C. **Lapse.** Any lapse, cancellation or material modification of any insurance policy maintained by the **Association**.

Section 13.02. Other Provisions for First Lien Holders. To the extent not inconsistent with **Alabama** law:

A. **Partial Condemnation or Damage.** Any restoration or repair of **Magnolia Place Phase Two** after a partial condemnation or damage due to an insurable hazard shall be performed substantially in accordance with this **Declaration** and the original plans and specifications unless the approval is obtained of the **Eligible Holders** of first **Mortgages** on **Lots** to which more than **fifty percent (50%)** of the votes of **Lots** subject to **Mortgages** held by such **Eligible Holders** are allocated.

B. **Substantial Destruction or Substantial Taking.** Any election to terminate the **Association** after substantial destruction or a substantial taking in condemnation shall require the approval of the **Eligible Holders** of first **Mortgages** on **Lots** to which more than **fifty percent (50%)** of the votes of **Lots** subject to **Mortgages** held by such **Eligible Holders** are allocated.

Section 13.03. No Priority. No provision of this **Declaration** or the **By-Laws** gives or shall be construed as giving any **Owner** or other party priority over any rights of the first **Mortgagee** of any **Lot** 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 13.04. Notice to Association. Upon request, each **Owner** shall be obligated to furnish to the **Association** the name and address of the holder of any first **Mortgage** encumbering the **Lot** of an **Owner**.

Section 13.05. Failure of Mortgagee to Respond. Any **Mortgagee** who receives a written request from the **Board of Directors** 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 said **Mortgagee** within **thirty (30) days** of the date of the request by the **Association**.

Section 13.06. Construction of Article XIII. Nothing contained in this **Article XIII** shall be construed

to reduce the vote that must otherwise be obtained under this **Declaration, By-Laws or Alabama Corporate Law** for any of the acts set out in this **Article XIII**.

Article XIV
Additional Rights Reserved to the Declarant

Section 14.01. Right of the Declarant to Modify Restrictions With Respect to Unsold Lots. With respect to any unsold **Lot**, the **Declarant** may include in any contract or **Deed** such modifications and/or additions to this **Declaration** as the **Declarant** in the sole discretion of the **Declarant** desires. **Provided, however,** except as to the **Declarant** as provided for in this **Declaration**, this **Declaration** may not be modified in any contract or **Deed** to except a **Lot** from the **Assessment** provisions of this **Declaration** or to lessen or extend the voting rights as provided in this **Declaration** or in the **Articles of Incorporation and By-Laws** of the **Association**.

Section 14.02. Transfer of Rights. Any or all of the special rights and obligations of the **Declarant** may be transferred by the **Declarant** to other **Persons**, pertaining to any one **Lot** or multiples of **Lots** or any part or all of **Magnolia Place Phase Two**, including, but not limited to, the exemption of the **Declarant** as to the **Lot** or **Lots** so transferred to pay **Assessments** as provided for in the **Declaration**. Any transfer of rights and obligations by the **Declarant** must be by a written instrument signed by the **Declarant** and duly recorded in the **Office of the Judge of Probate of Baldwin County, Alabama**.

Section 14.03. Legal Description Modifications. So long as the **Declarant** retains **Declarant Control**, the **Declarant** has the right to change or modify the legal description of any **Common Area** or any **Lot** or **Lots** owned by the **Declarant** located within **Magnolia Place Phase Two** without obtaining any approval from the **Association** or any **Owner** or other party, solely by filing an affidavit executed by the project surveyor describing the change made in the legal description of a **Common Area** or **Lot**.

Section 14.04. Withdrawal. The **Declarant**, and the successors and assigns of the **Declarant**, without consent from the **Association** or the **Owners**, shall have the right, at any time, or from time to time, so long as the **Declarant** owns any **Lot** in **Magnolia Place Phase Two** to withdraw portions of **Magnolia Place Phase Two** from this **Declaration**. The withdrawal authorized by this **Declaration** shall be made by filing in the **Office of the Judge of Probate of Baldwin County, Alabama**, a **Subsequent Amendment** with respect to the property which has been withdrawn.

