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**AMENDMENT TO  
DECLARATION OF CONDOMINIUM  
OF  
COURTSIDE AT BROOK HIGHLAND,  
a condominium**

This instrument prepared by:  
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**AMENDMENT TO  
DECLARATION OF CONDOMINIUM  
OF  
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THIS AMENDMENT TO THE DECLARATION OF CONDOMINIUM is made this 8th day of May, 2002, by Eddleman Properties, Inc., an Alabama corporation (the "Developer") and Courtside at Brook Highland Association, Inc., an Alabama nonprofit corporation, pursuant to the provisions of the Alabama Uniform Condominium Act of 1991, Code of Alabama 1975 §§ 35-8A-101 et seq. (the "Act").

**W I T N E S S E T H:**

WHEREAS, Developer is the owner of certain real property located in the City of Birmingham, Shelby County, Alabama, which was submitted to the provisions of the Alabama Uniform Condominium Act of 1991, as amended (the "Act") by the Declaration of Condominium of Courtside at Brook Highland, A Condominium (the "Condominium") filed in the Office of the Judge of Probate in Shelby County on July 19, 2001, and recorded as Instrument No. 2001-29968 in said office (the "Declaration");

WHEREAS, the Condominium includes 67 units ("Units") as reflected in the Plan of Courtside at Brook Highland, A Condominium (the "Plan"), prepared by K. B. Weygand & Associates dated May 15, 2001, which Plan was attached as Exhibit C to the Declaration and separately recorded in Map Book 28, Page 103 in the Office of the Judge of Probate of Shelby County, Alabama;

WHEREAS, the Developer is the owner of all of the Units and desires to amend the Declaration to conform the number of Units in the Declaration to those reflected in the Plan; to reserve certain Development Rights for the Developer as defined in § 35-8A-103(11) of the Act; to include a procedure for the approval of improvements proposed to be constructed on a Unit; to expand the restrictions on the use of the Units; and to modify the provisions relating to the responsibility for payment of Common Expenses and Assessments;

WHEREAS, the Association is named in the Declaration as the entity to provide for the operation, management, maintenance, control and administration of the Condominium in accordance with the Act and has executed this Amendment to evidence its consent to the amendments to the Declaration that the Developer so desires;

WHEREAS, the Developer and the Association desire that all references to the Declaration from and after recording hereof shall refer to the Declaration as amended by this Amendment and that references to capitalized terms in this Amendment shall have the definitions set forth in the Declaration after giving effect to the amendments set forth herein;

NOW, THEREFORE, Developer and the Association, upon the recording hereof, do hereby amend the Declaration in accordance with § 35-8A-217 of the Act and § 11.01(b) of the Declaration as follows:

1. The Declaration is hereby amended to reduce the number of Units from 75 to 67 in order to eliminate the property designated on the Plan "Future Lots" from the definition of Condominium Property and to reserve the right of the Developer to add the property designated on the Plan as "Future Lots" as additional Condominium Property under the Declaration pursuant to § 35-8A-210 of the Act by deleting Article II in its entirety and by substituting in lieu thereof the following:

## **ARTICLE II**

### **PROPERTY SUBJECT TO THIS DECLARATION**

2.01. **Description of Improvements and Identification of Units.** The Condominium Property shall originally consist of sixty-seven (67) residential Units. The total Condominium Property shall never contain more than seventy-four (74) residential Units. A plat of the Units identifying each Unit by a number and letter so that no Unit bears the same designation as any other Unit, all in sufficient detail to identify the Common Elements and Private Elements and their relative locations and approximate dimensions is set forth in the Plan attached to the Declaration as Exhibit C. The Unit shall consist of the designated portion of the Land described in Exhibit C and any improvements constructed or placed thereon.

2.02. **Amendment of Condominium Plan.** Developer reserves the right to alter the boundaries between Units and to decrease the number of Units so long as the Developer owns the Units so altered. Changes in the boundaries between Units, as hereinbefore provided, shall be reflected by an amendment to the Plan, and if necessary, an amendment to this Declaration. An amendment to the Plan or the Declaration reflecting an alteration of the boundaries of the Units owned by Developer need be signed and acknowledged only by the Developer and need not be approved by the Owners and Mortgagees, whether or not such approval may elsewhere be required herein; provided, however, that any change which shall result in a change in the undivided interest in Common Elements or a change in the share of Common Expenses with respect to Owners of Units other than Developer at the time of such change or which shall result in the alteration of boundaries of Units may not be made without an amendment of this Declaration approved by the Owners and Mortgagees in the manner elsewhere required herein.

2.03. **Additional Phases.** Developer further reserves the right to add to the Condominium Property all or any portion of the additional real property described as "Future Lots" on the Plan attached to the Declaration as Exhibit C, together with any improvements constructed thereon which may eventually consist of as many as seven (7) Units, such addition(s) to occur in one or more additional phases at any time and from time to time within twenty (20) years from the conveyance of the first Unit in the Condominium. The submission of additional property may be accomplished by filing an amendment to the Declaration, which amendment only need be signed by the Developer. If all or any portion of the real property described as "Future Lots" on Exhibit C is later submitted to the condominium form of ownership by amendment to this Declaration, the allocation of percentage ownership of the Common Elements, the sharing of Common Expenses and Surplus and the allocation of voting rights for each Unit as set forth on Exhibit D attached hereto shall be amended so that such percentage ownership and voting rights shall be equal to the ratio that one Unit bears to the total number of Units. Nothing contained herein shall obligate the Developer to submit the additional real property to the Condominium; however, the Developer may submit all, part or none of the land described as a "Future Lot" on Exhibit C. Any part of the real property described on Exhibit C that is not submitted to the Condominium Property may be developed or used by the Developer in any manner it deems proper or may be conveyed to the Association as a Common Element.

2.04. **Easements and Restrictions.** The Private Elements and Common Elements shall be, and the same are hereby declared to be subject to the restrictions, easements, conditions and covenants prescribed and established in the Condominium Documents governing the use of said Private Elements, Common Elements in setting forth the obligations and responsibilities incident to ownership of each Unit and its appurtenant undivided interest in the Common Elements. Said Private Elements and Common Elements are further declared to be subject to the restrictions, easements, conditions and limitations now of record affecting the Condominium Property, which easements and restrictions are described on Exhibit F attached to the Declaration.

(a) Utility and Maintenance Easements. Utility easements are reserved throughout the whole of the Property, including Units, as may be required for utility and maintenance services (including, without limitation, water, sewer, gas, electricity, telephone and cable television) in order to adequately serve the Condominium Property.

(b) Utility Equipment. There may be utility equipment located on the Condominium Property. An easement is hereby reserved in favor of each Unit for the purpose of placement, maintenance, repair and replacement of said



utility equipment by Developer and the Owners of the appurtenant Unit; provided that no utility equipment shall be placed in any part of the Condominium Property other than the present location unless the written approval of the Association shall have first been obtained.

(c) Easements for Ingress and Egress. The Common Elements shall be, and the same are hereby declared to be subject to a perpetual nonexclusive easement of way over all roads, walkways and other Common Elements in favor of all Owners for all proper and normal purposes and for the furnishing of services and facilities for which the same are reasonably intended for the enjoyment of said Owners, subject to all restrictions in the Condominium Documents.

(d) Easement for Use of Leased or Acquired Property. Each Unit Owner shall have a nonexclusive easement for use of any property now hereafter acquired by the Association or otherwise for the common benefit of the Owners by purchase, lease or otherwise for all normal and proper purposes for which the same are reasonably intended, subject to all restrictions in the Condominium Documents and the Rules and Regulations.