Section 14.05. Right of Approval. During the period of **Declarant Control**, this **Declaration** may not be amended without the express written consent of the **Declarant**.

In addition to any other rights granted or reserved to the **Declarant** by this **Declaration**, the **Declarant** shall have the right to approve all actions of the **Board of Directors** and the **Architectural Committee** as those actions may affect the rights of the **Declarant** to improve, construct, market and sell **Magnolia Place Phase Two**. This right shall be exercisable only by the **Declarant** and the successors and assigns of the **Declarant** who specifically take this right in a recorded instrument.

No action authorized by the **Board of Directors** or **Architectural Committee** shall become effective nor shall any action, policy or program be implemented until and unless:

A. Notice to the Declarant. The **Declarant** shall have been given written notice of all meetings and proposed actions approved at meetings of the **Board of Directors** or the **Architectural Committee** by certified mail, return receipt requested, or by personal delivery at the address the **Declarant** has registered with the Secretary of the **Association**; and

B. Declarant Representation at Meeting. The **Declarant** shall be given the opportunity at any such meeting to join in or to have a representative or agent join in discussion from the floor

of any prospective action, policy, or program to be implemented by the **Board of Directors** or the **Architectural Committee**. The **Declarant** and representatives or agents of the **Declarant** shall make the concerns, thoughts and suggestions of the **Declarant** known to the members of the **Architectural Committee** or the **Association**. Said right must be exercised by the **Declarant**, representatives, or agents of the **Declarant** within ten days after the meeting held pursuant to the terms and provisions of the **Declaration**.

Section 14.06. Development of Magnolia Place Phase Two. Subject to the approval of any **Governmental Authority** with appropriate jurisdiction, the **Declarant** shall have the right, but not the obligation, for so long as the **Declarant** retains **Declarant Control** as provided for in this **Declaration**, to make **Improvements** and changes to all **Common Areas** and to all **Lots, Dwellings** or other **Improvements** owned by the **Declarant**, including, without limitation: (a) installation and maintenance of any **Improvements** in or to the **Common Area**, (b) installation and maintenance of any boardwalks, soil erosion controls, or any other **Improvements** required by any **Governmental Authority**.

Section 14.07. Subdivision Plat. The **Declarant** reserves the right to record, modify, amend, revise and otherwise add to, at any time and from time to time, a subdivision **Plat** setting forth such information as the **Declarant** may deem necessary with regard to **Magnolia Place Phase Two**, including, without limitation, the locations and dimensions of all **Lots, Dwellings**, or other **Improvements, Common Area**, public roads, utility systems, drainage systems, utility easements, drainage easements, access easements, set-back line restrictions, lakes, retention ponds and drainage basins. Any such subdivision **Plats** or any amendments thereto shall be binding on the portions of **Magnolia Place Phase Two** indicated thereon as if such subdivision **Plat** were specifically incorporated into this **Declaration**. Notwithstanding anything provided to the contrary in this **Declaration**, the **Declarant** may at any time, or from time to time, divide and redivide, combine and resubdivide any **Lots** owned by the **Declarant** and change any easement description or relocate any roads affected thereby, subject to approval of any **Governmental Authority** having jurisdiction thereof.

Article XV

Dispute Resolution

Section 15.01. Agreement to Encourage Resolution of Disputes Without Litigation.

A. Resolution of Dispute. The **Declarant, Association** and the officers, directors and committee members of the **Association**, all **Owners**, all **Persons** subject to this **Declaration**, and any **Person** not otherwise subject to this **Declaration** who agrees to submit to this **Article XV** (collectively, the "**Bound Party**"), agree that it is in the best interest of all concerned to encourage the amicable resolution of disputes involving **Magnolia Place Phase Two**, the **Association** and/or the **Owners** without the emotional and financial costs of litigation. Accordingly, each **Bound Party** agrees not to file suit in any court with respect to a **Claim** (hereinafter defined), unless and until said **Bound Party** has first submitted such **Claim** to the alternative dispute resolution procedures set forth in **Section 15.02.** of this **Declaration** in a good faith effort to resolve such **Claim**.