(e) Easements Appurtenant to Units. The easements and other rights created herein for the Unit Owners shall be appurtenant to the Unit of that Owner and all conveyances of title to the Unit shall include a conveyance of the easements and rights as are herein provided even though no specific reference to such easements and rights appear in such instrument. The Owners do hereby designate the Developer and/or the Association as their lawful attorney-in-fact to execute any and all instruments on their behalf for the purpose of creating all such easements as are contemplated by the provisions hereof.

**2.05. Ownership of Common Elements.** Each Owner shall own an undivided interest in the Common Elements with all other Owners, and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as herein provided, without hindering or encroaching upon the lawful rights of the other Owners, which rights shall be appurtenant to and run along with the Unit. The extent or amount of such ownership shall be expressed by a percentage relating to each Unit and shall remain constant, unless changed in accordance with the provisions of Section 2.02 or 2.03 hereof or by the unanimous approval of all Owners and Mortgagees. The percentage ownership in the Common Elements relating to each Unit is as set forth on Exhibit D attached hereto.

2. The Declaration is further amended to change the percentage of each Owner of a Unit in the Common Elements, the Common Expenses and voting rights resulting from the

change in the number of Units by deleting Exhibit D in its entirety and by substituting in lieu thereof Exhibit D as attached to this Amendment.

3. The Declaration is hereby further amended to separately address the construction of improvements on Units and the obligation to repair and maintain existing improvements on Units by deleting Article V and substituting the following in lieu thereof as Article VA and Article VB of the Declaration

## **ARTICLE VA**

### **MAINTENANCE AND OPERATION OF THE CONDOMINIUM PROPERTY**

**5A.01. The Association's Obligation to Repair.** The Association acting through the Board of Directors shall be responsible for the maintenance, repair and replacement of the following, the cost of which shall be charged to all Unit Owners as a Common Expense:

- (i) The Common Elements of the Condominium Property, including the roads and storm water drainage facilities; and
- (ii) Incidental damage caused to a Unit by any work done by the Association.

This Section 5A.01 shall not relieve a Unit Owner of liability for damage to the Common Elements, a Unit of another person, adjacent property or any other property caused by the Unit Owner, his family members, guests, invitees, lessees or licensees as a consequence of the negligence, recklessness or willful misconduct of such person. The cost of repair for any damage so caused by the Unit Owner, his family members, guests, invitees, lessees or licensees, shall be a special assessment against the Unit Owner responsible therefor.

#### **5A.02. Each Owner's Obligation to Repair.**

(a) Except for those portions of the Condominium Property which the Association is required to maintain and repair, each Owner shall, at such Owner's expense, maintain the Private Elements of his Unit in good tenantable condition and repair, and shall be responsible for the repair, maintenance and replacement, if necessary, of the following items in his Unit:

- (i) The dwelling or any other improvement located or built on the Unit; and

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

(b) Each Unit Owner agrees as follows:

(i) To perform all maintenance, repairs and replacements which are his obligations under subparagraph (a) of this Section 5A.02;

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

(iii) Not to construct or make, or cause to be made, repairs to any utility system located outside his Unit but required to be maintained by him under subparagraph 5A.02(a)(ii) except by licensed plumbers or electricians authorized to do such work by the Association or its delegate;

(iv) Not to make any improvement to his Unit without the prior approval of the Architectural Review Committee as required in Article VB hereof;

(v) Not to make any alteration, addition, improvement, decoration, repair, replacement or change to the exterior of the dwelling or other improvement located on his Unit or to the Common Elements without the approval of the Architectural Review Committee as required in Article VB hereof; and

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

**5A.03. Alterations, Additions and Improvements by the Association.**

Except in the case of loss or damage to the Common Elements as contemplated by Article VIII of the Declaration, the Association shall not make any material structural alterations, capital additions or capital improvements to the Common Elements (other than for the purpose of replacing, restoring or rehabilitating portions of the Common Elements which is in accordance with the Declaration



and which does not require expenditures of more than \$1,000, exclusive of any funds applied from the reserves maintained hereunder) unless the same is authorized by the Board of Directors of the Association and ratified by the affirmative vote of the voting members casting not less than 50% of the total votes of the members of the Association present at any regular or special meeting of the Unit Owners called for that purpose at which a quorum is present. The cost of the foregoing shall be assessed against the Owners of Units as provided in Article IV hereof except as otherwise provided in this Section 5A.03. Where any alterations or additions as aforesaid are exclusively or substantially exclusively for the benefit of the Unit Owners requesting the same, then the cost of such alterations or additions shall be assessed against and collected solely from the Unit Owners exclusively, or substantially exclusively, benefiting therefrom, and the assessment shall be levied in such proportions as may be determined to be fair and equitable by the Board of Directors of the Association. Where such alterations or additions exclusively, or substantially exclusively, benefit Unit Owners requesting the same, said alterations and additions shall be made only when authorized by the Board of Directors and ratified by not less than 75% of the total votes of the Unit Owners exclusively, or substantially exclusively, benefiting therefrom. Alterations, improvements or repairs of an emergency nature may be made upon authorization by a vote of the majority of the Directors available for consultation if the same is necessary and in the best interest of the Unit Owners.

**5A.04. Utilities.** Each Unit Owner shall be required to pay all charges for utilities, including electricity, gas, cable television, and telephone service, used or consumed in his Unit. The utilities serving the Common Elements only shall be separately metered and paid by the Association as a Common Expense. The Association shall have authority to pay the cost of the utilities used or consumed in the Units and have the costs thereof apportioned among the Units based upon the Common Expense liability, use of the utility, or any other formula the Association may deem appropriate.

## **ARTICLE VB**

### **ARCHITECTURAL REVIEW COMMITTEE AND ARCHITECTURAL STANDARDS**

**5B.01 Committee Composition.** The ARC shall consist of three (3) persons. For so long as there are any Units upon which no residential dwelling has been constructed, Developer shall have the sole and exclusive right to appoint and remove all of the members of the ARC. At such time as there is no Unit without a residential dwelling constructed thereon, or upon Developer's sooner written notice to the Owners that it no longer desires to exercise the right to



appoint and remove members of the ARC as herein provided, then the members of the ARC shall be elected or removed by the Owners of the Units in accordance with the procedure set forth in subparagraph 5B.02 below. In the event of death, resignation or removal of a member of the ARC, then the remaining members of the ARC shall appoint a substitute member of the ARC to fill the vacancy of such deceased, resigning or removed member for the remainder of the term of such former member.

**5B.02 Procedure for Election and Removal.** Subject to the provisions of Section 5B.01 above, the procedure for the election and removal of the ARC by the Owners shall be as follows:

(a) Within 30 days after Developer's right to appoint the ARC is terminated in accordance with Section 5B.01 hereof, the ARC shall nominate for election by the Owners to the ARC one person for a term of three years, one person for a term of two years and one person for a term of one year and shall call a meeting of the Owners for election of the ARC by delivery of written notice of the persons nominated and the date, time and place of the meeting, which notice shall be sent not less than 14 nor more than 30 days prior to the meeting. Owners may make additional nominations for election for each position on the ARC by delivery of written notice to the ARC at least one day prior to the meeting. At the meeting, the persons nominated for each respective term shall be voted on separately and the person receiving the affirmative vote of a majority of the Owners present shall be elected to serve for the term specified and until his successor is elected and qualified. Prior to the expiration of each term, the ARC shall nominate a person for election for a three year term. The ARC shall then call a meeting of the Owners by delivery of written notice of the persons nominated and the date, time and place of the meeting not less than 14 nor more than 30 days prior to the meeting. Owners may make additional nominations for such position by delivery of written notice of such nomination to the ARC not less than one day prior to the meeting. At the meeting, the person receiving affirmative vote of a majority of the Owners present at the meeting shall be elected to the ARC for a term of three years from the expiration of his predecessor's term, and until his successor is elected and qualified.