B. Claim. As used in this **Article**, the term "**Claim**" shall refer to any claim, grievance or dispute arising out of or relating to:

1. The interpretation, application, or enforcement of the **Magnolia Place Phase Two Documents**; or
2. The rights, obligations and duties of any **Bound Party** under the **Magnolia Place Phase Two Documents**;

except that the following shall not be considered a "**Claim**" unless all parties to the matter otherwise agree to submit the matter to the procedures set forth in **Section 15.02.** of this **Declaration**:

1. Any suit by the **Association** to collect **Assessments** or other amounts due from any **Owner**;
2. Any suit by the **Association** to obtain a temporary restraining order (or emergency equitable relief) and such ancillary relief as the court may deem necessary in order to maintain the status quo and preserve the ability of the **Association** to enforce the provisions of this **Declaration**;
3. Any suit between the **Owners**, which does not include the **Declarant** or the **Association** as a party, if such suit asserts a **Claim** which would constitute a cause of action independent of the **Magnolia Place Phase Two Documents**;
4. Any suit in which any indispensable party is not a **Bound Party**;
5. Any suit as to which any applicable statute of limitations would expire within one hundred eighty (180) days of giving the **Notice** required by **Section 15.02. A.**, unless the party or parties against whom the **Claim** is made agree to toll the statute of limitations as to such **Claim** for such period as may reasonably be necessary to comply with this **Article XV**; and
6. Any suit relating to or arising out of any **Alleged Defect** (hereinafter defined).

Section 15.02. Dispute Resolution Procedures.

A. Notice. The **Bound Party** asserting a **Claim** (the "**Claimant**") against another **Bound Party** (the "**Respondent**") shall give written notice (the "**Notice**") to each **Respondent** and to the **Board** stating plainly and concisely;

1. The nature of the **Claim**, including the **Persons** involved and the role of the **Respondent** in the **Claim**;
2. The legal basis of the **Claim** (i.e., the specific authority out of which the **Claim** arises);
3. The proposed resolution or remedy of the **Claimant**; and
4. The desire of the **Claimant** to meet with the **Respondent** to discuss in good faith ways to resolve the **Claim**.

B. Negotiation. The **Claimant** and **Respondent** shall make every reasonable effort to meet in **Person** and confer for the purpose of resolving the **Claim** by good faith negotiation. If requested in writing, accompanied by a copy of the **Notice**, the **Board** may appoint a representative to assist the parties in negotiating a resolution of the **Claim**.

C. Mediation. If the parties have not resolved the **Claim** through negotiation within **thirty (30) days** of the date of the **Notice** described in **Section 15.02. A.** of this **Declaration** (or within such other period as the parties may agree upon), the **Claimant** shall have **thirty (30)** additional days to submit the **Claim** to mediation with an entity designated by the **Association** (if the **Association** is not a party to the **Claim**) or to an independent agency or individual providing dispute resolution services in the **State of Alabama**. If the **Claimant** does not submit the **Claim** to mediation within such time, or does not appear for the mediation when scheduled, the **Claimant** shall be deemed to have waived the **Claim**, and the **Respondent** shall be relieved of any and all liability to the **Claimant** (but not third parties) on account of such **Claim**. If the parties do not settle the **Claim** within **thirty (30) days** after submission of the matter to mediation, or within such time as determined reasonable by the mediator, the mediator shall issue a notice of termination of the mediation proceedings indicating that the parties are at an impasse and the date that

mediation was terminated. The **Claimant** shall thereafter be entitled to file suit or to initiate administrative proceedings on the **Claim**, as appropriate. Each party shall bear its own costs of the mediation, including attorneys' fees, and each party shall share equally all fees charged by the mediator.

D. Settlement. Any settlement of the **Claim** through negotiation or mediation shall be documented in writing and signed by the parties. If any party thereafter fails to abide by the terms of such agreement, then any other party may file suit or initiate administrative proceedings to enforce such agreement without the need to again comply with the procedures set forth in this **Section 15.02**. In such event, the party taking action to enforce the agreement or award shall, upon prevailing, be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties in equal proportions) all costs incurred in enforcing such agreement or award, including, without limitation, attorneys' fees and court costs.