(b) Upon the presentation to the ARC of a written petition executed by 10% or more of the Owners for the removal of a member elected to the ARC by the Owners, the ARC shall call a meeting of the Owners and shall deliver written notice of the purpose of the meeting and the date, time and place of the meeting. At the meeting, the member of the ARC named in the notice shall be subject to removal by the Owners, with or without cause, upon the affirmative vote of a majority of the Owners present at the meeting in favor of such removal.

Such removal shall be effective immediately and the vacancy created upon the removal shall be filled in the manner prescribed in Section 5B.01 above.

(c) The ARC may be terminated and its duties delegated to the Board of Directors of the Association if (i) a proposal to terminate the ARC is approved by a majority of the members of the ARC; and (b) the proposal to terminate the ARC is approved by the members of the Association at a meeting called for that purpose. Upon the termination of the ARC, all of its duties, rights and obligations shall be assumed and exercised by the Board of Directors of the Association.

**5B.03 Procedure and Meetings.** The ARC shall elect a chairman and he, or in his absence, the vice-chairman, shall be the presiding officer at all meetings of the ARC. The ARC may meet on a regular basis 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. The affirmative vote of a majority of those present in person or by proxy at a meeting of the ARC shall constitute the action of the ARC on any matter which comes before it; provided that a majority of the members of the ARC may delegate the right to act for and on behalf of the ARC to one or more of its members. The ARC is authorized to retain the services of consulting architects, landscape architects, designers, engineers, inspectors and/or attorneys in order to advise and assist the ARC in performing its functions set forth herein. The ARC shall be entitled to a reimbursement from the Association of expenses incurred in connection therewith. The ARC 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 ARC.

**5B.04 Architectural Standards.**

(a) The ARC is hereby authorized to promulgate and amend or modify from time to time written Architectural Standards governing policies, guidelines and minimum requirements to be satisfied with respect to the construction, location, landscaping and design of all dwellings and other improvements on any Unit, the content and manner in which plans and specifications and other documentation and information concerning the construction of any dwelling or other improvements on a Unit are to be submitted to and approved by the ARC and the Association and any other matters affecting the construction, repair or maintenance of any dwelling or other improvements on any Unit. The Architectural Standards adopted by the ARC and the Association shall be in addition to the provisions and requirements set forth in this Declaration and shall be binding upon and enforceable against all Owners.

(b) Notwithstanding anything herein to the contrary, the architectural standards for dwellings set forth in the Standard House Plans identified on Exhibit B to the Construction Contract by and between Eddleman Properties, Inc. and Thornton Construction Company, Inc., dated July 6, 2001, as the same may be amended from time to time, are hereby adopted and approved. An Owner may make reference to Standard House Plans in lieu of actually submitting the plans to the ARC pursuant to Section 5B.05(b)(ii), and such plans shall not be subject to further approval by the ARC under Section 5B.05 hereof, except that any modification, alteration or other change shall be subject to approval of the ARC under Section 5B.05(b), which approval shall not unreasonably be withheld. The approval of said Standard House Plans may be revoked by the ARC at any time after the termination of said Construction Contract.

#### **5B.05 Approval of Plans and Specifications.**

(a) In order to preserve the architectural and aesthetic appearance and the beauty of the development, to establish and preserve a harmonious design for the development and to protect and promote the value of the property, the Units, the dwellings, and all improvements thereon, no improvements of any nature shall be commenced, erected, installed, placed, moved onto, altered, replaced, relocated, permitted to remain on or maintained on any Unit by any Owner, other than Developer, which affect the exterior appearance of any Unit unless plans and specifications therefor have been submitted to and approved by the arc in accordance with the terms and provisions of section 5B.05(b) below. Without limiting the foregoing, the construction and installation of any dwellings, sidewalks, driveways, parking lots, mailboxes, decks, patios, piers, courtyards, swimming pools, greenhouses, playhouses, awnings, walls, fences, exterior lights, garages, guest or servant's quarters, garages or any other outbuildings, shall not be undertaken, nor shall any exterior addition to or change or alteration be made (including, without limitation, painting or staining of any exterior surface) to any dwelling or improvements, unless the plans and specifications for the same have been submitted to and approved by the ARC in accordance with the terms and provisions of section 5B.05(b) below.

(b) Subject to the provisions of Section 5B.04(b) hereof, the ARC is hereby authorized and empowered to approve all plans and specifications and the construction of all dwellings and other improvements on a Unit. Prior to the commencement of any dwelling or other improvements on any Unit, the Owner thereof shall submit to the ARC plans and specifications and related data



for all such Improvements, which shall include the following (hereinafter collectively referred to as the "Plans and Specifications"):

(i) Three (3) copies of an accurately drawn and dimensioned site development plan indicating the location of any and all Improvements, including, specifically, the dwelling to be constructed on said Unit, the location of all driveways, walkways, decks, terraces, patios and outbuildings and the relationship of the same to any set-back requirements applicable to the Unit. The site plan shall reflect the location of the proposed Improvements as such location relates to the recommended dwelling site as reflected on the Plan, or otherwise.

(ii) Three (3) copies of a foundation plan, floor plans and exterior elevation drawings of the front, back and sides of the dwelling to be constructed on the Unit.

(iii) Three (3) copies of written specifications and, if requested by the ARC, samples indicating the nature, color, type, shape, height and location of all exterior materials to be used in the construction of the dwelling on such Unit or any other improvements thereto, including, without limitation, the type and color of all brick, stone, stucco, roofing and other materials to be utilized on the exterior of a dwelling and the color of paint or stain to be used on all doors, shutters, trim work, eaves and cornices on the exterior of such dwelling.

(iv) Four (4) copies of the lighting plan, including specifications, for any exterior lighting to be utilized with respect to such Unit.

(v) Four (4) copies of a landscaping plan prepared and submitted in accordance with the provisions of Section 5B.06 below.

(vi) Three (3) copies of an erosion control plan prepared and submitted in accordance with Section 5B.07 below.

(vii) Such fee as may from time to time be imposed by the ARC for the review, approval and inspection of the Plans for such Improvements and the construction thereof pursuant to Section 5B.05(c) below (currently \$250.00).

(viii) Such other plans, specifications or other information or documentation as may be required by the Architectural Standards.

(c) The ARC shall, in its sole discretion, determine whether the Plans and Specifications and other data submitted by any Owner for approval are complete and acceptable. One copy of all Plans and Specifications as submitted to the ARC shall be retained in the records of the ARC and the other copy shall be returned to the Owner submitting the same marked "approved," "approved as noted," "disapproved" or "incomplete." The ARC shall establish a fee 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 in order to approve such Plans and Specifications and to monitor and otherwise enforce the terms hereof. Notwithstanding anything provided herein to the contrary, an Owner may make interior improvements and alterations within his dwelling that do not affect exterior appearance and may make interior improvements and alterations within any buildings or structures it maintains or owns that do not affect exterior appearance and, in each case, without the necessity or requirement that ARC approval or consent be obtained.

(d) Subject to the provisions of Section 5B.04(b) hereof, the ARC shall have the right to disapprove any Plans and Specifications upon any ground which is consistent with the objectives and purposes of this Declaration, including purely aesthetic considerations, any failure to comply with any of the provisions of this Declaration or the Architectural Standards, 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 the Condominium Property, objection to the location of any proposed improvements on any such Unit, objection to the Erosion Control Plan and/or landscaping plan for such Unit, objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any improvement or any other matter which, in the sole judgment of the ARC, would render the proposed improvement inharmonious with the general plan of development contemplated for the Condominium Property. The ARC shall have the right to approve any submitted Plans and Specifications with conditions or stipulations by which the Owner of such Unit shall be obligated to comply and must be incorporated into the Plans and Specifications for such improvements or dwelling. Approval of Plans and Specifications by the ARC for improvements to one particular Unit shall not be deemed an approval or otherwise obligate the ARC to approve similar plans and specifications or any of the features or elements for the improvements for any other Unit.

(e) In the event the ARC fails to approve in writing any proposed Plans and Specifications within forty-five (45) days after complete Plans and Specifications have been submitted, then the Plans and Specifications so submitted will be deemed to have been disapproved. The approval, conditional

approval or disapproval of such Plans and Specifications by the ARC shall be final and binding on the Owner and the ARC.

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

(g) If (A) any improvements are initiated, installed, maintained, altered, replaced or relocated on any Unit without approval by the ARC of the Plans and Specifications for the same or (B) the ARC shall determine that any approved Plans and Specifications for any improvements or the approved Erosion Control Plan (see Section 5B.07) and/or landscaping plans (see Section 5B.06) for any Unit are not being complied with, then, in either event, the Owner of such Unit shall be deemed to have violated this Declaration and the ARC shall have the right to exercise any of the rights and remedies set forth in Section 5B.13 below.

(h) The ARC and the Association, or any agent, employee or representative of either of them, may at any reasonable time and from time to time enter upon and inspect any Unit or any improvements being constructed thereon in order to determine whether the approved Plans and Specifications therefor are being complied with. Any such entry shall not be deemed to be a trespass or any other wrongful act by the ARC.

(i) NO OWNER SHALL OCCUPY ANY DWELLING UNLESS AND UNTIL THE ARC SHALL HAVE ISSUED TO THE OWNER A CERTIFICATE OF COMPLIANCE IN ACCORDANCE WITH THE PROVISIONS OF THIS SECTION 5B.05(i) AND SECTION 5B.14 BELOW. Upon completion of the construction of any dwelling, the Owner shall submit a written request to the ARC for a Certificate of Compliance. Upon receipt of such request, the ARC shall, within ten (10) business days, inspect the dwelling to determine if the construction is in compliance with the Plans and Specifications approved by the ARC, and promptly upon making such determination, the ARC shall either (i) issue to the Owner a Certificate of Compliance in accordance with Section 5B.14 below if the ARC finds the construction complies with such approved Plans and Specifications; or (ii) deliver to the Owner a written statement setting forth the reason(s) that a Certificate of Compliance will not be issued with respect to such dwelling.

**5B.06 Landscaping Approval.** In order to enhance the aesthetic appearance of the Property, no landscaping, grading, excavation or fill work of any nature shall be implemented or installed by any Owner, other than Developer, on any Lot or Dwelling unless and until landscaping plans therefor have been



submitted to and approved by the ARC. The provisions of Section 5B.05 above regarding the procedure for submission of such plans to the ARC, and the time for approval or disapproval of the same, shall be applicable to such landscaping plans.

**5B.07 Erosion Control Plan.** Owner or the Owner's builder or contractor shall prepare an Erosion Control Plan to be implemented with respect to any Unit. Any such Erosion Control Plan, to be approved by the ARC, must provide that gravel be placed in the driveway of the Unit during the construction period and that hay and silt fences be utilized during construction to minimize erosion. Such Erosion Control Plan must comply with all terms and conditions of the General Permit issued by the Alabama Department of Environmental Management and made available to Developer regarding storm water runoff from construction, excavation, land clearing and other land disturbance activities within the Property. The provisions of Section 5B.05 hereof regarding the procedure for submission of such plans to the ARC and the time for approval or disapproval of the same shall be applicable to such Erosion Control Plans.

**5B.08 Builder Regulation and Approval.** In order to minimize disruption in the Condominium Property and to maintain orderliness during construction of improvements to Units within the Condominium Property:

(a) The ARC and/or the Association shall have the right and authority from time to time to propose, adopt, alter, amend and revoke rules and regulations applicable to builders, general contractors and subcontractors who are engaged in the construction of improvements on any Units within the Condominium Property.

(b) The ARC and/or the Association shall have the right to approve an Owner's selection of a builder or contractor, whether a general contractor or subcontractor. No such builder, contractor, or subcontractor shall be approved if, in the opinion of the ARC and/or the Association, such builder, contractor or subcontractor (i) has a history of noncompliance with this Declaration or the rules and regulations adopted by the ARC and/or the Association with respect to builders and contractors in the Condominium Property, and such builder or contractor has failed to provide the ARC adequate assurance that it will comply with the requirements of this Declaration and any rules and regulations promulgated hereunder; or (ii) such builder or contractor or subcontractor working thereunder has failed to provide evidence of public liability insurance reasonably acceptable to the ARC and the Association.

(c) The ARC or the Association may require as a condition to the approval of any builder or contractor, whether as a general contractor or

subcontractor, to require such builder or contractor to post a bond or other reasonably satisfactory contract for indemnity to cover the cost of repair for any damage caused by such builder or contractor to the roads (including curbs and gutters) and storm water drainage systems.

**5B.09 Subsurface Conditions.** The Condominium Property may be located in an area which includes underground mines, tunnels, sinkholes and subsurface conditions which may result in sinkholes or other types of ground subsidence. The approval of Plans and Specifications by the ARC for any dwelling or other improvements on a Unit shall not be construed in any respect as a representation or warranty by the ARC, the Association or Developer to the Owner submitting such Plans and Specifications or to any of the successors or assigns of such Owner that the surface or subsurface conditions of such Unit are suitable for the construction of the improvements contemplated by such Plans and Specifications. It shall be the sole responsibility of each Owner to determine the suitability and adequacy of the surface and subsurface conditions of any Unit for the construction of any contemplated Improvements thereon.

**5B.10 Limitation of Liability.** Notwithstanding anything provided herein to the contrary, neither Developer, the ARC, the Association, nor any agent, employee, representative, member, shareholder, partner, officer or director of any of them, 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 VB, (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 VB, (d) the construction or performance of any work related to such plans, drawings and specifications, (e) bodily injuries (including death) to any Owner or the respective family members, guests, employees, servants, agents, invitees or licensees of any such Owner, or any damage to any dwellings, improvements or the personal property of any Owner or the respective family members, guests, employees, servants, agents, invitees or licensees of such Owner, which may be caused by, or arise as a result of, any defect, structural or otherwise, in any dwellings or improvements or the Plans and Specifications therefore or any past, present or future soil and/or subsurface conditions, known or unknown (including, without limitation, sinkholes, underground mines, tunnels and water channels and limestone formations on or under any Unit) and any other loss, claim, damage, liability or expense, including court costs and attorneys' fees, suffered, paid or incurred by any Owner arising out of or in connection with the use and occupancy of any Unit or any improvements situated thereon.



**5B.11 Commencement and Completion of Construction.** Upon commencement of construction of any Dwelling, construction work thereon shall be prosecuted diligently and continuously, and, unless a longer period of time is approved by the ARC, construction shall be completed within one (1) year of the commencement date of said construction. Such completion shall be evidenced by a certificate of occupancy issued by the appropriate governmental authorities and a Certificate of Compliance issued by the ARC.

**5B.12 Sales and Construction Activities.** Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Developer, its agents, employees, successors and assigns, shall have the right and option to maintain such facilities and to carry on such activities as may be reasonably required, convenient, or incidental to the completion, improvement, and sale of Units, including, without limitation, the installation and operation of sales and construction trailers and offices, signs and model dwellings, all as may be approved by Developer from time to time; provided, however, that the location of any construction trailers of any assignees of Developer's rights under this Section 5B.12 shall be subject to Developer's approval. The right to maintain and carry on such facilities and activities shall include, without limitation, the right to use dwellings constructed on Units as model residences and as offices for the sale of Units and for any related activities.