Section 15.03. Initiation of Litigation by the Association. In addition to compliance with the foregoing alternative dispute resolution procedures, if applicable, the **Association** shall not initiate any judicial, arbitration or administrative proceedings unless first approved by a vote of the **Members** entitled to cast **seventy-five percent (75%)** of the votes in the **Association**, except that no such approval shall be required for actions or proceedings:

A. Declarant Control. Initiated during the period of **Declarant Control** as described in this **Declaration**;

B. Enforcement of Provisions. Initiated to enforce the provisions of this **Declaration**, including collection of **Assessments** and foreclosure of liens;

C. Property Tax or Condemnation. Initiated to challenge property taxation or condemnation proceedings;

D. Supplier of Goods or Services. Initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

E. Defense of Claim. To defend claims filed against the **Association** or to assert counterclaims in proceedings instituted against it.

This **Section 15.03**, shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Section 15.04. Right of the Declarant to Cure Alleged Defects. Due to the complex nature of construction and the subjectivity involved in evaluating such quality, disputes may arise as to whether a defect exists and the responsibility of the **Declarant** therefor. It is the intent of the **Declarant** to resolve all disputes and claims regarding any **Alleged Defect** (as defined below) amicably, and without the necessity of time-consuming and costly litigation. Accordingly, the **Association** and all **Lot Owners** shall be bound by the following claim resolution procedure with respect to **Alleged Defects**:

A. Right to Cure by the Declarant. In the event that the **Association**, **Board** or any **Lot Owner** or **Lot Owners** (a "**Complaining Party**") claim, contend or allege that any portion of **Magnolia Place Phase Two**, including, without limitation, the **Common Area**, any **Lot**, and/or any **Improvements** constructed on the **Magnolia Place Phase Two**, are defective or that the **Declarant** or the agents, consultants, contractors or subcontractors of the **Declarant** (the "**Agents of the Declarant**") were negligent in the planning, design, engineering, grading, construction or other development thereof (collectively an "**Alleged Defect**"), the **Declarant** hereby reserves the right to inspect, repair and/or replace such **Alleged Defect** as set forth in this **Declaration**.

B. Notice to the Declarant. In the event that a **Complaining Party** discovers any

Alleged Defect, such **Complaining Party** shall, within a reasonable time after discovery, notify the **Declarant**, in writing, at such address as the **Declarant** may from time to time provide to the **Association**, or such other address at which the **Declarant** maintains the principal place of business of the **Declarant**, of the specific nature of such **Alleged Defect** (the "**Notice of Alleged Defect**").

C. Right to Enter, Inspect, Repair and/or Replace. Within a reasonable time after the receipt by the **Declarant**, the **Declarant** shall have the right, upon reasonable notice to the **Complaining Party** and during normal business hours, to enter onto or into, as applicable, the **Common Area**, any **Lot**, and/or any **Improvements** or other portion of **Magnolia Place Phase Two** for the purposes of inspecting and, if deemed necessary by the **Declarant**, repairing and/or replacing such **Alleged Defect**. In conducting such inspection, repairs and/or replacement, the **Declarant** shall be entitled to take any actions as the **Declarant** shall deem reasonable and necessary under the circumstances.

D. Legal Actions. No **Complaining Party** shall initiate any legal action, cause of action, proceeding, or arbitration against the **Declarant** alleging damages: (1) for the costs of repairing or the replacement of any **Alleged Defect**, (2) for the diminution in value of any real or personal property resulting from such **Alleged Defect**, or (3) for any consequential damages resulting from such **Alleged Defect**, unless and until the **Complaining Party** has: (i) delivered to the **Declarant** a **Notice of Alleged Defect**, and (ii) the **Declarant** has, within **ninety (90) days** after the receipt by the **Declarant** of such **Notice of Alleged Defect**, either: (a) failed to repair or replace such **Alleged Defect**, or (b) if such **Alleged Defect** cannot reasonably be repaired or replaced within such **ninety (90) day** period, failed to commence such repair or replacement of the **Alleged Defect** and, thereafter, failed to pursue diligently such repair or replacement to completion.