**5B.13 Enforcement and Remedies.** In the event any of the provisions of this Article VB or any rules and regulations promulgated by the ARC or the Association hereunder are breached or are not otherwise being complied with in all respects by any Owner or the respective family members, guests, invitees, agents, employees or contractors of any Owner, then the Association shall have the right, at its option, to do any or all of the following: (a) deny a contractor access to the subject Unit until the Owner or contractor submits a plan for correction of the violation that is approved by the ARC and undertakes to cure such violation in accordance with the approved plan, (b) require the cessation of any further construction on any Unit until any work in place which does not comply with the Plans and Specifications approved by the ARC for such improvements is removed or corrected, and/or (c) through its designated agents, employees, representatives and independent contractors, enter upon such Unit and take all action necessary to cure such violation or breach. All costs and expenses incurred by the ARC in enforcing any of the provisions of this Article VB, including, without limitation, attorneys' fees, court costs, costs and expenses of witnesses, engineers, architects, contractors, 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 Association in causing any Owner or such Owner's contractors, agents or invitees to comply with the terms and provisions of this



Article VB shall be paid by such Owner as an assessment under Article IV hereof, and if the same is not paid when due, shall bear interest and shall be subject to the lien and shall be subject to foreclosure as provided therein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any of the enforcement rights specified in this Declaration, including without limitation, Sections 6.21 and 6.27(d) and 6.30 hereof.

**5B.14 Certificate of Compliance.** The Certificate of Compliance issued by the ARC shall be in form suitable for recordation, identifying the subject Unit on which such dwelling or improvement is placed, and stating that the Plans and Specifications, the location of such dwelling or improvement and the use or uses to be conducted thereon have been approved, that such dwelling or improvement as constructed complies with the requirements of the ARC under this Article VB, and that there are no outstanding unpaid assessments against the Owner under this Declaration. Preparation and recording of such certificate shall be at the expense of such Owner. A Certificate of Compliance shall be prima facie evidence of the facts therein stated, and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all dwellings or improvements on the Unit, and the use or uses described therein comply with all the requirements of this Article VB, that all assessments which may constitute a lien on such Unit have been paid, and that the Unit is in compliance with all other requirements of this Declaration as to which the ARC and the Association exercise any discretionary or interpretive powers.

4. The Declaration is further amended to incorporate additional restrictions on the use of the Condominium Property by deleting Article VI in its entirety and substituting in lieu thereof the following:

## **ARTICLE VI**

### **RESTRICTIONS ON USE OF UNITS AND COMMON ELEMENTS**

**6.01. Rules and Regulations of the Association.** The Association is authorized to promulgate, amend and enforce Rules and Regulations concerning the operation and use of the Condominium Property; provided that such Rules and Regulations are not contrary to or inconsistent with the Act and the Condominium Documents. A copy of the Rules and Regulations shall be furnished by the Board of Directors to each Unit Owner prior to the time they become effective. All present and future Unit Owners, tenants, and occupants of the Units and any person who uses any part of the Condominium Property in any manner, are

subject to, and shall comply with the provisions of the Condominium Documents and the Rules and Regulations. The acquisition, rental or occupancy of a Unit or the use of any part of the Condominium Property by any one person shall constitute his agreement to be subject to and bound by the provisions of the Condominium Documents and the Rules and Regulations, and such provisions shall be deemed to be enforceable as equitable servitudes and covenants running with the land and shall bind any person having at any time any interest or estate in such Unit, as though such provisions were recited and stipulated in full in each and every deed of conveyance or lease thereof. The Association may promulgate enforcement provisions for violation of any Rule or Regulation by an Owner, his family members, guests, invitees, lessees or renters, including the payment of penalties for such violations.

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

- (a) Each Unit is hereby restricted to residential use.
- (b) There shall be no obstruction of the Common Elements, nor shall anything be kept or stored in the Common Elements, nor shall anything be constructed on or planted in or removed from the Common Elements, nor shall the Common Elements in any other way be altered without the prior written consent of the Association.
- (c) No Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in any increase of fire or hazard insurance premiums or the cancellation of insurance on any part of the Condominium Property, or which would be in violation of any law. No waste shall be committed to the Common Elements.
- (d) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Elements. The Common Elements shall be kept clear of rubbish, debris and other unsightly materials.

6.03 **ARC and Association Approval.** No dwellings or other improvements of any nature whatsoever shall be constructed on any Unit unless such dwelling and/or improvements have been approved by the ARC in the manner set forth in Article VB above. **No dwelling shall be occupied by any person until the Owner shall have received a Certificate of Compliance from the ARC pursuant to Section 5B.05(i) and Section 5B.14 of this Declaration.**

6.04 **Underground Utilities.** All utility lines, pipes, conduits and wiring for electrical, gas, telephone, water, sewer, cable television, security and any other utility service for any portion of the Condominium Property shall be installed and maintained below ground.

6.05 **Building Sites.**

(a) Prior to commencing any construction related activities on a Unit (including grading and clearing), the location of the dwelling to be constructed thereon shall be set forth on the site development plan submitted to the ARC in accordance with Section 5B.05(b)(i) above. All eaves, steps, porches, terraces, decks and patios shall be deemed a part of the dwelling for purposes of locating the dwelling on the site development plan.

(b) Subject to the minimum building set back lines which may from time to time be imposed by governmental authorities having jurisdiction over the Condominium Property, there shall be no fixed building set back lines with respect to any Unit. The Developer may, at its election, establish a recommended site for a dwelling on each Unit. The establishment of such building site is intended as a guideline, and the actual location of a dwelling on a Unit is subject to the approval of the ARC and the Association in accordance with Section 5B.05 above. **The ARC reserves the right to control absolutely and to solely decide the precise site and location of any dwellings or other improvements upon all Units within the Condominium Property and shall not be required to approve the construction of any dwelling within the recommended building site reflected on the Plan, or otherwise, or in strict compliance with the set back lines of the applicable governmental authority.**

6.06 **Trees.** Unless located within ten (10) feet of a dwelling or any driveway or sidewalk, no Owner, other than Developer, shall cut, remove or mutilate any tree, shrub, bush or other vegetation having a trunk diameter of four (4) inches or more at a point of three (3) feet above ground level, without first obtaining the approval of the ARC; provided, however, that the foregoing shall not be deemed to prohibit the cutting and removal of any dead or diseased trees certified as such to the ARC.

6.07 **Living Space.** The living space with respect to dwellings to be constructed on Units within the Condominium Property shall be in accordance with the following guidelines: (i) not less than 1,500 square feet on the main floor of any one-story or one and one-half story dwelling; and (ii) not less than 1,200 square feet on the first floor of any two-story dwelling. The ARC can reduce or increase the living space requirements for a dwelling if, in the opinion of the



ARC, the appearance of the dwelling on the Unit will be consistent with the other dwellings within the Condominium Property.

**6.08 Landscaping.**

(a) The landscaping plan for each Unit in the Condominium Property shall substantially comply with the requirements of Section 5B.06 shall be submitted to the ARC for approval pursuant to the provisions of Section 5B.05 above.

(b) All front and side yards of each Unit shall, unless approved by the ARC or otherwise required as a natural area or unless the same is landscaped with shrubbery and other approved plant life, be sodded with grass.

(c) All landscaping for a Unit shall be completed in accordance with the landscaping plan approved by the ARC no later than thirty (30) days following the issuance of a Certificate of Compliance for the Dwelling situated thereon.

(d) No hedge or shrubbery planting which obstructs sight-lines of streets and roadways shall be placed or permitted to remain on any Unit where such hedge or shrubbery interferes with traffic sight-lines for roadways within the Condominium Property. The determination of whether any such obstruction exists shall be made by the ARC, whose determination shall be final, conclusive and binding on all Owners.

(e) No rocks, rock walls or other substances shall be placed on any Unit as a front or side yard border or to prevent vehicles from parking on or pedestrians from walking on any portion of such Unit or to otherwise impede or limit access to the same. No bird baths, fountains, reflectors, flag poles, statues, lawn sculptures, lawn furnishings, artificial plants, rock gardens, rock walls, bird houses or other fixtures and accessories shall be placed or installed within the front or side yards of any Unit.

(f) No vegetable, herb or similar gardens or plants shall be planted or maintained in the front or side yards of any Unit or in the rear (back) yard of any Unit if the same would be visible from any street.

(g) No Owner shall allow the grass on his Unit to grow to a height in excess of six (6) inches, measured from the surface of the ground.

(h) Seasonal or holiday decorations (e.g., Christmas trees and lights, pumpkins, Easter decorations) shall be promptly removed from each Unit as soon as such holiday passes.

#### **6.09 Roofing.**

(a) The ARC shall have the right to establish specific requirements for the pitch of any roof and the type of roofing materials which may be utilized for any Dwelling.

(b) No solar or other energy collection panel, equipment or device shall be installed or maintained on any Unit, including, without limitation, the roof of any dwelling, if the same would be visible from any street.

(c) No plumbing or heating vents, stacks and other projections of any nature shall be placed on the roof on the front of a dwelling. All such vents, stacks and any other projections from the roof of any dwelling shall be located on the rear roof of such dwelling and shall (i) be painted the same color as the roofing material used for such dwelling and (ii) to the extent practicable, not be visible from any street.

(d) No projections of any type shall be placed or permitted to remain above the roof of any dwelling except for approved chimneys and vent stacks.

**6.10 Exterior Lighting.** All exterior lighting for any Unit, including, without limitation, free standing lighting and utility (e.g., flood) lights attached to a dwelling, must be approved by the ARC.

#### **6.11 Exterior Materials and Finishes.**

(a) Approved exterior building material finishes for any dwelling shall include brick, stone, stucco, synthetic plaster (e.g., dryvit), solid wood siding (e.g., cypress or other solid wood) and such other materials as may be approved by the ARC. Unless specifically approved by ARC, the use of siding in combination with brick, stone, stucco or synthetic plaster (e.g., dryvit) shall not be utilized on the front of any Dwelling and shall otherwise be limited to the greatest extent possible. All wood surfaces utilized on the exterior of any dwelling shall be painted; stained wood shall not be authorized; provided, however, that the foregoing shall not be deemed to require decks on the rear of a dwelling to be painted nor shall the foregoing be deemed to prohibit the staining of doors. Unless specifically approved by the ARC, exterior finish materials shall not include particle board, plywood, vinyl or any other type of pressed, laminated

or fabricated siding, vertical siding, and any other materials as the ARC and the Association may from time to time determine.

(b) All brick, stonework and mortar, as to type, size, color and application, must be approved by the ARC and the Association. No black grout (mortar) shall be utilized for any exterior brick or stone. All exterior colors, including, without limitation, the color of all roof shingles, brick, stone, stucco, synthetic plaster (e.g. dryvit), wood, trim, cornices, eaves, railings, doors and shutters shall be subject to approval of the ARC.

(c) No wooden steps, stoops or porches shall be allowed on the front or sides of any dwellings. Concrete steps, stoops or porches must be finished in tile, brick or stone.

(d) 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 dwelling or for retaining walls and foundations shall be finished in the same materials utilized for the remainder of the dwelling (e.g., brick, stone, stucco, etc.).

(e) Metal flashing, valleys, vents and gutters installed on a dwelling shall be painted to blend with the color of the exterior materials to which it is adhered or installed.

**6.12 Chimneys.** The exterior of all chimneys shall be constructed of either brick, stone, stucco or synthetic plaster (e.g. dryvit). Unless specifically approved by the ARC, no cantilevered chimneys or chimneys with siding shall be permitted. If a fireplace utilizes a metal spark arrestor or other metal venting apparatus at the top of the chimney, then a painted metal 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 dwelling.

### **6.13 Garages.**

(a) Each dwelling shall provide for parking for at least two (2) automobiles in garages equipped with garage doors. Carports shall not be permitted.

(b) Garage doors shall be constructed of such materials as are approved by the ARC. Garage doors shall be kept closed at all times except when in use. No garage shall be converted to any use other than for the parking of vehicles therein without the approval of the ARC.



(c) All automobiles owned or used by the Owner of any dwelling and their respective family members 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 which would result in the garage being unavailable for the parking of vehicles therein.

#### **6.14 Fences.**

(a) No chain link, vinyl coated or wire fences shall be permitted within the Condominium Property except with regard to maintenance areas within the Common Areas, and those fences erected by Developer. No fences shall be allowed in front yards. Electric fences (other than underground invisible electric fences for the retention of pets) shall not be permitted. The type of materials utilized for (including the color thereof) and the location of all fences must be approved by the ARC. Fences visible to streets shall be screened with landscaping acceptable to the ARC.

(b) Notwithstanding subparagraph (a) above, no fence constructed on any Lot shall exceed six feet in height or the maximum height imposed by any governmental authority. No fence shall be constructed over or upon any portion of any easement granted by the Developer, whether or not reflected on the Plan.

#### **6.15 Windows, Window Treatments and Doors.**

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

(b) No aluminum or metal windows shall be utilized on the front or sides of any dwelling. Cantilevered bay windows shall be approved by the ARC (which may require additional landscaping in front of such bay windows). Burglar bars or doors (including wrought iron doors) shall not be permitted. Screen doors shall not be used on the front or side of any dwelling. No aluminum or metal doors with glass fronts (e.g., storm doors) shall be allowed on the front of any dwelling.

(c) Appropriate window treatments shall be used on all windows. Sheets, bed linens, blankets and paper or plastic bags are not appropriate window treatments.

**6.16 Mailboxes.** Only one (1) mailbox shall be allowed on any Unit. All mailboxes shall be of the type, design, color and location as may be

established in the Architectural Standards or as approved by the ARC. Mailboxes shall contain only the name and/or house number of the Unit as approved by the ARC, but no further inscription, paintings, ornaments or artistry shall be allowed.

**6.17 Utility Meters and HVAC Equipment.** All electrical, gas, telephone and cable television meters shall be located on the side or rear of a dwelling. All exterior heating, ventilating and air conditioning compressor units and equipment shall be located, to the extent practicable, at the rear of a dwelling and, if the same are visible from the street, such compressor units and equipment shall be screened from public view by either walls or landscaping to be approved by the ARC. No window mounted heating or air conditioning units or window fans shall be permitted.

**6.18 Satellite Dishes and Antennae.** Unless specifically permitted by the Architectural Standards from time to time adopted as herein provided, no satellite dishes, radio antenna, radio receiver or other similar device or aerial shall be attached to or installed on any Unit unless the same is contained entirely within the interior of a building or other structure. No radio or television signals or any other form of electromagnetic radiation or transmission shall be permitted to originate from any Unit which may interfere with the reception of radio or television signals within the Condominium Property; provided, however, that Developer shall not be prohibited from causing to be installed and operated, either directly or indirectly by contract or otherwise with another entity, any equipment necessary for master antenna, cable television, security, mobile radio or similar systems within the Condominium Property.

**6.19 Driveways and Sidewalks.** All driveways and sidewalks for each Unit shall be constructed of such hard surfaced material as may be specified in the Architectural Standards or approved by the ARC. All driveways and sidewalks shall be paved in such hard surfaced materials. Chert, gravel and loose stone driveways and sidewalks are prohibited.