E. No Additional Obligations; Irrevocability and Waiver of Right. Nothing set forth in this **Section 15.04**, shall be construed to impose any obligation on the **Declarant** to inspect, repair, or replace or pay for any item or **Alleged Defect** for which the **Declarant** is not otherwise obligated to do under applicable law or other agreement to which the **Declarant** is a party. The right of the **Declarant** to enter, inspect, repair and/or replace reserved hereby shall be irrevocable and may not be waived or otherwise terminated except by a writing, in recordable form, executed and recorded by the **Declarant** in the records of the **Office of the Judge of Probate of Baldwin County, Alabama**. This provision does not create any warranties, express or implied, on the part of the **Declarant** or the **Association**.

F. Arbitration. Any disagreement between an **Owner**, **Owners**, the **Board**, and/or the **Association**, on the one hand, and the **Declarant** on the other, concerning the efforts of the **Declarant** to remedy or repair any **Alleged Defect** (a "**Dispute**"), after compliance with the foregoing provisions of this **Section 15.04**, shall be resolved by binding arbitration conducted in **Baldwin County, Alabama** in accordance with the **Construction Industry Arbitration Rules of the American Arbitration Association** then in effect. Without limiting the foregoing, it is expressly agreed that this agreement to arbitrate also covers any and all claims that the **Purchaser** may assert against the construction contractor(s) and/or design-builder(s) for **Magnolia Place Phase Two**, and the subcontractors of the contractor(s) and/or design-builder(s), sub-consultants and affiliates (sometimes referred to in this **Declaration** as "**Contractor Parties**"). At the option of the **Declarant**, any other **Person** or entity with whom or which the **Declarant** has an agreement for binding arbitration may be joined in an arbitration proceeding under this **Declaration**. The award rendered by the arbitrators shall be final and binding upon the parties to the arbitration, and judgment upon the award may be entered in any court having jurisdiction over any of the parties thereto. Arbitration proceedings pertaining to a **Dispute** shall be transcribed verbatim by a competent court reporting company selected by the **American Arbitration Association**. The initial fee of the **American Arbitration Association** shall be borne by the party initiating the **Dispute**, and all other costs of the arbitration, including the costs and fees of the arbitrators, and the expense of transcription, shall be borne in equal shares by: (a) the **Owners** or **Owners** and/or **Association**, (b) the **Declarant**, and (c) any **Contractor Parties** and/or other parties to the arbitration joined at the option of the **Owner**. Notwithstanding anything contained in this **Declaration** to the contrary, the respective parties to the arbitration shall each be responsible for their own costs incurred in the arbitration with respect to third party expenses, including but not limited to, costs of discovery, attorneys' fees,

accountants' fees, investigation expenses and experts' fees.

Article XVI

General Provisions

Section 16.01. Disclosures. Each **Owner** and the family, tenants, guests, employees, invitees, lessees or licensees of each **Owner** acknowledge the following:

A. **Traffic and Noise.** **Magnolia Place Phase Two** is located adjacent to thoroughfares that may be affected by traffic and noise from time to time and may be improved and/or widened in the future.

B. **Views.** The views from a **Lot** of an **Owner** may change over time due to, among other circumstances, additional development and the removal or addition of landscaping.

C. **Zoning.** No representations are made regarding the zoning of adjacent property, or that the category to which adjacent property is zoned may not change in the future.

D. **Schools.** No representations are made regarding the schools that currently or may in the future serve the **Lot**.

E. **Objectionable Conditions.** Since in every neighborhood, there are conditions that different people may find objectionable, it is acknowledged that there may be conditions outside of **Magnolia Place Phase Two** that an **Owner** may find objectionable and that it shall be the sole responsibility of the **Owners** to become acquainted with neighborhood conditions that could affect the **Lot**.

F. **Sounds and Noise.** No representations are made that sound may not be transmitted from one **Lot** to another.

G. **Lot Sizes, Dimensions and Square Footage Shown on the Plat, if any, Only Approximations.** The **Lot** sizes, dimensions and square footage calculations shown on the **Plat**, if any, are only approximations. Any **Lot Owner** who is concerned about any representations regarding the **Plat** should perform his own investigation as to the dimensions, measurements and square footage of his **Lot**.

H. **Construction Activities.** The **Declarant** will be constructing portions of **Magnolia Place Phase Two** and engaging in other construction activities related to the construction of **Magnolia Place Phase Two** and **Improvements**. Such construction activities may, from time to time, produce certain conditions on **Magnolia Place Phase Two**, including, without limitation: (1) noise or sound that is objectionable because of its volume, duration, frequency or shrillness; (2) smoke; (3) noxious, toxic, or corrosive fumes or gases; (4) obnoxious odors; (5) dust, dirt or flying ash; (6) unusual fire or explosion hazards; (7) temporary interruption of utilities; and/or (8) other conditions that may threaten the security or safety of **Persons** on **Magnolia Place Phase Two**. Notwithstanding the foregoing, all **Owners** agree that such conditions on **Magnolia Place Phase Two** resulting from construction activities shall not be deemed a nuisance and shall not cause the **Declarant** and the agents of the **Declarant** to be deemed in violation of any provision of this **Declaration**.

I. **Hurricanes and Storms.** **Magnolia Place Phase Two** is situated in a location that may be subject to hurricanes, strong winds, tropical storms, erosion, flooding, and other forces of nature that may cause damage or casualty losses to **Magnolia Place Phase Two**.

Section 16.02. Hurricane Preparations. Each **Lot Owner** who is absent from his or her **Lot** during hurricane season, shall prepare his or her **Lot** prior to departure by:

A. **Removing All Furniture and Plants.** Removing all furniture and plants and any

other item not permanently affixed from the porches or patios; and

B. Designating Caretaker. Designating a responsible firm or individual to care for the **Lot** during his or her absence (including removal of furniture and plants not affixed to porches or patios) in the event of a hurricane or severe storm, and in the event the **Lot** suffers hurricane or storm damage, each **Lot Owner** shall furnish the **Board of Directors**, or manager, if any, with the name of such firm or individual.

Article XVII **Miscellaneous**

Section 17.01. Duration. This **Declaration** shall run with and bind the **Lots** and **Magnolia Place Phase Two**, and shall inure to the benefit of and shall be enforceable by the **Declarant**, the **Association** or the **Owner** of any **Lot**, their respective legal representatives, heirs, successors and assigns, for a term of thirty years from the date this **Declaration** is recorded, after which time this **Declaration** shall be automatically extended for successive periods of ten years, unless an instrument in writing, signed by seventy-five percent of the then **Owners**, has been recorded within the year preceding the beginning of each successive period of ten years, agreeing to change this **Declaration**, in whole or in part, or to terminate the same, in which case this **Declaration** shall be modified or terminated as specified in this **Declaration**.

Section 17.02. Acceptance by Grantee. The grantee of any **Lot** subject to this **Declaration**, by acceptance of the **Deed** or other instrument conveying an interest in or title to, or the execution of a contract for the purchase of any **Lot**, whether from the **Declarant** or a subsequent **Owner** of such **Lot**, shall accept such **Deed** or other contract upon and subject to each and all of the terms and conditions contained in this **Declaration**.

Section 17.03. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the **Association** unless approved by a vote of **seventy-five percent (75%)** of the **Members** entitled to vote in the **Association** or solely by the **Declarant** so long as the **Declarant** retains **Declarant Control** as provided for in this **Declaration**. This **Section 17.03**, shall not apply, however, to: (a) actions brought by the **Association** to enforce the provisions of this **Declaration** (including, without limitation, the foreclosure of liens), (b) the imposition and collection of **Assessments** as provided in this **Declaration**, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the **Association** in proceedings instituted against the **Association**. This **Section 17.03**, shall not be amended unless such amendment is made by the **Declarant** so long as the **Declarant** retains **Declarant Control** as provided for in this **Declaration** and thereafter upon approval by the vote of the **Members** entitled to vote in the **Association** as provided for in this **Section 17.03**.