**6.20 Outdoor Furniture, Recreational Facilities and Clotheslines.**

(a) No furniture shall be placed, kept, installed, maintained or located in or on front or side yards or areas of a Unit. 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) Wood piles shall be located only at the rear of a dwelling and shall be screened by appropriate landscaping from view from streets and, to the extent practicable, from adjacent Units.

(c) 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) Free-standing playhouses and treehouses shall be permitted but only after ARC approval of the same.

(e) Basketball backboards shall be located so as not to be visible from any street and shall otherwise be located on such Unit in a location approved by the ARC. Basketball goal backboards should be of clear plexiglass or acrylic.

(f) Outside clotheslines or other outside facilities for drying or airing clothes shall be prohibited on any Unit unless such clotheslines or other facilities are screened by appropriate landscaping from view from any street and from any adjacent Unit. No clothing, rugs or other items shall be hung, placed or allowed to remain on any railing, fence or wall.

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

(h) Bird feeders, wood carvings, plaques and other types of homecrafts shall not be permitted in the front or side yards of any Unit 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 at the rear of a dwelling, shall not be visible from any street.

**6.21 Pets and Animals.** No animals, livestock, birds or poultry of any kind shall be kept, raised or bred by any Owner upon any Unit or other portion of the Condominium Property; provided, however, that a reasonable number of the usual household pets may be kept and maintained on a Unit so long as they are not kept for breeding or commercial purposes and so long as they are kept within a fence or walled area on the Unit (including, without limitation, invisible fences) approved by the ARC, and they are kept on a leash when outside such fenced or walled area. No pet shall be allowed to make an unreasonable amount of noise or become a nuisance. No structure or area for the care, housing or confinement of any pet shall be constructed or maintained on any part of the Common Elements; all such structures or areas shall be located at the rear of a dwelling, shall not be visible from any street and shall be constructed of materials and of a size approved by the ARC. Dogs and cats shall not be allowed to roam unattended within the Condominium Property. Pets shall not be permitted to leave excrement



on the Unit 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. The Association shall have the right from time to time to promulgate rules and regulations governing keeping the pets within the Condominium Property, including the right to assess fines for violations of such rules and regulations.

#### **6.22 Trash, Rubbish and Nuisances.**

(a) No trash, garbage, rubbish or debris of any kind shall be dumped, placed or permitted to accumulate upon any portion of the Condominium Property nor shall any nuisance or odors be permitted to exist or operate upon or arise from any Unit which would render any portion thereof unsanitary, unsightly, offensive or detrimental to persons using, occupying or owning any other Units within the Condominium Property. Noxious or offensive activities shall not be carried on in or from any Unit or in any part of the Common Areas, and each Owner shall refrain from any act or use of a Unit which could cause disorderly, unsightly or unkept conditions, result in the cancellation of or increase in insurance coverage or premiums for any portion of the Condominium Property or be in violation of any law, statute, ordinance rule, regulation or requirement of any governmental authority. Without limiting the generality of the foregoing, no exterior speakers, horns, whistles, bells or other sound devices, other than security and fire alarm devices used exclusively for such purposes, shall be located, used or placed upon any Unit or other portion of the Condominium Property.

(b) Trash, garbage and any other refuse or waste shall not be kept on any Unit 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 Units by appropriate landscaping or fencing approved by the ARC; provided, however, that trash cans and containers can be moved to the side yard of any dwelling on trash collection days for such Unit.

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

#### **6.23 Recreational Vehicles and Machinery and Equipment.**

(a) 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 to be stored or allowed to remain on any Unit unless the same is placed, stored and maintained within a wholly-enclosed structure, with roofing and doors, on such Unit. Any such enclosed structure must be approved by the ARC. 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.

(b) Each Unit shall provide for adequate off-street parking (i.e., parking areas located solely within the property lines of such Unit). Vehicles shall be parked only in driveways constructed in accordance with the provisions of Section 6.19 above or in garages constructed in accordance with the provisions of Section 6.13 above. Vehicles shall not be parked on any landscaped or natural areas of a Unit.

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

(d) The Association 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, tractors, equipment, machinery, trailers (with or without wheels), motor homes, 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.

**6.24 Signage.** All signs, billboards or advertising structures of any kind are prohibited except for signage structures made available by the Association to an Owner's real estate broker and to an Owner for the purpose of advertising a Unit for sale and for signage structures made available by the Association to the primary builder for the purpose of advertising the construction of the dwelling. All such signage shall be purchased from the Association for a reasonable cost. The signs shall contain no more than the name of the broker or builder, telephone number, the name of the agent, and such other information as may be approved by the Association. The ARC and the Association shall have the right to enter any of the Property for the purpose of removing and destroying any unauthorized signs without recourse from any Owner or builder. All builder or contractor signs shall



be promptly removed after completion of construction. So long as it owns any Units, the Developer shall have the right to place any type of signs on or about the Condominium Property for the purpose of advertising the Condominium Property and promoting the sale of Units.

**6.25 Above Ground Tanks and Wells.** No exposed above-ground tanks for the storage of fuel, water or any other substances shall be located on any Unit or within any of the Common Areas. No private water wells may be drilled or maintained and no septic tanks or similar sewage facilities may be installed or maintained on any Unit.

**6.26 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 Unit; 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 detached garages or other structures which are approved in writing by the ARC, (c) dog houses so long as such dog houses are visibly screened from view from all streets; and (d) adjacent offices erected or placed on any part of the Property by Developer pursuant to Section 5B.12 above.

**6.27 Construction of Improvements.**

(a) During the construction of any improvements or dwelling, (i) all Units shall be maintained in a clean condition, free of debris and waste material, (ii) all unused construction materials shall be stored, to the extent practicable, out of view from any street and (iii) all construction trash, debris and rubbish on each Unit shall be properly disposed of outside the Condominium Property at least weekly. In no event shall any used construction materials be burned or buried on or beneath any Unit or any other portion of the Condominium Property. No Owner shall allow dirt, mud, gravel or other substances to collect or remain on any street. Each Owner and each Owner's contractor, subcontractors, laborers and suppliers shall cause all such dirt, mud, gravel and other substances to be removed from the treads and wheels of all vehicles used in or related to the construction of improvements on a Unit prior to such vehicles traveling on any streets within the Condominium Property.

(b) During the construction of any improvements or dwellings, construction equipment and the vehicles of all contractors, subcontractors, laborers, materialmen and suppliers shall (i) utilize off-street parking only, (ii) enter the Unit on which such Improvements are being constructed only from the



driveway for such Unit and (iii) not damage trees or other vegetation on such Lot which, pursuant to the provisions of Section 6.06 above, are to be preserved.

(c) 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 the Condominium Property. Upon completion of construction of any improvements or any dwelling, all construction machinery, tools and equipment, all unused construction materials and all trash, debris and rubbish shall be immediately removed from the Unit and such Unit shall be kept and maintained in a clean and uncluttered condition.

(d) All dwellings and any other improvements shall be constructed in compliance with the Architectural Standards and all applicable federal, state, county and local laws, ordinances, rules, regulations and zoning and building code requirements. Each Owner shall be solely responsible for obtaining from the appropriate governmental authorities all necessary permits and licenses and otherwise paying all required fees for the construction of any improvements on such Owner's Unit. Each owner shall also be responsible for strict compliance with the Plans and Specifications for the dwelling, the landscaping plan for the Lot, the Erosion Control Plan approved by the ARC, as well as any other applicable watershed protection or soil erosion requirements, and other governmental requirements, both during and after completion of construction of any improvements on such Owner's Unit. **In the event that the Owner or any of his contractors or agents shall be in violation of the aforesaid requirement, the Association or the ARC shall have the right to exercise any of the remedies set forth in Section 6.30 below. Further, the Owner shall indemnify and hold the Developer harmless from and against any liability the Developer may have as a result of the violation by the Owner or its builder, contractor, or other agent, of the terms, conditions or requirements of the Erosion Control Plan submitted by the Owner and approved by the ARC.**

**6.28 Swimming Pools.** Swimming pools, outdoor hot tubs, reflecting ponds, saunas, whirlpools, and lap pools may be constructed, installed and maintained on any Unit subject to the prior written approval of the plans for the same by the ARC and the restrictions contained herein and in the Erosion Control Plan. Above-ground pools shall not be permitted. The Association shall have the right to adopt further rules and regulations governing the construction of swimming pools and other outdoor water features or amenities within the Property.