Section 17.04. Indemnity for Damages. Each and every **Lot Owner** and future **Lot Owner**, in accepting a **Deed** or contract for any **Lot** subject to this **Declaration**, agrees to indemnify the **Declarant** for any damage caused by such **Owner**, or the contractor, agent or employees of such **Owner**, to **Common Areas**, roads, streets, gutters, walkways or other aspects of public ways, including all surfacing or to water, drainage or storm sewer lines or sanitary sewer lines owned by the **Declarant**, or for which the **Declarant** has responsibility, at the time of such damage.

Section 17.05. Effect of Violation on Mortgage Lien. No violation of any of the terms and conditions of this **Declaration** shall defeat or render invalid the lien of any **Mortgage** made in good faith and for value upon any portion of **Magnolia Place Phase Two**. **Provided, however**, that any **Mortgagee** in actual possession, or any purchaser at any foreclosure sale of a **Mortgage** shall be bound by and subject to this **Declaration** as fully as any other **Owner**.

Section 17.06. No Reverter. No provision of this **Declaration** is intended to be, or shall be construed as, a condition subsequent or as creating a possibility of reverter.

Section 17.07. Unrestrictive Right of Transfer. The right of a **Lot Owner** to sell, transfer or otherwise convey the **Lot** of said **Owner** shall not be subject to any right of first refusal or a similar restriction.

Section 17.08. No Restrictions on Mortgaging. Anything construed in this **Declaration** to the contrary, there shall be no restrictions on the right of a **Lot Owner** to **Mortgage** the **Lot** of said **Owner**.

Section 17.09. Enforcement. In the event of a violation or breach of any of this **Declaration** or any amendments to this **Declaration** by any **Owner**, or employee, agent or lessee of such **Owner**, the **Owner** of a **Lot**, or the **Association**, or the **Declarant** (so long as the **Declarant** retains **Declarant Control** as provided for in this **Declaration**), their successors and assigns, shall have the right to proceed at law or in equity to compel compliance with the terms and conditions of this **Declaration**, to prevent the violation or breach of this **Declaration**, to sue for and recover damages or other dues, or take all such courses of action at any time, or such other legal remedy that the **Declarant** may deem appropriate. No delay or failure on the part of an aggrieved party to initiate an available remedy set forth in this **Declaration** shall be held to be a waiver of that party or an estoppel of that party or of any other party to assert any right available to said party upon the recurrence or continuation of said violation or the occurrence of a different violation.

Damages shall not be deemed adequate compensation for any breach or violation of any provision of this **Declaration**, but any **Person** or entity entitled to enforce any provision of this **Declaration** shall be entitled specifically to relief by way of injunction as well as any other available relief either at law or in equity.

Any party to a proceeding who succeeds in enforcing this **Declaration** or enjoining the violation of this **Declaration** against a **Lot Owner** may be awarded a reasonable attorney's fee against such **Lot Owner**.

Section 17.10. Certificate of Violation. In addition to any other rights or remedies available to the **Association** pursuant to this **Declaration** or at law or equity, the **Association** shall have the right to file in the records of **Baldwin County, Alabama**, a certificate or notice of violation of this **Declaration** (which violation shall include, without limitation, nonpayment of the annual charges and/or failure to comply with architectural guidelines) upon failure of a **Lot Owner** to correct a violation of this **Declaration** within **thirty days** after written notice of the violation has been given by the **Association** to the **Lot Owner**.

Section 17.11. Estoppel Certificate. Upon the request of any **Member**, the **Board of Directors** of the **Association**, or designee, shall furnish a written certificate signed by an officer or agent of the **Association** regarding unpaid **Assessments** levied against the **Lot** or property of a **Member** in violation of this **Declaration**, the **By-Laws** or **Rules and Regulations** by any **Owner** or **Occupant** of a **Lot**. Such certificate shall bind the **Association** with respect to the foregoing matters. The **Association** may require the advance payment of a reasonable processing fee.