**6.29 Variances.** The ARC, in its sole and absolute discretion, shall have the exclusive right to grant variances with respect to the provisions of Article VA and VB above and this Article VI with respect to any Unit. Any

variance request submitted to the ARC shall be in writing and, upon approval of the same by the ARC, shall be evidenced by a written variance executed by a member of the ARC.

**6.30 Enforcement and Remedies.** In the event any of the provisions of this Article VI are breached or are not otherwise being complied with in all aspects by any Owner or the respective family members, guests, invitees, agents, employees or contractors of any Owner, then the Association shall have the right, at its option, to do any or all of the following: (a) require cessation of such violation or noncompliance and/or (b) through their designated agents, employees, representatives and independent contractors, enter upon such Unit and take all action necessary to extinguish or correct such violation or breach. All costs and expenses incurred by the Association in enforcing any of the provisions of this Article VI, 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 ARC or the Association in connection therewith, shall be paid by such Owner who has violated or breached any of the provisions of this Article VI, shall constitute an individual Assessment to such Owner pursuant to Article IV hereof, and if the same is not paid when due, shall bear interest, and shall be subject to the lien and subject to foreclosure as provided for herein. Notwithstanding anything provided herein to the contrary, the rights and remedies of the ARC and the Association set forth herein shall not be deemed exclusive of any other rights and remedies which the ARC or the Association may exercise at law or in equity or any of the enforcement rights specified in this Declaration in Sections 5B.13, 6.21, and 6.27(d) of this Declaration.

5. The Declaration shall be further amended to establish the obligation of the Developer with respect to the payment of Common Expenses and the payment of assessments on unsold Units by deleting Section 12.03(c) in its entirety therefrom and by adding the following as new Section 12.04 of the Declaration:

**12.05 Payment of Common Expenses and Assessments by the Developer.** Developer shall pay and be responsible for the Common Expenses and other expenses incurred by the Association in connection with the administration, operation and management of the Condominium Property until the first to occur of either of the following: (i) the expiration of two (2) years after conveyance of the first Unit; or (ii) the expiration of thirty (30) days after the conveyance of a total of twenty (20) Units to purchasers other than the Developer or persons affiliated with the Developer. No Assessments shall be made against any Units so long as the Developer is responsible for the payment of the Common Expenses; provided that Developer may, at its election and in its discretion, elect



to pay Assessments with respect to unsold Units in which case Developer shall have no responsibility to pay any Common Expenses or other expenses of the Association from and after the first month Assessments are levied against the Owners of Units.

6. All capitalized terms not specifically defined herein shall have the same meanings attributable to them in the Declaration. In the event of any conflict in the provisions of this Amendment and the Declaration, the provisions of this Amendment shall govern in all respects.

7. The Developer in its capacity as Developer and as the Owner of all Units hereby ratifies, confirms and approves the terms and provisions of the Declaration as amended hereby and declares the Condominium Property shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied, improved and in any other manner utilized subject to the covenants, conditions, restrictions, obligations and provisions of the Declaration as amended hereby, all of which shall run with the land and shall be binding upon all parties having or acquiring any right, title and interest in the Condominium Property or any part thereof. The Association hereby consents to the amendments herein contemplated and agrees that the Declaration as amended hereby shall run with the land and be binding upon its members as owners of Units.

**IN WITNESS WHEREOF**, the undersigned has caused this Amendment to be executed on this 8<sup>th</sup> day of MAY, 2002.

EDDLEMAN PROPERTIES, INC.

By: *David W. Eddleman*

Its: PRESIDENT

ASSOCIATION:

Courtside at Brook Highland Association,  
Inc.

By: *David W. Eddleman*

Its: PRESIDENT



STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, SUSAN S. TURNER, A Notary Public in and for said county in said state, hereby certify that Douglas D. Eddleman, whose name as President of Eddleman Properties, Inc., a corporation, is signed to the foregoing Amendment to Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Amendment, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal of office this 8th day of May, 2002.

Susan S. Turner  
Notary Public  
My Commission Expires: 7/27/03

STATE OF ALABAMA )

COUNTY OF JEFFERSON )

I, SUSAN S. TURNER, A Notary Public in and for said county in said state, hereby certify that Douglas D. Eddleman, whose name as President of Courtside at Brook Highland, a condominium, is signed to the foregoing Amendment to Declaration of Condominium, and who is known to me, acknowledged before me on this day that, being informed of the contents of the above and foregoing Amendment, he, as such officer and with full authority, executed the same voluntarily for and as the act of said corporation on the day the same bears date.

Given under my hand and official seal of office this 8th day of May, 2002.

Susan S. Turner  
Notary Public  
My Commission Expires: 7/27/03

**AMENDED  
EXHIBIT D**

**PERCENT OWNERSHIP OF COMMON ELEMENTS  
AND VOTES**

<b>UNIT #</b>	<b>% COMMON ELEMENT OWNERSHIP</b>	<b>% COMMON EXPENSE LIABILITY</b>	<b># OF VOTES</b>
1	1.493	1.493	1
2	1.493	1.493	1
3	1.493	1.493	1
6	1.493	1.493	1
7	1.493	1.493	1
8	1.493	1.493	1
9	1.493	1.493	1
10	1.493	1.493	1
11	1.493	1.493	1
12	1.493	1.493	1
13	1.493	1.493	1
14	1.493	1.493	1
15	1.493	1.493	1
18	1.493	1.493	1
19	1.493	1.493	1
20	1.493	1.493	1
21	1.493	1.493	1
24	1.493	1.493	1
25	1.493	1.493	1
26	1.493	1.493	1
29	1.493	1.493	1
30	1.493	1.493	1
32	1.493	1.493	1
33	1.493	1.493	1
34	1.493	1.493	1
35	1.493	1.493	1
36	1.493	1.493	1
37	1.493	1.493	1
38	1.493	1.493	1
39	1.493	1.493	1
40	1.493	1.493	1
41	1.493	1.493	1
42	1.493	1.493	1
43	1.493	1.493	1
44	1.493	1.493	1
45	1.493	1.493	1

46	1.493	1.493	1
47	1.493	1.493	1
48	1.493	1.493	1
49	1.493	1.493	1
50	1.493	1.493	1
51	1.493	1.493	1
52	1.493	1.493	1
53	1.493	1.493	1
54	1.493	1.493	1
55	1.493	1.493	1
56	1.493	1.493	1
57	1.493	1.493	1
58	1.493	1.493	1
59	1.493	1.493	1
60	1.493	1.493	1
61	1.493	1.493	1
62	1.493	1.493	1
63	1.493	1.493	1
64	1.493	1.493	1
65	1.493	1.493	1
66	1.493	1.493	1
67	1.493	1.493	1
68	1.493	1.493	1
69	1.493	1.493	1
70	1.493	1.493	1
71	1.493	1.493	1
72	1.493	1.493	1
73	1.493	1.493	1
74	1.493	1.493	1
75	1.493	1.493	1

**TOTALS**

**100.03**

**100.03**

**67**