Section 17.12. Assignment by Association. The **Association** shall be empowered to assign the rights of the **Association** under this **Declaration** to any successor nonprofit membership corporation and, upon such assignment said assignee shall have all the rights and be subject to all the duties of the **Association** under this **Declaration**.

Section 17.13. No Waiver. The failure of any party entitled to enforce this **Declaration** to do so shall in no event be considered a waiver of the right to do so, as to the same violation or breach or as to such a violation or breach occurring prior or subsequent to said waiver. **Provided, however**, that approval of plans pursuant to **Article IV** of this **Declaration** shall be binding on any and all parties as a conclusive determination that such plans are in conformity with this **Declaration**.

Section 17.14. Severability. If any **Article**, part, clause, provision or condition of this **Declaration** is held to be void, invalid or inoperative, such voidness, invalidity or inoperativeness shall not affect any other

Article, clause, provision or condition of this **Declaration**; but the remainder of this **Declaration** shall be effective as though such **Article**, clause, provision or condition had not been contained in this **Declaration**.

Section 17.15. Interpretation of this Declaration. The **Declarant** or the **Association** shall have the right to construe and interpret the provisions of this **Declaration**, and in absence of an adjudication by a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all **Persons** or properties benefited or bound by the provisions of this **Declaration**.

Section 17.16. Captions, Gender and Grammar. The captions preceding the various sections, paragraphs and subparagraphs of this **Declaration** are for the convenience of reference only, and none of them shall be used as an aid to the construction of any provision in this **Declaration**. Wherever and whenever applicable, the singular form of any word shall be taken to mean or apply to the plural, and the masculine form shall be taken to mean or apply to the feminine or to the neuter.

Section 17.17. Cumulative Effect; Conflict. The covenants, restrictions and provisions of this **Declaration** shall be cumulative. **Provided, however**, in the event of conflict between or among this **Declaration** and the provisions of the **Articles of Incorporation, By-Laws or Rules and Regulations**, this **Declaration** shall prevail.

IN WITNESS WHEREOF, the **Declarant** has caused this **Declaration** to be executed effective as of the **Effective Date**.

Declarant:

Tahoe Associates, Inc., an Alabama Corporation

By: _____

T.E. Mitchell

Its: President

(Corporate Seal)

STATE OF ALABAMA :

COUNTY OF BALDWIN :

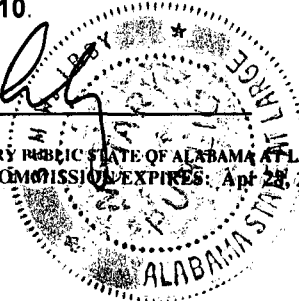
I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that **T.E. Mitchell**, whose name as **President of Tahoe Associates, Inc., an Alabama Corporation**, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, that he, as such officer and with full authority, executed the same voluntarily for and as the act of said **Corporation**.

Given under my hand and seal this 10th day of May, 2010.

Notary Public

My Commission Expires:

NOTARY PUBLIC STATE OF ALABAMA AT LARGE
MY COMMISSION EXPIRES: Apr 28, 2012



Joinder of Mortgagee

The undersigned, a representative of **Wachovia Bank, National Association**, being the holder of the first **Mortgage** on **Magnolia Place Phase Two** covered by this **Declaration**, does hereby consent to this **Declaration**.

Dated this 10th day of May, 2010.

Wachovia Bank, National Association

By: _____

Ed Hammele
Its: President

(Corporate Seal)

STATE OF ALABAMA :

COUNTY OF BALDWIN :

I, the undersigned authority, a Notary Public in and for said State and County, hereby certify that Ed Hammele, whose name as President of **Wachovia Bank, National Association**, is signed to the foregoing instrument and who is known to me, acknowledged before me on this day that, being informed of the contents of the instrument, that he, as such officer and with full authority, executed the same voluntarily for and as the act of said **Bank**.

Given under my hand and seal this 10th day of May, 2010.

Nicole Shreve
Notary Public
My Commission Expires: 3/30/14

THIS INSTRUMENT PREPARED BY:

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Irby & Heard, P.C.
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